

File No. 191005

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date November 21, 2019

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Controller's Report, Economic Impact</u> |
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Completed by: Alisa Somera

Date November 18, 2019

Completed by: _____

Date _____

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 certain**
6 **neighborhood commercial districts and certain neighborhood commercial transit**
7 **districts vacant, to fund assistance to small businesses; increasing the City's**
8 **appropriations limit by the amount collected under the tax for four years from March 3,**
9 **2020; and affirming the Planning Department's determination under the California**
10 **Environmental 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. 191005 and is incorporated herein by reference. The Board
16 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 certain**
23 **neighborhood commercial districts and certain neighborhood commercial transit**
24 **districts vacant, to fund assistance to small businesses; increasing the City's**
25 **appropriations limit by the amount collected under the tax for four years from March 3,**

1 2020; and affirming the Planning Department's determination under the California
2 Environmental 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 fails to offer the property
17 at a reasonable rate. Retail vacancies may persist as property owners and landlords hold storefronts
18 off of the market for extended periods of time or refuse to offer the space for a reasonable market rate.

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

22 (f) By dedicating proceeds from the Vacancy Tax to the Small Business Assistance Fund, the
23 Vacancy Tax will also assist small businesses and provide relief to those small businesses adversely
24 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 "Affiliate" means a person under common majority ownership or common control with any
6 other person, whether that ownership or control is direct or indirect. An Affiliate includes but is not
7 limited to a person that majority owns or controls any other person or a person that is majority owned
8 or controlled by any other person.

9 "Building Permit Application Period" means the period following the date that an application
10 for a building permit for repair, rehabilitation, or construction with respect to Taxable Commercial
11 Space in a building or structure is filed with the City through the date the Department of Building
12 Inspection or its successor agency grants or denies that application, but not to exceed one year.
13 Notwithstanding the preceding sentence, if more than one building permit application is filed by or on
14 behalf of one or more persons in the Taxpayer's Group for the same Taxable Commercial Space, the
15 Building Permit Application Period shall mean only the applicable period following the date the first
16 application is filed with the City by or on behalf of anyone in the Taxpayer's Group.

17 "Conditional Use Application Period" means the 183-day period following the date that a
18 complete application for a conditional use permit for use of Taxable Commercial Space is filed with the
19 City, but if the Planning Commission or its successor agency does not grant or deny that application
20 within 183 days, the Conditional Use Application Period means the period following the date that the
21 application is filed through December 31 of the year in which the date 183 days from the application
22 filing date falls. Notwithstanding the preceding sentence, if more than one complete conditional use
23 permit application is filed by or on behalf of one or more persons in the Taxpayer's Group for the same
24 Taxable Commercial Space, the Conditional Use Application Period shall mean only the applicable
25

1 period following the date the first complete application is filed with the City by or on behalf of anyone
2 in the Taxpayer's Group.

3 "Construction Period" means the one-year period following the date that the City issues a
4 building permit for repair, rehabilitation, or construction with respect to Taxable Commercial Space in
5 a building or structure, provided that if the City issues multiple building permits to or for the benefit of
6 one or more persons in the Taxpayer's Group for the same Taxable Commercial Space, the One-Year
7 Construction Period shall mean only the one-year period following the issuance of the first building
8 permit to or for the benefit of anyone in the Taxpayer's Group.

9 "Disaster Period" means the two-year period following the date that Taxable Commercial
10 Space was severely damaged and made uninhabitable or unusable due to fire, natural disaster, or other
11 catastrophic event.

12 "Frontage" means the number of linear feet of Taxable Commercial Space that is adjacent or
13 tangent to a Public Right of Way, rounded to the nearest foot.

14 "Public Right of Way" means the dedicated public alleys, boulevards, courts, lanes, roads,
15 sidewalks, spaces, streets, and ways within the City, which are under the permitting jurisdiction of the
16 Department of Public Works.

17 "Related Person" means a spouse or domestic partner, child, parent, or sibling (these latter
18 three relationships including biological, adoptive, and "step" relationships; and the sibling
19 relationship also including half-siblings).

20 "Residential Real Estate" means real property where the primary use of or right to use the
21 property is for the purpose of dwelling, sleeping or lodging other than as part of the business activity of
22 accommodations. For purposes of this Article 29, "accommodations" means the activity of providing
23 lodging or short-term accommodations for travelers, vacationers, or others, including the business
24 activity described in code 721 of the North American Industry Classification System as of November 6,
25 2012.

1 "Taxable Commercial Space" means the ground floor of any building or structure, or the
2 ground floor of any portion of a building or structure, where such ground floor (1) is adjacent or
3 tangent to a Public Right of Way, (2) is located in one of the "Named Neighborhood Commercial
4 Districts" or "Named Neighborhood Commercial Transit Districts" listed in Section 201 of the
5 Planning Code, as those districts exist on March 3, 2020, and irrespective of whether those districts are
6 expanded, narrowed, eliminated, or otherwise modified subsequent to that date, and (3) is not
7 Residential Real Estate.

8 "Taxpayer's Group" means for each taxpayer, with respect to each Taxable Commercial
9 Space, the taxpayer, any current or former co-owner or co-tenant of the taxpayer, and any Related
10 Person or Affiliate of the taxpayer or the taxpayer's current or former co-owner or co-tenant.

11 "Vacant" means unoccupied, uninhabited, or unused for more than 182 days, whether
12 consecutive or nonconsecutive, in a tax year. Notwithstanding the previous sentence, a person shall
13 not be considered to have kept a building or structure Vacant during the Building Permit Application
14 Period, Construction Period, Disaster Period, and/or Conditional Use Application Period if that
15 Building Permit Application Period, Construction Period, Disaster Period, and/or Conditional Use
16 Application Period applies to that person for that Taxable Commercial Space. In determining whether
17 a person has kept Taxable Commercial Space Vacant, days within the Building Permit Application
18 Period, Construction Period, Disaster Period, and Conditional Use Application Period shall be
19 disregarded if that Building Permit Application Period, Construction Period, Disaster Period, and/or
20 Conditional Use Application Period applies to that person for that Taxable Commercial Space.

21
22 **SEC. 2904. IMPOSITION OF TAX.**

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

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

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

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

5 (3) For the 2023 tax year and subsequent tax years:

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

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

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

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

21 (d) A person shall be liable for the Vacancy Tax only if that person has kept Taxable
22 Commercial Space Vacant in a tax year. A person shall be deemed to have kept Taxable Commercial
23 Space Vacant in a tax year if that person and all Related Persons and Affiliates of that person,
24 individually or collectively, have kept that Taxable Commercial Space Vacant for more than 182 days
25 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) Any organization that is exempt from income taxation under Section 501(c)(3) of the
7 Internal Revenue Code of 1986, as amended, shall be exempt from the Vacancy Tax.

8 (c) The City shall not be exempt from the Vacancy Tax.

9 (d) If a lessee or sublessee has operated a business in Taxable Commercial Space for more
10 than 182 consecutive days during a lease or sublease of at least two years, such lessee or sublessee
11 shall not be liable for the Vacancy Tax for the remainder of that lease or sublease, regardless of
12 whether that lessee or sublessee keeps the Taxable Commercial Space Vacant.

13
14 **SEC. 2906. ADMINISTRATION.**

15 Except as otherwise provided under this Article 29, the Vacancy Tax shall be administered
16 pursuant to Article 6 of the Business and Tax Regulations Code.

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

19 (a) All monies collected under the Vacancy Tax Ordinance shall be deposited to the credit of
20 the Small Business Assistance Fund ("Fund"), established in Administrative Code Section 10.100-334.
21 The Fund shall be maintained separate and apart from all other City funds and shall be subject to
22 appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to
23 have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be
24 carried forward and accumulated in the Fund for the purposes described in subsection (b).
25

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) To the Tax Collector and other City Departments, for administration of the Vacancy**
5 **Tax and administration of the Fund.**

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

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

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

16
17 **SEC. 2908. TECHNICAL ASSISTANCE TO THE TAX COLLECTOR.**

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

21
22 **SEC. 2909. AMENDMENT OF ORDINANCE.**

23 **The Board of Supervisors may amend or repeal this Article 29 by ordinance by a two-thirds**
24 **vote and without a vote of the people except as limited by Articles XIII A and XIII C of the California**
25 **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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REVISED LEGISLATIVE DIGEST

(11/18/2019, Amended in Committee)

[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 certain neighborhood commercial districts and certain 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 named neighborhood commercial or neighborhood commercial transit districts vacant. The tax would be based on the linear footage of street-facing frontage of vacant ground floor commercial space and the number of consecutive years that space was kept vacant, as follows:

- For keeping space vacant in the 2021 tax year, \$250 per linear foot.
- For keeping space vacant in the 2022 tax year:
 - \$500 per linear foot if that space was kept vacant both in 2022 and by any person 2021; or
 - \$250 per linear foot if that space was kept vacant only in 2022.
- For keeping space vacant in 2023 and subsequent tax years:
 - \$1,000 per linear foot if that space was kept vacant in the tax year and by any person in both of the previous two tax years;
 - \$500 per linear foot if the \$1,000 rate does not apply and if that space was kept vacant both in the tax year and by any person in the immediately preceding tax year; or
 - \$250 per linear foot if that space was kept vacant only in the tax year.

Commercial space would be considered vacant if it is unoccupied, uninhabited, or unused for more than 182 days, whether consecutive or nonconsecutive, in a calendar year. Days during the following periods would not count as vacant days: (1) the period following the date that an initial building permit application for repair, rehabilitation, or construction of commercial space

is filed through the date that application is granted or denied, without regard to any appeals, such period not to exceed one year, (2) the one-year period following the date that the City issues an initial building permit for repair, rehabilitation, or construction of commercial space, (3) the two-year period following the date that commercial space was severely damaged and made uninhabitable or unusable due to fire or natural disaster, and/or (4) the 183-day period following the date that an initial complete application for a conditional use permit is filed with the City, but if that application is not granted or denied within 183 days, without regard to any appeals, the period shall be extended to December 31 of the year in which the date 183 days from the filing date of the complete application falls.

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 all related persons or affiliates of that person, individually or collectively, keep that space vacant for more than 182 days in that year. A related person means a spouse, domestic partner, child, parent, or sibling. An affiliate means a person under common majority ownership or common control with another person, including persons in a parent-subsidiary relationship. Internal Revenue Code Section 501(c)(3) organizations would be exempted from the tax. The City would not be exempted from the tax.

The tax would be imposed on 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.

If a lessee or sublessee has operated a business in commercial space for more than 182 consecutive days during a lease or sublease of at least two years, such lessee or sublessee shall not be liable for the tax for the remainder of that lease or sublease, regardless of whether that lessee or sublessee keeps that space vacant.

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.

Background Information

This legislative digest reflects amendments made in committee on November 13, 2019. The amendments changed the tax rates, clarified that the tax applies only to named neighborhood commercial and neighborhood commercial transit districts, added definitions for related persons and affiliates, modified the exclusion periods during which commercial space would not be considered vacant, added an exemption for Section 501(c)(3) organizations, and made

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other, nonsubstantive changes. The amendments also increased the threshold by which the Board of Supervisors may amend this ordinance consistent with the California Constitution from a majority to two-thirds.

This legislative digest also reflects an amendment made in committee on November 18, 2019, which added an exemption for lessees and sublessees in certain circumstances.

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CITY AND COUNTY OF SAN FRANCISCO

LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

November 15, 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

Office of Small Business Recommendation to the Board of Supervisors: **Approval**

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.

At that time, the Commission expressed their support for the intent of the motion, particularly as it relates to long term vacancies. The SBC's recommendation was to support the motion upon the condition that Supervisor Peskin work in concert with the Office of Small Business (OSB). Specifically, they recommended modified timelines relative to the named exceptions and an amendment that the 182 days to be consecutive only

The Office of Small Business very much appreciates Supervisor Peskin and Lee Hepner for working with OSB on its set of recommendations. The amended version of the Initiative Ordinance does satisfy these critical concerns:

1. The Vacancy Tax now poses significantly less of a risk to small businesses.
2. The Conditional Use Authorization Period, the Building Permit Application Period and the Construction Period are now reflective of realistic permitting processing times, and as such greatly reduces the risk that a small business could be assessed the tax while trying to open their business.
3. The vacancy tax has a three year tiered phase in period beginning at \$250 per linear foot in the first year, \$500 in the second year, \$1000.00 per linear foot in the third year and beyond. This significantly reduces the amount of the tax the property owner could potentially pass on to the tenant during lease negotiations.

OFFICE OF SMALL BUSINESS • SMALL BUSINESS COMMISSION

1 DR. CARLTON B. GOODLETT PLACE, ROOM 140, SAN FRANCISCO, CALIFORNIA 94102-4681

(415) 554-6408

4. As requested, The Disaster Period has been extended beyond one year to two years.

Considerations for trailing legislation:

1. The Board of Supervisors should consider providing the regulatory agency with guidance on how to address vacant properties where the property owner may be experiencing economic hardship. This is to ensure that applying this tax would not destabilize the property owner and expedite the sale of the property.
2. Require that the Controller or the Tax and Treasurers Office report out data relative to: number of property owners assessed the tax each year and how long the property has been vacant and; number of long term vacancies being leased; number of small business charged the tax and whether the tax was charged due to non-activation or during the permitting period of before opening; whether the tax assessment resulted in the sale of property; and an evaluation of properties available on the market.

The Office of Small Business was grateful for the opportunity to work with Supervisor Peskin and his staff and recommends that the Board of Supervisor support Vacancy Tax Initiative Ordinance. OSB looks forward to working with Supervisor Peskin or any member of the Board of Supervisors on any trailing legislation and the Tax and Treasurers Office in developing the guidelines for administering the tax.

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

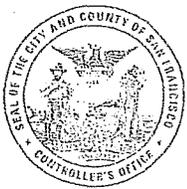
Sincerely,



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

FL# 191005
Received in Committee
11/13/19
JR



OFFICE OF THE CONTROLLER
CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield
Controller
Todd Rydstrom
Deputy Controller

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

November 13, 2019

RE: File 191005 – Ordinance creating an excise tax on keeping commercial property vacant

Dear Ms. Calvillo,

Should the proposed ordinance be approved by the voters, in my opinion, it would result in an annual tax revenue increase to the City of a de minimus amount up to a maximum of \$5 million. The proposed tax is a dedicated tax and proceeds would be deposited into the Small Business Assistance Fund.

The proposed ordinance would amend the City's Business Tax and Regulations Code to impose an annual excise tax of \$1,000 per linear foot of street-facing frontage of vacant ground floor commercial space that is located in a neighborhood commercial district or a neighborhood transit commercial district. The tax would be paid by the building owner, should the commercial space not be leased; the lessee, if leased and not subleased; or the sublessee. Generally, commercial ground floor space would be considered vacant if it is unoccupied, uninhabited, or unused for more than 182 days.

The proposed ordinance would establish the Small Business Assistance Fund. After allowable administrative costs and refunds of any overpayments of the vacancy tax, the Fund would provide assistance to the maintenance and operation of small businesses in San Francisco.

Sincerely,

Ben Rosenfield
Controller

Note: This analysis reflects our understanding of the proposal as of the date shown. At times further information is provided to us which may result in revisions being made to this analysis before the final Controller's statement appears in the Voter Information Pamphlet.

Wong, Linda (BOS)

From: Mchugh, Eileen (BOS)
Sent: Wednesday, November 13, 2019 7:49 PM
To: Wong, Linda (BOS)
Subject: FW: Economic Impact Report Issued: Taxing Commercial Vacancies

From: Egan, Ted (CON) <ted.egan@sfgov.org>
Sent: Wednesday, November 13, 2019 10:07 AM
To: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Mchugh, Eileen (BOS) <eileen.e.mchugh@sfgov.org>; BOS-Supervisors <bos-supervisors@sfgov.org>; BOS-Legislative Aides <bos-legislative_aides@sfgov.org>; Elsbernd, Sean (MYR) <sean.elsbernd@sfgov.org>; Bruss, Andrea (MYR) <andrea.bruss@sfgov.org>; Philhour, Marjan (MYR) <marjan.philhour@sfgov.org>; Power, Andres (MYR) <andres.power@sfgov.org>; Kirkpatrick, Kelly (MYR) <kelly.kirkpatrick@sfgov.org>; Cretan, Jeff (MYR) <jeff.cretan@sfgov.org>; Kittler, Sophia (MYR) <sophia.kittler@sfgov.org>; Torres, Joaquin (ECN) <joaquin.torres@sfgov.org>; alubos@sftc.org; pkilkenny@sftc.org; Campbell, Severin (BUD) <severin.campbell@sfgov.org>; Brousseau, Fred (BUD) <fred.brousseau@sfgov.org>; Docs, SF (LIB) <sfdocs@sfpl.org>; Rosenfield, Ben (CON) <ben.rosenfield@sfgov.org>; Rydstrom, Todd (CON) <Todd.Rydstrom@sfgov.org>; Lane, Maura (CON) <maura.lane@sfgov.org>
Subject: Economic Impact Report Issued: Taxing Commercial Vacancies

The Office of Economic Analysis has issued an economic impact report on the proposed tax on keeping commercial properties vacant

The report may be accessed here: <http://openbook.sfgov.org/webreports/details3.aspx?id=2772>

Main Conclusions:

The proposed legislation would place an excise tax relating to vacant commercial property on the March 2020 ballot in San Francisco. The proposed tax would apply to most ground-floor non-residential properties within neighborhood commercial areas in the city. If the owner (or tenant) of such a property keeps it unoccupied for more than 182 days in a given year, a tax equal to \$1,000 per linear foot of the street frontage of the property would be incurred. Exceptions are provided, for a time-limited period, if the vacancy is due to fire or natural disaster; construction, repair or rehabilitation, or a pending conditional use authorization from the City.

The problem of vacant commercial storefronts is associated with the decline of the retail trade industry in the city, during a time of strong overall economic growth. Small businesses and property owners suffer when vacant storefronts make commercial areas less attractive to customers. To the extent that speculative or negligent behavior by property owners and tenants is contributing to the problem of commercial vacancy, a narrowly tailored vacancy tax can benefit these areas, and the city's economy in general. However, properties can also remain vacant for long periods because of economic conditions beyond the control of the owner. In such cases, a tax would not solve the problem, would reduce commercial property values, and discourage investment in commercial areas. This risk can be minimized by broadening the current exemptions in the proposed tax, to avoid taxing vacancies during a recession, and to minimize the impact zoning controls can have on commercial vacancies.

Ted Egan, Ph.D., Chief Economist
Office of the Controller
City and County of San Francisco
City Hall, Room 316

2019-11
4.005
File No. - 19105



OFFICE OF THE CONTROLLER

CITY AND COUNTY OF SAN FRANCISCO

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
Ben Rosenfield
Controller

2019 NOV 13 AM 9:50
Todd Rydstrom
Deputy Controller

BY JRE

MEMORANDUM

TO: The Honorable Board of Supervisors
Angela Calvillo, Clerk of the Board of Supervisors

FROM: Ted Egan, Chief Economist

DATE: November 13, 2019

SUBJECT: Office of Economic Analysis Impact Report for File Number 191005

Dear Madam Clerk and Members of the Board:

The Office of Economic Analysis is pleased to present you with its economic impact report on file number 191005, "Taxing Commercial Vacancies: Economic Impact Report." If you have any questions about this report, please contact me at (415) 554-5268.

Taxing Commercial Vacancies: Economic Impact Report



CITY & COUNTY OF SAN FRANCISCO

Office of the Controller
Office of Economic Analysis

Item #191005

11.13.2019

Introduction

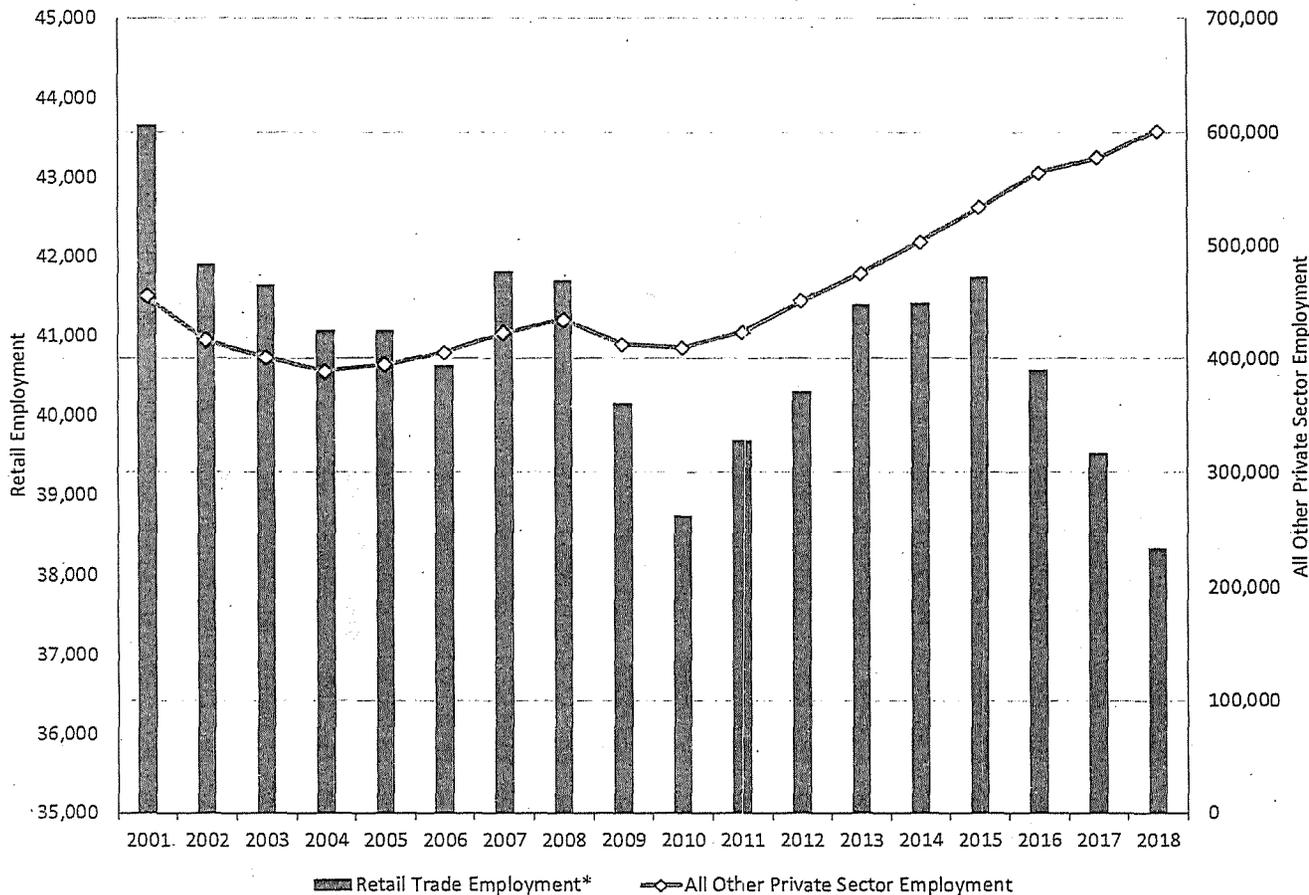
- The proposed legislation would place an excise tax relating to vacant commercial property on the March 2020 ballot in San Francisco. Under California law, all tax increases must be approved by the voters.
- The proposed tax would apply to most ground-floor non-residential properties within neighborhood commercial areas in the city. If the owner (or tenant) of such a property keeps it unoccupied for more than 182 days in a given year, a tax equal to \$1,000 per linear foot of the street frontage of the property would be incurred.
- Exceptions are provided, for a time-limited period, if the vacancy is due to fire or natural disaster; construction, repair or rehabilitation, or a pending conditional use authorization from the City.
- While the tax is expected to affect few property owners and generate little revenue, it is structured in a way that could have consequences for the city's changing neighborhood commercial areas. For this reason, the Office of Economic Analysis has published this economic impact report.

Background and Policy Issues

- The tax has been proposed in the context of reports of rising commercial vacancies in neighborhood commercial areas, at a time of unprecedented strength in the city's overall economy.
- The legislation states that "retail vacancies occur when a property owner or landlord fails to actively market a vacant retail storefront to viable commercial tenants and/or to offer the property at a reasonable rate. Retail vacancies may persist as property owners and landlords hold storefronts off of the market for extended periods of time or refuse to offer the space for a reasonable market rate".
- Vacancy taxes are sometimes proposed as a way to curb speculative behavior in which an owner keeps a property vacant to avoid a long-term lease at current rents, in the hope that higher-paying tenants will be available in the future. However, under local or state law, an owner is not obligated to agree to a long-term lease with a commercial tenant.

San Francisco's Retail Trade Trends in Context

Retail Trade* and All Other Private Sector Employment in San Francisco, 2001-18



Since 2001, the city's retail trade industry has performed very differently from the rest of the city's economy. Brick-and-mortar retail employment declined by 12%, while other private sector employment has grown by 32%. The number of retail establishments in the city has also declined, by 15%. Most such establishments are located in the neighborhood commercial districts that are affected by the proposed legislation.

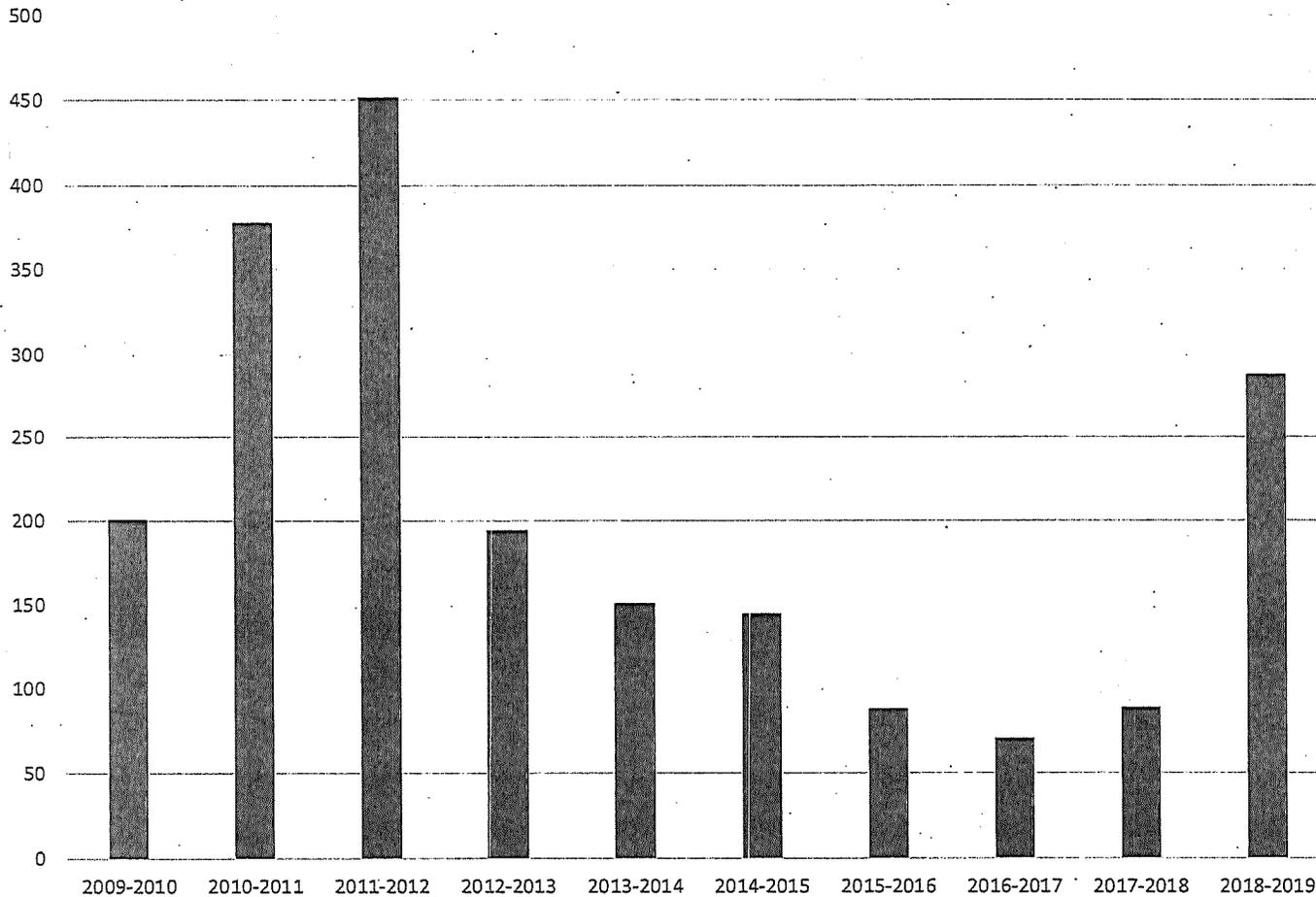
Since 2015, the trend is even more stark – an 8% decline in retail employment, alongside 13% growth in other private employment

This decline has occurred despite a substantial increase in the supply of retail space in the city. San Francisco's housing supply has expanded by 15% since 2000, with much of that new supply consisting of multi-family housing with new retail space on the ground floor. Most of this supply growth has not occurred in neighborhood commercial areas, however.

* "Retail trade" refers to companies with NAICS codes 44-45, excluding 454, Non-store retailers, who are mainly internet retailers. Food & Beverage Service Establishments are not included.
 Source: Bureau of Labor Statistics, Quarterly Census of Employment and Wages.

Vacancies Increase When Retail Declines

Estimated Number of Citywide Vacant Buildings, FY2010 - FY2019, Based on DBI Fees



The City's Building Code requires owners of vacant buildings and commercial storefronts to register them with the Department of Building Inspection (DBI), and pay an annual fee.

Based on DBI's fee revenue, we have estimated the number of registered vacant buildings over time. All types of vacant buildings are required to be registered, so the totals shown here are greater than the numbers that would be subject to the proposed legislation.

The number rose during the recession years, fell during the recovery, and has recently risen again. One likely factor behind the recent rise is increased enforcement by DBI in 2018 and 2019, and a new City ordinance that closed loopholes around the registration requirement. The decline in retail employment since 2015 may also be a contributing factor.

Estimated Tax Revenue

- The tax's revenue is expected to fluctuate with the city's building cycle, with higher revenues seen during an economic downturn, in keeping with the general trend seen in DBI's vacant building fee revenue.
- To arrive at a revenue estimate for the proposed tax, we assume the city's overall vacancy rate for retail properties will fluctuate between 5% - 30%, depending on the business cycle. We further assume that 1% - 3% of those vacancies will be vacant for more than 182 days, and thus be potentially subject to the tax.
- Using the the City's GIS data to measure the street frontage of the affected zones, and multiplying that length by the \$1,000/foot-year tax and the vacancy rate led to a revenue estimate of between \$0.3 and \$5 million per year.

Economic Impact Factors

- To the extent that the proposed tax can be tailored to apply only to vacancies caused by speculative or negligent behavior, the tax would likely lead to fewer vacancies, and potentially more vibrant and healthy neighborhood retail areas. Neighboring property values would be protected, along with the incentive to invest in and maintain public and private amenities within the neighborhood.
- However, the fact that brick-and-mortar retailing has declined while the rest of the economy, and the supply of retail space, has grown, suggests San Francisco – like many other areas – may be experiencing a long-term decline in demand for retail space due to the growth of internet commerce.
- A property could also be vacant because of a lack of demand, either due to this long-term decline, and/or a recession. If an owner has a vacant commercial property because the previous tenant went out of business, and cannot secure another tenant because new businesses are not being formed, then a tax is unlikely to improve the situation. On the contrary, the threat of a tax that cannot be avoided will likely depress the value of all properties in neighborhood commercial areas, and inhibit investment in them.

Recommendation: Recession Exemption

- The proposed tax does attempt to identify and protect owners, for a six month period, whose properties are kept vacant because they are in the process of securing a Conditional Use permit.
- However, this “safe harbor” would not benefit an owner unable to find a tenant during a recession.
- This issue could be addressed by, for example, deducting official U.S. recession periods from the 183 day vacancy period, so an owner would not be taxed for being unable to find a tenant during a recession.

Recommendation: Broader Tenant Exemptions

- Additionally, some neighborhood commercial areas have fairly restrictive rules about allowable businesses, even with a conditional use authorization.
- The City may wish to further exempt an owner who has a pending application for a use variance and a lease commitment from certain potential tenants that would not be permitted in the commercial area without a variance.
- As a concrete example – so-called “flexible retail” uses are not permitted in many neighborhood commercial districts (NCDs). The City could exempt from the proposed tax an owner of a vacant unit in an NCD who had a lease commitment from a business that wanted to operate a flexible retail use, if the owner also applied for a variance.
- This kind of broader exemption would make it easier for the owner to demonstrate a good faith effort to limit vacancy, and it is highly unlikely that an owner would prefer a tenant that requires a variance to one that could be more easily permitted.
- Of course, this provision would only exempt the owner from paying the tax; the variance application would be considered separately.

Conclusions

- The problem of vacant commercial storefronts is associated with the decline of the retail trade industry in the city, during a time of strong overall economic growth.
- Small businesses and property owners suffer when vacant storefronts make commercial areas less attractive to customers. To the extent that speculative or negligent behavior by property owners and tenants is contributing to the problem of commercial vacancy, a narrowly tailored vacancy tax can benefit these areas, and the city's economy in general.
- However, properties can also remain vacant for long periods because of economic conditions beyond the control of the owner. In such cases, a tax would not solve the problem, would reduce commercial property values, and discourage investment in commercial areas.
- This risk can be minimized by broadening the current exemptions in the proposed tax, to avoid taxing vacancies during a recession, and to minimize the impact zoning controls can have on commercial vacancies.

Staff Contacts

Ted Egan, Ph.D., Chief Economist
ted.egan@sfgov.org



SAN FRANCISCO
OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO

LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

November 15, 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

Office of Small Business Recommendation to the Board of Supervisors: **Approval**

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.

At that time, the Commission expressed their support for the intent of the motion, particularly as it relates to long term vacancies. The SBC's recommendation was to support the motion upon the condition that Supervisor Peskin work in concert with the Office of Small Business (OSB). Specifically, they recommended modified timelines relative to the named exceptions and an amendment that the 182 days to be consecutive only

The Office of Small Business very much appreciates Supervisor Peskin and Lee Hepner for working with OSB on its set of recommendations. The amended version of the Initiative Ordinance does satisfy these critical concerns:

1. The Vacancy Tax now poses significantly less of a risk to small businesses.
2. The Conditional Use Authorization Period, the Building Permit Application Period and the Construction Period are now reflective of realistic permitting processing times, and as such greatly reduces the risk that a small business could be assessed the tax while trying to open their business.
3. The vacancy tax has a three year tiered phase in period beginning at \$250 per linear foot in the first year, \$500 in the second year, \$1000.00 per linear foot in the third year and beyond. This significantly reduces the amount of the tax the property owner could potentially pass on to the tenant during lease negotiations.

OFFICE OF SMALL BUSINESS • SMALL BUSINESS COMMISSION

1 DR. CARLTON B. GOODLETT PLACE, ROOM 140, SAN FRANCISCO, CALIFORNIA 94102-4681

(415) 554-6408

4. As requested, The Disaster Period has been extended beyond one year to two years.

Considerations for trailing legislation:

1. The Board of Supervisors should consider providing the regulatory agency with guidance on how to address vacant properties where the property owner may be experiencing economic hardship. This is to ensure that applying this tax would not destabilize the property owner and expedite the sale of the property.
2. Require that the Controller or the Tax and Treasurers Office report out data relative to: number of property owners assessed the tax each year and how long the property has been vacant and; number of long term vacancies being leased; number of small business charged the tax and whether the tax was charged due to non-activation or during the permitting period of before opening; whether the tax assessment resulted in the sale of property; and an evaluation of properties available on the market.

The Office of Small Business was grateful for the opportunity to work with Supervisor Peskin and his staff and recommends that the Board of Supervisor support Vacancy Tax Initiative Ordinance. OSB looks forward to working with Supervisor Peskin or any member of the Board of Supervisors on any trailing legislation and the Tax and Treasurers Office in developing the guidelines for administering the tax.

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

Wong, Linda (BOS)

From: Dick-Endrizzi, Regina (ECN)
Sent: Monday, November 18, 2019 8:33 AM
To: Fewer, Sandra (BOS); Mandelman, Rafael (BOS); Stefani, Catherine (BOS)
Cc: Peskin, Aaron (BOS); Hepner, Lee (BOS); Fregosi, Ian (BOS); Temprano, Tom (BOS); Wong, Linda (BOS); Donovan, Dominica (ECN)
Subject: Update to the SBC/OSB response for BOS File#191005 - Recommending Approval
Attachments: 191005 - SBC Response.Final.2.pdf

Dear Supervisors Fewer, Stefani and Mandelman,

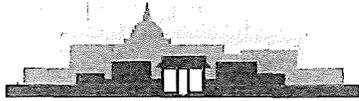
Attached is an updated response on behalf of the Small Business Commission and the Office of Small Business and recommends the Board of Supervisors support the Initiative Ordinance and move it forward to March 2020 Ballot. OSB has reviewed the amendment that will be introduced today and supports it.

Kindly,

Regina Dick-Endrizzi | Executive Director | Office of Small Business
regina.dick-endrizzi@sfgov.org | D: 415.554.6481 | O: 415.554.6134 | c: 415.902-4573
City Hall, Room 140* | 1 Carlton B. Goodlett Place | San Francisco, CA 94102

www.sfosb.org | businessportal.sfgov.org | [facebook](https://www.facebook.com/sfgov) | [twitter](https://twitter.com/sfgov)

*As of July 1, 2019, the Office of Small Business (OSB) has relocated to Room 140 in City Hall. (Van Ness Side)
OSB shares space with Treasurer and Tax Collector and is located in the back, left side of Room 140.



SAN FRANCISCO

OFFICE OF SMALL BUSINESS

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

OFFICE OF SMALL BUSINESS • SMALL BUSINESS COMMISSION

1 DR. CARLTON B. GOODLETT PLACE, ROOM 110, SAN FRANCISCO, CALIFORNIA 94102-4681

(415) 554-6408

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 $25 \times \$1000 = \$25,000$.
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

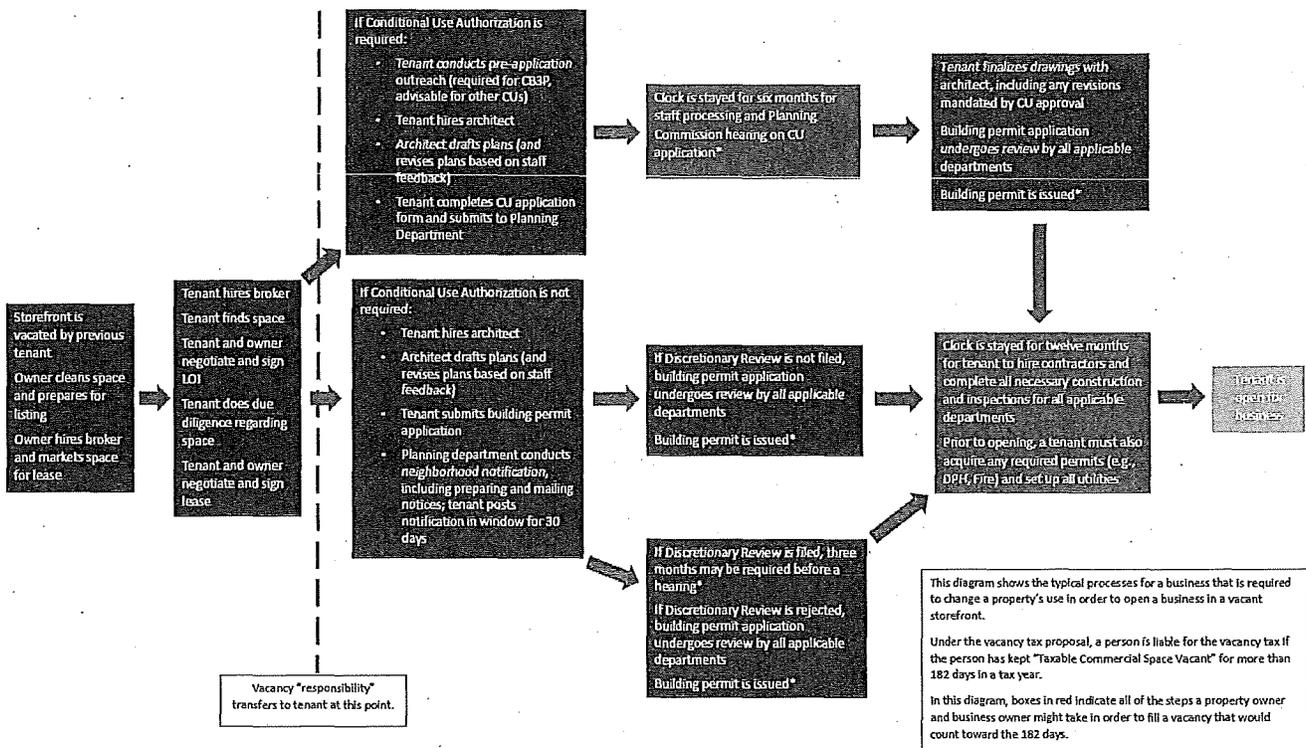
² SEC. 702. Classes of Neighborhood Commercial Districts

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

Wong, Linda (BOS)

From: Donovan, Dominica (ECN)
Sent: Monday, November 4, 2019 9:10 AM
To: Wong, Linda (BOS)
Cc: Lew, Lisa (BOS); Dick-Endrizzi, Regina (ECN); Karunaratne, Kanishka (MYR); Kittler, Sophia (MYR); Pagan, Lisa (ECN); Quevedo, Bryan (ECN); Chan, Gloria (ECN); Peskin, Aaron (BOS); Hepner, Lee (BOS); Fewer, Sandra (BOS); Boilard, Chelsea (BOS); Stefani, Catherine (BOS); Herzstein, Daniel (BOS); Mandelman, Rafael (BOS); Mundy, Erin (BOS)
Subject: RE: BOS Referral: File No. 191005 - Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Excise Tax on Keeping Commercial Property Vacant
Attachments: 191005 - SBC Response.Final.pdf

Hi Linda,

Please see the SBC's response attached.

Many thanks,

Dominica Donovan
Senior Policy Analyst
Small Business Commission Secretary

Office of Small Business
City and County of San Francisco
City Hall, Room 140
Direct: (415) 554-6489 | Office: (415) 554-6134

[website](#) | [business portal](#) | [facebook](#) | [twitter](#)

From: Lew, Lisa (BOS)
Sent: Monday, October 07, 2019 4:07 PM
To: Dick-Endrizzi, Regina (ECN) <regina.dick-endrizzi@sfgov.org>
Cc: Donovan, Dominica (ECN) <dominica.donovan@sfgov.org>; Wong, Linda (BOS) <linda.wong@sfgov.org>
Subject: BOS Referral: File No. 191005 - Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Excise Tax on Keeping Commercial Property Vacant

Hello,

Attached is a proposed legislation which is being referred to the Small Business Commission for comment and recommendation.

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.

Sent on behalf of Linda Wong, Budget and Finance Committee. Please forward the Commission's response as soon as it is available to Linda Wong.

Regards,

Lisa Lew

Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
P 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org



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Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

October 7, 2019

File No. 191005

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear Ms. Gibson:

On October 1, 2019, Supervisor Peskin introduced legislation for the following proposed Initiative Ordinance for the March 3, 2020, Election:

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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Linda Wong".

for By: Linda Wong, Assistant Clerk
Budget and Finance Committee

Attachment

c: Joy Navarrete, Environmental Planner not result in a direct or indirect physical change
Don Lewis, Environmental Planner in the environment.

joy navarrete

Digitally signed by joy navarrete
DN: dc=org, dc=sfgov, dc=cityplanning,
ou=CityPlanning, ou=Environmental
Planning, cn=joy navarrete,
email=joy.navarrete@sfgov.org
Date: 2019.10.17 17:56:47 -0700

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Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

November 15, 2019

File No. 191005-2

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear Ms. Gibson:

On November 13, 2019, Supervisor Peskin introduced an amended legislation for the following proposed Initiative Ordinance for the March 3, 2020, Election:

File No. 191005-2

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 certain neighborhood commercial districts and certain 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.

This amended legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

Linda Wong
for By: Linda Wong, Assistant Clerk
Budget and Finance Committee

Attachment

c: Joy Navarrete, Environmental Planner
Don Lewis, Environmental Planner

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller

FROM:  Linda Wong, Assistant Clerk, Budget and Finance Committee
Board of Supervisors

DATE: November 15, 2019

SUBJECT: AMENDED INITIATIVE ORDINANCE INTRODUCED
March 3, 2020 Election

The Board of Supervisors' Budget and Finance Committee has received the following amended Initiative Ordinance for the March 3, 2020, Election, introduced by Supervisor Peskin on November 13, 2019. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 191005-2

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 certain neighborhood commercial districts and certain 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.

Please review and prepare a financial analysis of the proposed amended measure prior to the first Budget and Finance Committee hearing.

If you have any questions or concerns, please call me at (415) 554-7719 or email: linda.wong@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Todd Rydstrom, Deputy City Controller
Peg Stevenson, City Performance Director
Natasha Mihal, City Services Auditor

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
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TDD/TTY No. 554-5227

MEMORANDUM

TO: Sophia Kittler, Liaison to the Board of Supervisors, Mayor's Office
Jon Givner, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission
Naomi Kelly, City Administrator, Office of the City Administrator
Jose Cisneros, Treasurer, Office of the Treasurer & Tax Collector
Mohammed Nuru, Director, Public Works
Joaquin Torres, Director, Office of Economic and Workforce Development

FROM:  Linda Wong, Assistant Clerk, Budget and Finance Committee
Board of Supervisors

DATE: November 15, 2019

SUBJECT: AMENDED INITIATIVE ORDINANCE INTRODUCED
March 3, 2020 Election

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Please review and submit any reports or comments you wish to be included with the legislative file.

If you have any questions or concerns, please call me at (415) 554-7719 or email: linda.wong@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Andres Power, Mayor's Office
Rebecca Peacock, Mayor's Office
Patrick Ford, Ethics Commission
Lynn Khaw, Office of the City Administrator
Lihmeei Leu, Office of the City Administrator
Amanda Kahn Fried, Office of the Treasurer & Tax Collector
David Steinberg, Public Works
Jeremy Spitz, Public Works
Jennifer Blot, Public Works
John Thomas, Public Works
Lena Liu, Public Works
J'Wel Vaughan, Office of Economic and Workforce Development
Ken Rich, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development

BOARD of SUPERVISORS



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San Francisco 94102-4689
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Fax No. 554-5163
TDD/TTY No. 554-5227

November 15, 2019

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

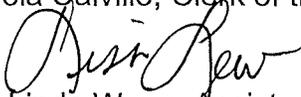
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The proposed amended ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Budget and Finance Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

for By: 
Linda Wong, Assistant Clerk
Budget and Finance Committee

c: John Rahaim, Director of Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
AnMarie Rodgers, Director of Citywide Planning

Corey Teague, Zoning Administrator
Scott Sanchez, Acting Deputy Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

BOARD of SUPERVISORS



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TDD/TTY No. 554-5227

MEMORANDUM

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

FROM:  Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: November 15, 2019

SUBJECT: AMENDED LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following amended legislation, introduced by Supervisor Peskin on November 13, 2019:

File No. 191005-2

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The proposed amended 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

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM:  Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: November 15, 2019

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Committee has received the following amended legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 191005-2

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 certain neighborhood commercial districts and certain 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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

c: Dominica Donovan, Small Business Commission

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller

FROM:  Linda Wong, Assistant Clerk, Budget and Finance Committee
Board of Supervisors

DATE: October 7, 2019

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
March 3, 2020 Election

The Board of Supervisors' Budget and Finance Committee has received the following Initiative Ordinance for the March 3, 2020, Election, introduced by Supervisor Peskin on October 1, 2019. This matter is being referred to you in accordance with Rules of Order 2.22.4.

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.

Please review and prepare a financial analysis of the proposed measure prior to the first Budget and Finance Committee hearing.

If you have any questions or concerns, please call me at (415) 554-7719 or email: linda.wong@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Todd Rydstrom, Deputy City Controller
Peg Stevenson, City Performance Director
Natasha Mihal, City Services Auditor

BOARD of SUPERVISORS



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MEMORANDUM

TO: Sophia Kittler, Liaison to the Board of Supervisors, Mayor's Office
Jon Givner, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission
Naomi Kelly, City Administrator, Office of the City Administrator
Jose Cisneros, Treasurer, Office of the Treasurer & Tax Collector
Mohammed Nuru, Director, Public Works
Joaquin Torres, Director, Office of Economic and Workforce Development

FROM: *ll*
bw Linda Wong, Assistant Clerk, Budget and Finance Committee
Board of Supervisors

DATE: October 7, 2019

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
March 3, 2020 Election

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c: Andres Power, Mayor's Office
Rebecca Peacock, Mayor's Office
Patrick Ford, Ethics Commission
Lynn Khaw, Office of the City Administrator
Lihmeei Leu, Office of the City Administrator
Amanda Kahn Fried, Office of the Treasurer & Tax Collector
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Jennifer Blot, Public Works
John Thomas, Public Works
Lena Liu, Public Works
J'Wel Vaughan, Office of Economic and Workforce Development
Ken Rich, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development

BOARD of SUPERVISORS



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Tel. No. 554-5184
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TDD/TTY No. 554-5227

October 7, 2019

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

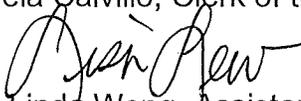
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Angela Calvillo, Clerk of the Board

for By:  Linda Wong, Assistant Clerk
Budget and Finance Committee

c: John Rahaim, Director of Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
AnMarie Rodgers, Director of Citywide Planning
Corey Teague, Zoning Administrator

Scott Sanchez, Acting Deputy Zoning Administrator
Lisa Gibson, Environmental Review Officer
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Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

BOARD of SUPERVISORS



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Tel. No. 554-5184
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TDD/TTY No. 554-5227

MEMORANDUM

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

FROM: *ll*
bw 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.

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

BOARD of SUPERVISORS



City Hall
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San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

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

DATE: October 7, 2019

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

c: Dominica Donovan, Small Business Commission

File #191005
Received in Committee
11/18/19
jm

Mark Borsuk Incorporated

Real Estate Investments

BRE #862664

mark@borsuk.com / www.borsuk.com

(415) 922-4740 / CELL 264-8364 / FAX 922-1485

1626 Vallejo Street, San Francisco, CA 94123-5116

<Please insert my written comments and attachment into the record>

November 18, 2019

**SUBJECT: Initiative Ordinance-Excise Tax on Keeping Commercial
Property Vacant.**

**Comments before the Budget and Finance Committee (Supervisors
Fewer, Mandelman, and Stefani).**

1. Introduction

My name is Mark Borsuk.

I am a retail leasing broker and real property attorney.

I reside in Supervisor Stefani's district, and our property is on Chestnut St. across from the Apple Store.

2. Retail leasing is a troubled business.

Retail leasing is a troubled business.

Earlier this year, our tenant filed for bankruptcy and vacated the premises.

We have a highly experienced broker handling the space, and since April, we've received inquiries, but only a few leasing proposals.

In sum, we're not even close to making a deal with a digital native, food provider, or traditional retailer after almost eight (8) months.

3. Online shopping reduces retail space demand

The Internet's introduction sealed the fate for many retailers.

In the late 1990s, I predicted that the shift to online shopping would undermine location-based retailing. See www.borsuk.com.

After the Great Recession, women increasingly shopped online, shifting more sales from the store.

Dr. Egan's report also notes a falling demand for physical space. (p. 7)

Particularly vulnerable are shopping street merchants unable to offer customers convenience goods, services, or unique experiences.

Amazon's **new** next day delivery service offers yet another reason to avoid the store.

In a recent study, I described the ongoing mayhem and its growing impact on many retailers and property owners. See <http://borsuk.com/articles/reckoning.htm>

4. Storefront vacancies result from formula retail's iatrogenic impact.

In San Francisco, storefront vacancies result from formula retail's iatrogenic impact.

Iatrogenesis is a term describing the unexpected and unforeseen harm caused by the healer's practices.

In this case, ever more restrictive formula retail rules and regulations increase vacancies.

In effect, the 2004 law and its progeny are poisoning the leasing market.

5. A revolutionary is necessary.

Is there a solution to dramatically reduce San Francisco's storefront vacancies?

Yes, and last July, I proposed to Supervisor Stefani suspending the rules for 2 years. See attached.

The moratorium will bring new energy, ideas, and tenants to the neighborhoods.

If there are doubters, ask them why they tolerate increased neighborhood vacancies resulting from a dysfunctional system created with rear-view mirror thinking?

Please recommend to your colleagues the moratorium and table the proposed punitive initiative before you.

Thank you.

Mark Borsuk

DRE#00842787

Mark Borsuk

From: Bennett, Samuel (BOS) <samuel.bennett@sfgov.org>
Sent: Thursday, July 25, 2019 12:43 PM
To: Mark Borsuk
Cc: Stefani, Catherine (BOS)
Subject: RE: 2156 Chestnut St.-City created impediments to leasing storefronts space

Hi Mark,

Thank you for your patience, and apologies for my typo in my first message to you regarding tomorrow's meeting – unfortunately, the Supervisor is still unavailable tomorrow morning. I'm trying to find a time on the calendar before September that might work for rescheduling your meeting, so I will be in touch as soon as possible.

In the meantime, we'll take a look at the attachments you sent along. Thanks again for your patience.

Best,

Samuel Bennett

Legislative Aide to District 2 Supervisor Catherine Stefani
City and County of San Francisco
415-554-7752

From: Mark Borsuk [mailto:mark@borsuk.com]
Sent: Thursday, July 25, 2019 11:42 AM
To: Bennett, Samuel (BOS) <samuel.bennett@sfgov.org>
Cc: Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Subject: 2156 Chestnut St.-City created impediments to leasing storefronts space

July 25, 2019

Samuel:

1. Pls confirm whether I am meeting with the Supervisor or not tomorrow morning.
2. The purpose of my meeting is to propose a two (2) year moratorium on most formula retail regulations. See attached.
3. The goal is to let the market clear the vacancies otherwise hindered by the City's iatrogenic storefront rules and regulations.

4. Also, attached are my comments to Oakland's Vacant Parcel Tax proposed rules and regulations.
5. My analysis demonstrates how policymakers trying to solve one problem create new unforeseen and unintended other problems.
6. If the Supervisor is canceling tomorrow's appointment, when can I meet with her to discuss the moratorium?

Regards,

Mark Borsuk

DRE # 00842787

(O) 415-922-4740

(M) 415-264-8364

Please be advised that the content of this email or the submission of any attachment for review, negotiation or signature does not constitute an offer, acceptance, contract, lease or other legally binding obligation or agreement.

SF laws cause vacant storefronts

iatrogenic policies harm customers, tenants & landlords

Supervisor Stefani discussion

July 26, 2019

Mark Borsuk

Managing Director

The Real Estate Transformation Group

mark@borsuk.com / 415-922-4740

magical thinking behind storefront regulations

- Supervisors believe they understand the storefront leasing market
 - iatrogenic outcome*: fewer tenants want to open in SF
- Supervisors believe they can control the market
 - iatrogenic outcome: a complicated tenant approval system at a prohibitive cost
- Supervisors believe punitive laws & regulations reduce storefront vacancies
 - iatrogenic outcome: vacancies increase

*"govt policies with unforeseen and unintended harmful side effects"—Nassim Nicholas Taleb (The Black Swan & Antifragil)

emergency storefront occupancy initiative

less Stalinism more pragmatism

- **Supervisors declare emergency**
 - take responsibility for escalating storefront vacancies
 - admit rules and regulations exacerbate vacancies
 - acknowledge vacancies lower sales tax revenue
- **Supervisors clear vacancy backlog by suspending most discretionary approvals**
 - two (2) year trial period
 - hiatus will allow more retail to restaurant conversions within an existing space
 - postpone vacancy tax discussion (Oakland Vacant Parcel Tax memo attached)
- **Supervisors nominate panel to develop bright-line rules with rapid approval times**
 - appoint fresh faces who have “skin in the game”
 - expand “by right” categories
 - “deemed approved” is the default decision to minimize discretionary approvals



235 Montgomery St., Ste. 760, San Francisco, CA 94104
tel: 415.352.4520 • fax: 415.392.0485
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October 30, 2019

Supervisor Sandra Lee Fewer, Budget and Finance Committee Chair
Supervisor Catherine Stefani
Supervisor Rafael Mandelman
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, Ca 94102

Re: File #191005, Excise Tax on Keeping Commercial Properties Vacant

Dear Chairwoman Fewer and Supervisors Stefani and Mandelman,

The San Francisco Chamber of Commerce, representing thousands of local businesses, has reviewed Supervisor Peskin's Vacancy Tax measure proposed for the March 2020 ballot (File #191005). The measure, should it pass, will assess a tax on property owners and landlords who have ground floor commercial spaces that are vacant for more than 182 days in a year.

We appreciate that the Supervisor shares our concerns, and that of local businesses, property owners, residents and visitors, that our city's neighborhood retail spaces should be occupied and thriving. We also recognize that thought and effort has gone into crafting this legislation to make sure those who are trying, against fairly challenging odds, to fill their vacancies in a timely manner would not be penalized when their retail spaces remain vacant over time.

However, we are concerned that the measure as currently drafted does not give sufficient time or flexibility for landlords and property owners who are working in good faith to lease their commercial spaces to do so, given how long it takes to get through the city's permitting process. In addition, building out a space, ensuring it is seismically sound, and completing the full move-in process takes considerable time as well.

We all share the goal of reducing commercial vacancies and ensuring businesses, especially small, local businesses, can obtain permits and open their doors as quickly as possible. We have drafted proposed amendments to this measure we feel will add the necessary time and flexibility required to ensure that business owners who are trying in good faith to market, lease and build out retail spaces will be able to do so before they are assessed a Vacancy Tax. We urge you to discuss and approve the following amendments when this item comes before you at the Budget and Finance Committee.

The exemptions for a Construction Period and Disaster Period currently stands at one year. Based on input from our members, the time it takes to repair after a large disaster and to obtain all the required permits, we believe these **one-year extensions should be extended to three years**. If a property owner, landlord, lessees and sublessees subject to the Vacancy Tax, has already received their necessary permits, and then a disaster hits, they should also have one additional year to comply with the Vacancy Tax.

Given the lengthy process that businesses must go through to ensure they are properly permitted, several allowances need to be made. The Conditional Use exemption period stands at six months. This is not a feasible time period for the City to review or appeal conditional use permits. **This period should be extended to eighteen months**. In addition, many businesses face planning hurdles beyond Conditional Use



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authorizations, such as Discretionary Review hearings and Board of Permit Appeal hearings. **To accomodate for these obstacles, the Conditional Use exemption period should be expanded to include Discretionary Review appeals and hearings.**

Several businesses require a lengthy neighborhood notification process before launching operations. Due to the lengthy process of "Neighborhood Notification", we are recommending a **6 month exemption period when a vacant retail space is waiting for a neighborhood notification** to be sent out regarding a new business.

The term "vacant" is defined by being unoccupied, uninhabited, or unused for more than 182 days – consecutive or nonconsecutive. **It is imperative that this be amended to 182 consecutive days** to ensure that the reason for the vacancy is not due to the results of circumstantial causes outside of business owner's control.

To further ensure that small businesses are not harmed by unforeseen consequences of this tax, **small property owners, small business owners and Legacy Businesses as defined by the Planning Code, as well as neighborhood commercial retail spaces zoned for obsolete or difficult to retain practices, should be exempt from the Vacancy Tax.**

Given that the tax could be passed down to a lessee, who might not have budgeted for this additional cost, the effective date should be amended to **January 1, 2022** in order to give retail owners time to finance for this potential new cost of doing business in San Francisco.

The business and economic environment in San Francisco is anything but stagnant. With constantly changing economic cycles and other outside factors influencing business, we suggest this tax be subject to a **sunset provision of five years.**

The San Francisco Chamber of Commerce believes that the vast majority of neighborhood commercial property owners and businesses work hard to fill their retail spaces and keep them activated. These amendments will give our City's "good actors" the time and flexibility they need to find tenants, obtain permits and build out commercial spaces within a reasonable time frame so that our neighborhood shopping areas can flourish.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney Fong", written over a circular stamp or seal.

Rodney Fong
President and CEO

cc: Clerk of the Board, to be distributed to all Supervisors; Mayor London Breed; Supervisor Peskin

OB
Leg Per
Leg Clerk

Member, Board of Supervisors
District 1



City and County of San Francisco

SANDRA LEE FEWER

李麗嫦 市參事

<p>DATE: November 13, 2019</p> <p>TO: Angela Calvillo Clerk of the Board of Supervisors</p> <p>FROM: Supervisor Sandra Lee Fewer Chairperson</p> <p>RE: Budget and Finance Committee COMMITTEE REPORT</p>	<p>RECEIVED BOARD OF SUPERVISORS SAN FRANCISCO 2019 NOV 13 PM 3:21 AK</p>
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Pursuant to Board Rule 4.20, as Chair of the Budget and Finance Committee, I have deemed the following matters are of an urgent nature and request they be considered by the full Board on Tuesday, November 19, 2019, as Committee Reports:

191005 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.

191112 Multifamily Housing Revenue Bonds - 711 Eddy Street - Not to Exceed \$84,840,000

Resolution authorizing the issuance and delivery of multifamily housing revenue bonds in an aggregate principal amount not to exceed \$84,840,000, in one or more series or subseries, for the purpose of providing financing for the acquisition and rehabilitation of a 202-unit multifamily rental housing project known as "Eastern Park Apartments;" approving the form of and authorizing the execution of an indenture of trust providing the terms and conditions of and the authorization for the issuance of such bonds; approving the form of, and authorizing the execution of, a financing agreement providing the terms and conditions of the loans from the City to the borrower; approving the form of and authorizing the execution of a regulatory agreement and declaration of restrictive covenants; approving the form of and authorizing the execution of a bond purchase agreement; approving the form of an Official Statement for such bonds and authorizing the distribution thereof; authorizing the collection of certain fees; approving modifications, changes and additions to the documents; ratifying and approving any action heretofore taken in connection with the loans, the bonds and the Project; granting general

authority to City officials to take actions necessary to implement this Resolution, subject to the terms of this Resolution; and related matters, as defined herein.

191127 Multifamily Housing Revenue Bonds - 4840 Mission Street - Not to Exceed \$75,000,000

Resolution declaring the intent of the City and County of San Francisco ("City") to reimburse certain expenditures from proceeds of future bonded indebtedness in an aggregate principal amount not to exceed \$75,000,000; authorizing the Director of the Mayor's Office of Housing and Community Development ("Director") to submit an application and related documents to the California Debt Limit Allocation Committee ("CDLAC") to permit the issuance of residential mortgage revenue bonds in an aggregate principal amount not to exceed \$75,000,000 for 4840 Mission Street; authorizing and directing the Director to direct the Controller's Office to hold in trust an amount not to exceed \$100,000 in accordance with CDLAC procedures; authorizing the Director to certify to CDLAC that the City has on deposit the required amount; authorizing the Director to pay an amount equal to such deposit to the State of California if the City fails to issue the residential mortgage revenue bonds; authorizing and directing the execution of any documents necessary to implement this Resolution; and ratifying and approving any action heretofore taken in connection with the Project, as defined herein, and the Application, as defined herein.

191126 Multifamily Housing Revenue Bonds - 2340 San Jose Avenue (Balboa Park Upper Yard) - Not to Exceed \$80,000,000

Resolution declaring the intent of the City and County of San Francisco ("City") to reimburse certain expenditures from proceeds of future bonded indebtedness in an aggregate principal amount not to exceed \$80,000,000; authorizing the Director of the Mayor's Office of Housing and Community Development ("Director") to submit an application and related documents to the California Debt Limit Allocation Committee ("CDLAC") to permit the issuance of residential mortgage revenue bonds in an aggregate principal amount not to exceed \$80,000,000 for 2340 San Jose Avenue; authorizing and directing the Director to direct the Controller's Office to hold in trust an amount not to exceed \$100,000 in accordance with CDLAC procedures; authorizing the Director to certify to CDLAC that the City has on deposit the required amount; authorizing the Director to pay an amount equal to such deposit to the State of California if the City fails to issue the residential mortgage revenue bonds; authorizing and directing the execution of any documents necessary to implement this Resolution; and ratifying and approving any action heretofore taken in connection with the Project, as defined herein, and the Application, as defined herein.

191129 Multifamily Housing Revenue Bonds - 681 Florida Street - Not to Exceed \$55,972,500

Resolution declaring the intent of the City and County of San Francisco ("City") to reimburse certain expenditures from proceeds of future bonded indebtedness; authorizing the Director of the Mayor's Office of Housing and Community Development ("Director") to submit an application and related documents to the California Debt Limit Allocation Committee ("CDLAC") to permit the issuance of residential mortgage revenue bonds pursuant to a plan of financing in an aggregate principal amount not to exceed \$55,972,500 for 681 Florida Street; authorizing and directing the Director to direct the Controller's Office to hold in trust an amount not to exceed \$100,000 in accordance with CDLAC procedures; authorizing the Director to certify to CDLAC that the City has on deposit the required amount; authorizing the Director to pay an amount equal to such deposit to the State of California if the City fails to issue the residential mortgage revenue

bonds; approving, for purposes of the Internal Revenue Code of 1986, as amended, the issuance and sale of residential mortgage revenue bonds by the City in an aggregate principal amount not to exceed \$55,972,500; authorizing and directing the execution of any documents necessary to implement this Resolution; and ratifying and approving any action heretofore taken in connection with the Project, as defined herein, and the Application, as defined herein.

191128 Multifamily Housing Revenue Bonds - 190 Coleridge Street (Coleridge Park Homes) - Not to Exceed \$20,655,000

Resolution declaring the intent of the City and County of San Francisco ("City") to reimburse certain expenditures from proceeds of future bonded indebtedness in an aggregate principal amount not to exceed \$20,655,000; authorizing the Director of the Mayor's Office of Housing and Community Development ("Director") to submit an application and related documents to the California Debt Limit Allocation Committee ("CDLAC") to permit the issuance of residential mortgage revenue bonds in an aggregate principal amount not to exceed \$20,655,000 for 190 Coleridge Street (Coleridge Park Homes); authorizing and directing the Director to direct the Controller's Office to hold in trust an amount not to exceed \$100,000 in accordance with CDLAC procedures; authorizing the Director to certify to CDLAC that the City has on deposit the required amount; authorizing the Director to pay an amount equal to such deposit to the State of California if the City fails to issue the residential mortgage revenue bonds; authorizing and directing the execution of any documents necessary to implement this Resolution; and ratifying and approving any action heretofore taken in connection with the Project, as defined herein, and the Application, as defined herein.

These matters will be heard in the Budget and Finance Committee on Monday, November 18th at 12pm.

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2019 OCT - 1 PM 4:55

BY _____
Time stamp
or meeting date AK

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Peskin

Subject:

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

The text is listed:

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.

Signature of Sponsoring Supervisor: [Signature]

For Clerk's Use Only

