

File No. 230898

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee Date October 11, 2023

Board of Supervisors Meeting Date _____

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Completed by: Brent Jalipa Date October 5, 2023

Completed by: Brent Jalipa Date _____

1 [Business and Tax Regulations Code - Administration of Empty Homes Tax]

2
3 **Ordinance amending the Business and Tax Regulations Code to add provisions to**
4 **administer the Empty Homes Tax; and to make conforming non-substantive changes.**

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

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

14 Section 1. Article 29A of the Business and Tax Regulations Code is hereby amended
15 by revising Section 2954, to read as follows:

16 **SEC. 2954. RETURNS; PRESUMPTION OF VACANCY.**

17 (a) Each person that is required to pay the Empty Homes Tax shall file a return in the
18 form and manner prescribed by the Tax Collector.

19 (b) Each person that owns a Residential Unit at any time during a tax year ~~and that is~~
20 ~~not exempt from the Empty Homes Tax with respect to that Residential Unit under any one of~~
21 ~~subsections (a) through (d) of Section 2955~~ shall file a return for that tax year in the form and
22 manner prescribed by the Tax Collector, unless that person is exempt from the Empty Homes Tax
23 with respect to that Residential Unit under any one of subsections (a) through (d) of Section 2955 or is
24 covered under the Homeowners' Exemption Period for that Residential Unit for the entire tax year.

25 A person that fails to file the return required by this subsection (b) for a Residential Unit shall

1 be presumed to have kept that Residential Unit Vacant for the tax year for which such return
2 is required. The person who fails to file the required return may rebut the presumption by
3 producing satisfactory evidence that such person did not keep the Residential Unit Vacant
4 during the tax year for which the return is required.

5
6 Section 2. Article 6 of the Business and Tax Regulations Code is hereby amended by
7 revising Sections 6.1-1, 6.2-17, 6.4-1, 6.5-1, 6.8-1, 6.8-2, 6.9-1, 6.9-4, 6.10-3, and 6.18-1, to
8 read as follows:

9
10 **SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS.**

11 (a) These common administrative provisions shall apply to Articles 6, 7, 8, 9, 10, 10B,
12 11, 12, 12-A-1, 21, 28, 29, 29A, 30, 32, and 33 of this Code and to Chapter 105 of the
13 Administrative Code, unless the specific language of either Code otherwise requires. Any
14 provision of this Article 6 that references or applies to Article 10 shall be deemed to also
15 reference or apply to Article 10B. Any provision of this Article 6 that references or applies to a
16 tax shall be deemed to also reference or apply to a fee administered pursuant to this Article,
17 and shall be deemed to also reference or apply to an assessment levied pursuant to the
18 Property and Business Improvement District Law of 1994 (California Streets and Highways
19 Code sections 36600 et seq.) or Article 15 of this Code. A fee administered pursuant to
20 Article 6 or an assessment levied pursuant to the Property and Business Improvement District
21 Law of 1994 or Article 15 of this Code shall for purposes of this Article be deemed to be
22 imposed pursuant to the provisions of the Business and Tax Regulations Code.

23 * * * *

1 **SEC. 6.2-17. RETURN.**

2 The term "return" means any written statement required to be filed under Articles 6, 7,
3 8, 9, 10, 10B, 11, 12, 12-A-1, 21, 28, 29, 29A, 30, 32, or 33, or under laws applicable to a fee
4 administered pursuant to Article 6, or under laws applicable to an assessment levied pursuant
5 to the Property and Business Improvement District Law of 1994 (California Streets and
6 Highways Code sections 36600 et seq.) or Article 15 of this Code.

7
8 **SEC. 6.4-1. RECORDS; INVESTIGATION; SUBPOENAS.**

9 (a) Every taxpayer shall keep and preserve business *and other* records as may be
10 necessary to determine the amount of tax for which the person may be liable or that the
11 person was required to collect, including all local, state, and federal tax returns of any kind, for
12 a period of five years from the date the tax is due or paid, whichever is later.

13 (b) Upon request of the Tax Collector, a taxpayer shall produce such business *and*
14 *other* records at the Tax Collector's Office during normal business hours for inspection,
15 examination, and copying. Refusal to allow full inspection, examination, or copying of such
16 records shall subject the taxpayer to all penalties authorized by law, including but not limited
17 to the penalties set forth in Section 6.17-3 or Section 6.17-3.1, as applicable. As an
18 alternative to production at the Tax Collector's Office, the Tax Collector may agree to inspect,
19 examine, and copy the requested books, papers, and records at the taxpayer's place of
20 business or some other mutually acceptable location, and may require the taxpayer to
21 reimburse the City for the Tax Collector's ordinary and reasonable expenses incurred in the
22 inspection, examination, and copying of such books, papers, and records, including food,
23 lodging, transportation, and other related items, as appropriate.

1 (c) The Tax Collector may order any person or persons, whether taxpayers, alleged
2 taxpayers, witnesses, or custodians of records, to produce all books, papers, and records that
3 the Tax Collector believes may have relevance to enforcing compliance with the provisions of
4 the Business and Tax Regulations Code for inspection, examination, and copying at the Tax
5 Collector's Office during normal business hours. As an alternative to production at the Tax
6 Collector's Office, the Tax Collector may agree to inspect, examine, and copy the requested
7 books, papers, and records at the person's place of business or some other mutually
8 acceptable location, and may require the person to reimburse the City for the Tax Collector's
9 ordinary and reasonable expenses incurred in the inspection, examination, and copying of
10 such books, papers, and records, including food, lodging, transportation, and other related
11 items, as appropriate.

12 (d) The Tax Collector may order the attendance before the Tax Collector of any person
13 or persons, whether taxpayers, alleged taxpayers, witnesses, or custodians of records, whom
14 the Tax Collector believes may have information relevant to enforcing compliance with the
15 provisions of the Business and Tax Regulations Code.

16 (e) If the taxpayer does not maintain business and other records that are adequate to
17 determine liability under the Business and Tax Regulations Code, or following a request by
18 the Tax Collector, fails to produce such business and other records in a timely fashion, the Tax
19 Collector may determine the taxpayer's liability based upon any information in the Tax
20 Collector's possession, or that may come into the Tax Collector's possession. Such
21 determination shall be prima facie evidence of the taxpayer's liability in any subsequent
22 administrative or judicial proceeding.

23 (f) The Tax Collector may issue and serve subpoenas to carry out ~~these~~ provisions of
24 this Section 6.4-1.

1 **SEC. 6.5-1. REQUEST FOR FINANCIAL AND OTHER INFORMATION.**

2 (a) In addition to a subpoena issued pursuant to Section 6.4-1, the Tax Collector may,
3 at the Tax Collector’s discretion, send any person, whether a taxpayer, alleged taxpayer,
4 witness, or custodian of records, a written request for financial information *or other information*
5 relevant to verifying, determining or redetermining any person’s tax liability or tax-exempt
6 status. “Financial information” shall include, but not be limited to, bank records, journals,
7 ledgers, and local, state, and federal tax returns, and shall include information regarding
8 subsidiary, related, affiliated, controlled, or controlling persons in possession of information
9 relevant to the Tax Collector’s inquiry. *“Other information” shall include any information that is*
10 *not financial information.* The request shall be mailed to the person’s last known address as
11 indicated in the Tax Collector’s records.

12 (b) Each person to whom a written request for financial information *or other information*
13 has been sent pursuant to ~~§~~ subsection (a) of this Section 6.5-1 shall complete and return the
14 form, with the information requested, to the Tax Collector within 30 days of the date of the
15 mailing of the written request, or by such other reasonable deadline as the Tax Collector may
16 set forth in the written request. Said person shall provide such financial information *or other*
17 *information* that the Tax Collector, in writing, has requested.

18
19 **SEC. 6.8-1. CITY, PUBLIC ENTITY, AND CONSTITUTIONAL EXEMPTIONS.**

20 (a) Nothing in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A-1, 21, 28, 29, 29A, 30, 32, or 33
21 shall be construed as imposing a tax upon:

22 (1) The City, except for the Vacancy Tax (Article 29);

23 (2) The State of California, or any county, municipal corporation, district, or
24 other political subdivision of the State, except where any constitutional or statutory immunity
25 from taxation is waived or is not applicable;

1 (3) The United States, or any of its agencies or subdivisions, except where any
2 constitutional or statutory immunity from taxation is waived or is not applicable; or

3 (4) Any person exempted from the particular tax by the Constitution or statutes
4 of the United States or the Constitution or statutes of the State of California.

5 (b) The foregoing exemption from taxation does not relieve an exempt party from its
6 duty to collect, report, and remit third-party taxes.

7
8 **SEC. 6.8-2. CREDITS AND EXEMPTIONS.**

9 The credits and exemptions set forth in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A-1,
10 12-C, 21, 28, 29, 29A, 30, 32, and 33, in laws applicable to fees administered pursuant to
11 Article 6, and in laws applicable to assessments levied pursuant to the Property and Business
12 Improvement District Law of 1994 (California Streets and Highways Code sections 36600 *et*
13 *seq.*) or Article 15 of this Code, are provided on the assumption that the City has the power to
14 offer such credits and exemptions. If a credit or exemption is invalidated by a court of
15 competent jurisdiction, the taxpayer must pay any additional amount that the taxpayer would
16 have owed but for such invalid credit or exemption. Amounts owed as a result of the
17 invalidation of a credit or exemption that are paid within three years after the decision of the
18 court becomes final shall not be subject to interest or penalties.

19
20 **SEC. 6.9-1. RETURNS AND PAYMENTS.**

21 (a) **Returns Generally.** Except as otherwise provided in this Business and Tax
22 Regulations Code, on or before the due date, or in the event of cessation of business within
23 15 days of such cessation, each taxpayer shall file a return for the subject period on a form
24 provided by the Tax Collector, regardless of whether there is a tax liability owing. A taxpayer
25 who has not received a return form from the Tax Collector is responsible for obtaining such

1 form and filing a return, and the failure of the Tax Collector to furnish the taxpayer with a
2 return shall not relieve the taxpayer of any payment or filing obligation. Returns shall show
3 the amount of tax paid, collected, or otherwise due for the subject period and such other
4 information as the Tax Collector may require. Each taxpayer shall transmit the return,
5 together with the remittance of the tax due, to the Tax Collector at the Tax Collector's Office
6 on or before the due date specified in this Section 6.9-1. Filing a return that the Tax Collector
7 determines to be incomplete in any material respect may be deemed failure to file a return in
8 violation of this Section 6.9-1(a).

9 * * * *

10 **(k) Empty Homes Tax.**

11 **(1) Annual Due Date.** *Except as otherwise provided in this Business and Tax*
12 *Regulations Code, returns and payments of the Empty Homes Tax (Article 29A) shall be filed annually*
13 *and are due and payable, and shall be delinquent if not submitted and paid to the Tax Collector, on or*
14 *before the last day of April of the succeeding year, or in the event the Residential Unit is sold or*
15 *transferred within 45 days after such sale or transfer.*

16 **(2) Additional Filing Requirements.** *In addition to the filing requirements in*
17 *subsection (k)(1), each person that owns a Residential Unit at any time during a tax year shall file a*
18 *return for that tax year, unless that person is exempt from the Empty Homes Tax with respect to that*
19 *Residential Unit under any one of subsections (a) through (d) of Section 2955 of Article 29A of this*
20 *Code or is covered under the Homeowners' Exemption Period for that Residential Unit for the entire*
21 *year. The return shall be filed by the last day of April of the succeeding year, or in the event the*
22 *Residential Unit is sold or transferred within 45 days after such sale or transfer. For purposes of this*
23 *subsection (k)(2), the terms "Homeowners' Exemption Period" and "Residential Unit" have the same*
24 *meaning as those terms are defined in Section 2952 of Article 29A of this Code.*

1 **SEC. 6.9-4. EXTENSION OF TIME FOR FILING A RETURN AND PAYING TAX.**

2 (a) For good cause, the Tax Collector, in the Tax Collector’s discretion, may extend,
3 for a period not to exceed 60 days, the time for filing any return, other than a Vacancy Tax
4 (Article 29) *or Empty Homes Tax (Article 29A)* return, pursuant to this Article 6 or regulations
5 prescribed by the Tax Collector. For taxes required to be deposited monthly, or for the
6 Sugary Drinks Distributor Tax (Article 8), the Tax Collector may only extend the time for filing
7 a return for a period not to exceed 30 days. As a condition of such extension, the person
8 seeking the extension shall make a payment of not less than 100% of such person’s liability
9 for such period.

10 (b) Failure to make the required 100% payment will result in the automatic denial of
11 the person’s extension and the person being subject to the standard due dates in this
12 Article 6, including any penalties, interest, fees, and other consequences of failing to file and
13 pay by those due dates.

14 (c) Notwithstanding subsection (a) of this Section 6.9-4, the Tax Collector may extend
15 any time for filing any return or payment of tax or excuse penalties for any late filing or late
16 payment by a period not to exceed 60 days if billing or other administrative duties of the Tax
17 Collector cannot be performed in a timely manner.

18
19 **SEC. 6.10-3. COLLECTION OF TAX; LEGAL ACTIONS.**

20 (a) (1) The Tax Collector may bring an action in the courts of this State, or any
21 other state, or of the District of Columbia, or of the United States and its territories or
22 possessions, or any other forum where permitted by law to recover in the name of the City
23 any amount of taxes due and payable under the Business and Tax Regulations Code and
24 remaining unpaid, together with penalties, interest, and costs, including reasonable attorneys’
25 fees.

1 (2) In any action filed pursuant to this ~~subdivision~~Section 6.10-3, the Complaint
2 shall attach a certificate executed by the Tax Collector or ~~his~~the Tax Collector's representative
3 that contains the following information:

4 (A) the name of the operator, taxpayer, or other person determined to be
5 liable for the tax;

6 (B) the description of the operator's, taxpayer's, or other person's
7 business or activity against which the tax has been assessed;

8 (C) the location and/or address of the business or activity;

9 (D) the amount of the tax, penalty, and interest remaining unpaid as of
10 the last day of the month prior to the month in which the Complaint is filed; and

11 (E) the fact that the City has complied with all provisions of the Business
12 and Tax Regulations Code in the computation and the levy of the tax, penalty, or interest.

13 * * * *

14
15 **SEC. 6.18-1. SUMMARY JUDGMENT; NOTICE; CERTIFICATE.**

16 If any tax imposed pursuant to the Business and Tax Regulations Code is not paid by
17 the last day of the month after the delinquency date, or after any jeopardy determination or
18 deficiency determination of the Tax Collector becomes final pursuant to Sections 6.12-1 *et*
19 *seq.* or 6.13-1 *et seq.*, the Tax Collector may file, no sooner than 20 days after the mailing of
20 the notice required in subsection (b), in the office of the Clerk of the Court, without fee, a
21 certificate specifying as follows:

22 (a) That a notice of intent to file the certificate has been sent, by certified mail, to the
23 operator, taxpayer, or other person determined to be liable for the tax at the person's last
24 known address, not less than 20 days prior to the date of the certificate;

25 (b) That the notice required in subsection (a) set forth the following information:

1 (1) The name of the operator, taxpayer, or other person determined to be liable
2 for the tax,

3 (2) The description of the operator's, taxpayer's, or other person's business or
4 activity against which the tax has been assessed,

5 (3) The location and/or address of the business or activity,

6 (4) That judgment will be sought in the amount of the tax, penalty, and interest
7 remaining unpaid at the time of the filing of the certificate, and costs as permitted by law,

8 (5) That, upon issuance and recordation of the judgment, additional interest will
9 continue to accrue at the rate prescribed by the Enforcement of Judgments Law (Title 9 of
10 Part 2 of the California Code of Civil Procedure), and that any bond premium posted or other
11 costs to enforce the judgment shall be an added charge, and

12 (6) That a recording fee in the amount set forth in Section 27361.3 of the
13 California Government Code will be required to be paid for the purpose of the recordation of
14 any release of the judgment lien;

15 * * * *

16 (f) ~~The fact that~~ ~~The fact that~~ That a request is therein made for issuance and entry of
17 judgment against the operator, taxpayer, or other person determined to be liable for the tax.

18
19 Section 3. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23
24 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the “Note” that appears under
4 the official title of the ordinance.

5

6 APPROVED AS TO FORM:
7 DAVID CHIU, City Attorney

8

9 By: /s/ Kerne H. O. Matsubara
10 KERNE H. O. MATSUBARA
11 Deputy City Attorney

12

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Administration of Empty Homes Tax]

Ordinance amending the Business and Tax Regulations Code to add provisions to administer the Empty Homes Tax; and to make conforming non-substantive changes.

Existing Law

Voters passed the Empty Homes Tax at the November 8, 2022 election. The Empty Homes Tax ordinance requires persons subject to the tax and persons that own certain residential units to file annual returns with the Tax Collector. Existing law provides for the administration of most of the City's taxes. These administrative provisions include definitions; the Tax Collector's audit and collection authority; filing and payment requirements; rules for refunds and lawsuits; penalty, interest, and citation provisions; and taxpayer confidentiality provisions, among others.

Amendments to Current Law

This ordinance would extend the above administrative provisions, as applicable, to the Empty Homes Tax. This ordinance also would require persons subject to the Empty Homes Tax to file tax returns and make tax remittances to the Tax Collector by April 30 of the succeeding year or within 45 days of any sale or transfer of the residential unit. In addition, each owner of a residential unit would be required to file annual informational returns with the Tax Collector by April 30 of the succeeding year or within 45 days of any sale or transfer of the residential unit—unless the owner is covered under the homeowners' exemption period for that residential unit for the entire year or qualifies for one of a specified list of exemptions. The homeowners' exemption period means the period during which the residential unit is the owner's principal residence and the owner has validly claimed the homeowners' property tax exemption or the disabled veterans' exemption. This ordinance also would make conforming changes to Article 6 of the Business and Tax Regulations Code, including amendments to the provisions on taxpayers' maintenance of records and the Tax Collector's requests for information to enable administration of the Empty Homes Tax.

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From: [BOS Legislation, \(BOS\)](#)
To: [Jalipa, Brent \(BOS\)](#)
Subject: FW: Empty Homes Tax Implementation Legislation for Introduction
Date: Tuesday, October 3, 2023 1:38:26 PM
Attachments: [ORD Empty Homes Tax Implementation 01700867.docx](#)
[DIG Empty Homes Tax Implementation 01697266.DOCX](#)

From: Manke, Eric (TTX) <eric.manke@sfgov.org>
Sent: Monday, August 28, 2023 10:58 AM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: MATSUBARA, KERNE (CAT) <Kerne.Matsubara@sfcityatty.org>; Fried, Amanda (TTX) <amanda.fried@sfgov.org>
Subject: FW: Empty Homes Tax Implementation Legislation for Introduction

Good Morning,

Please find a proposed ordinance for the Board of Supervisors approval, which amends the Business and Tax Regulations Code to add provisions to administer the Empty Homes Tax. Below is confirmation of the City Attorney signature and the accompanying legislative digest is also attached. Feel free to contact me with any questions or concerns. Thank you.

Eric Manke