

1 [Business and Tax Regulations Code - Empty Homes Tax Suspension Pending Litigation]

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3 **Ordinance amending the Business and Tax Regulations Code to suspend the Empty**
4 **Homes Tax pending a final decision in *Eric Debbane, et al. v. City & County of***
5 ***San Francisco, et al.*, San Francisco Superior Court Case No. CGC-23-604600,**
6 **retroactive to January 1, 2024, and to reinstate that tax so that the tax first applies in**
7 **the tax year immediately following the calendar year of that final decision.**

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

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

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Section 1. Findings.

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(a) On November 26, 2024, the San Francisco Superior Court issued an order in *Eric*
16 *Debbane, et al. v. City & County of San Francisco, et al.*, San Francisco Superior Court Case
17 Number CGC-23-604600 (the “Empty Homes Tax Case”), prohibiting the City from enforcing
18 or administering the Empty Homes Tax – the tax imposed under Article 29A of the Business
19 and Tax Regulations Code – on the grounds that the Empty Homes Tax violates State law
20 and the Federal and State Constitutions.

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(b) The Court issued this order despite clear case law precluding the use of California
22 Code of Civil Procedure Section 526a to enjoin the collection of taxes. The City believes that
23 if it appealed the trial court’s order on the grounds that Section 526a cannot be used to enjoin
24 the collection of taxes, the Court of Appeal would overturn the trial court’s decision on that
25 basis and permit the City to continue to enforce and administer the Empty Homes Tax. But

1 due to the unique circumstances of the Empty Homes Tax, the City would prefer that the
2 Court of Appeal rule on the merits of petitioners' substantive statutory and constitutional
3 arguments to give the City and taxpayers certainty as to the constitutionality and legality of the
4 Empty Homes Tax.

5 (c) If the Court of Appeal overturns the trial court's decision on the merits, as the City
6 believes it will, the City may be forced to collect the Empty Homes Taxes the trial court's order
7 prohibited it from collecting during the appeal. These taxes – which may relate to residential
8 vacancies from several years prior – may be administratively difficult and financially
9 burdensome to collect because the owners of the properties may have changed and relevant
10 documents may not be available to ascertain tax liability. Further, imposing taxes going back
11 several years may place an undue burden on property owners, and would lead to significant
12 uncertainty for both the City and property owners throughout the appeal.

13 (d) This ordinance therefore suspends imposition of the Empty Homes Tax, retroactive
14 to calendar year 2024 (the payments for which would generally otherwise be due in April
15 2025), until the calendar year following the year in which the decision in the Empty Homes
16 Tax Case becomes final and all appeals have been exhausted or the time for filing any such
17 appeals has passed. The Empty Homes Tax would be reinstated so that the tax first applies
18 in the tax year immediately following the calendar year of that final decision.

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20 Section 2. Article 29A of the Business and Tax Regulations Code is hereby amended
21 by revising Sections 2953 and 2957, to read as follows:

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1 **SEC. 2953. IMPOSITION OF TAX.**

2 (a) Except as otherwise provided in this Article 29A, for the purposes described in
3 Section 2958, the City imposes an annual Empty Homes Tax on each person that owns a
4 Residential Unit for keeping that Residential Unit Vacant.

5 (b) The tax on an owner keeping a Residential Unit Vacant for the ~~2024~~ tax year
6 *described in subsection (k)* shall be as follows:

- 7 (1) \$2,500 for each Residential Unit with square footage less than 1,000;
- 8 (2) \$3,500 for each Residential Unit with square footage from 1,000 to 2,000;
- 9 and
- 10 (3) \$5,000 for each Residential Unit with square footage greater than 2,000.

11 (c) The tax on an owner keeping a Residential Unit Vacant for the ~~2025~~ tax year
12 *immediately following the tax year described in subsection (k)*, if that owner has not kept that
13 Residential Unit Vacant in the ~~2024~~ tax year *described in subsection (k)*, shall be as follows:

- 14 (1) \$2,500 for each Residential Unit with square footage less than 1,000;
- 15 (2) \$3,500 for each Residential Unit with square footage from 1,000 to 2,000;
- 16 and
- 17 (3) \$5,000 for each Residential Unit with square footage greater than 2,000.

18 (d) The tax on an owner keeping a Residential Unit Vacant for the ~~2025~~ tax year
19 *immediately following the tax year described in subsection (k)*, if that owner has kept that
20 Residential Unit Vacant in the ~~2024~~ tax year *described in subsection (k)*, shall be as follows:

- 21 (1) \$5,000 for each Residential Unit with square footage less than 1,000;
- 22 (2) \$7,000 for each Residential Unit with square footage from 1,000 to 2,000;
- 23 and
- 24 (3) \$10,000 for each Residential Unit with square footage greater than 2,000.

1 (e) The tax on an owner keeping a Residential Unit Vacant for the ~~2026~~-tax year two
2 years after the tax year described in subsection (k) and subsequent tax years, if that owner has not
3 kept that Residential Unit Vacant in the immediately preceding tax year, shall be as follows:

4 (1) \$2,500 for each Residential Unit with square footage less than 1,000;

5 (2) \$3,500 for each Residential Unit with square footage from 1,000 to 2,000;

6 and

7 (3) \$5,000 for each Residential Unit with square footage greater than 2,000.

8 (f) The tax on an owner keeping a Residential Unit Vacant for the ~~2026~~-tax year two
9 years after the tax year described in subsection (k) and subsequent tax years, if that owner has
10 kept that Residential Unit Vacant in the immediately preceding tax year but has not kept that
11 Residential Unit Vacant in the tax year immediately preceding that tax year, shall be as
12 follows:

13 (1) \$5,000 for each Residential Unit with square footage less than 1,000;

14 (2) \$7,000 for each Residential Unit with square footage from 1,000 to 2,000;

15 and

16 (3) \$10,000 for each Residential Unit with square footage greater than 2,000.

17 (g) The tax on an owner keeping a Residential Unit Vacant for the ~~2026~~-tax year two
18 years after the tax year described in subsection (k) and subsequent tax years, if that owner has
19 kept that Residential Unit Vacant in the immediately preceding tax year and has kept that
20 Residential Unit Vacant in the tax year immediately preceding that tax year, shall be as
21 follows:

22 (1) \$10,000 for each Residential Unit with square footage less than 1,000;

23 (2) \$14,000 for each Residential Unit with square footage from 1,000 to 2,000;

24 and

25 (3) \$20,000 for each Residential Unit with square footage greater than 2,000.

1 (h) The rates set forth in subsections (c), (d), (e), (f), and (g) of this Section 2953 shall
2 be adjusted annually in accordance with the increase in the Consumer Price Index: All Urban
3 Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the
4 United States Bureau of Labor Statistics, or any successor to that index, as of December 31st
5 of the preceding year, beginning with the ~~2025~~-tax year immediately following the tax year
6 described in subsection (k).

7 (i) The Empty Homes Tax shall be payable by the owner or owners of the Residential
8 Unit kept Vacant. Not more than one tax per Residential Unit shall be imposed under this
9 Section 2953 for a tax year by reason of multiple liable owners. If there are multiple liable
10 owners, each owner shall be jointly and severally liable for the tax, which shall be the highest
11 amount of tax payable by any owner for that Residential Unit for that tax year.

12 (j) A person shall be liable for the Empty Homes Tax only if that person, while owning
13 a Residential Unit, has kept or is deemed to have kept that Residential Unit unoccupied,
14 uninhabited, or unused, for more than 182 days, whether consecutive or nonconsecutive, in a
15 tax year. In determining whether an owner has kept a Residential Unit Vacant during a tax
16 year, days within any Vacancy Exclusion Period shall be disregarded if that Vacancy
17 Exclusion Period applies to that owner for that Residential Unit, as shall days in which the
18 Residential Unit was not owned by the owner, but the owner shall be deemed to have kept the
19 Residential Unit unoccupied, uninhabited, or unused on all other days that such Residential
20 Unit is unoccupied, uninhabited, or unused during the tax year.

21 (k) The Empty Homes Tax shall take effect on January 1, ~~2024~~ of the tax year
22 immediately following the calendar year in which the decision in Eric Debbane, et al. v. City & County
23 of San Francisco, et al., San Francisco Superior Court Case Number CGC-23-604600, becomes final
24 and all appeals have been exhausted or the time for filing any such appeals passed. The Empty
25 Homes Tax shall expire on December 31, 2053.

1 **SEC. 2957. DEPOSIT OF PROCEEDS.**

2 (a) All monies collected under the Empty Homes Tax Ordinance shall be deposited to
3 the credit of the Housing Activation Fund (“Fund”) established in Administrative Code
4 Section 10.100-76. The Fund shall be maintained separate and apart from all other City funds
5 and shall be subject to appropriation. Any balance remaining in the Fund at the close of any
6 fiscal year shall be deemed to have been provided for a special purpose within the meaning of
7 Charter Section 9.113(a) and shall be carried forward and accumulated in the Fund for the
8 purposes described in Section 2958.

9 (b) Commencing with a report filed no later than February 15, ~~2026~~ *of the calendar year*
10 *two years after the tax year described in Section 2953(k)*, covering the fiscal year ending on
11 June 30, ~~2025~~ *of the calendar year immediately following the tax year described in Section 2953(k)*,
12 the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a
13 report containing the amount of monies collected in and expended from the Fund during the
14 prior fiscal year, the status of any project required or authorized to be funded by Section 2958,
15 and such other information as the Controller, in the Controller’s sole discretion, shall deem
16 relevant to the operation of this Article 29A.

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18 Section 3. Effective Date; Retroactivity.

19 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
20 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
21 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
22 Mayor’s veto of the ordinance.

23 (b) Upon its effective date, this ordinance shall be retroactive to January 1, 2024.
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