

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

Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an excise tax on owners keeping certain residential units vacant, to fund rental subsidies and the acquisition, rehabilitation, and operation of affordable housing; increasing the City's appropriations limit by the amount collected under the tax for four years from November 8, 2022; and affirming the Planning Department's determination under the California Environmental Quality Act.

NOTE: **Unchanged Code text and uncodified text** are in plain font.

Additions to Codes are in *single-underline italics Times New Roman font*.

Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.

Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Pursuant to Articles XIII A and XIII C of the Constitution of the State of California, this ordinance shall be submitted to the qualified electors of the City and County of San Francisco at the November 8, 2022, consolidated general election.

Section 2. The Business and Tax Regulations Code is hereby amended by adding Article 29A, consisting of Sections 2950 through 2963, to read as follows:

ARTICLE 29A: EMPTY HOMES TAX ORDINANCE

SEC. 2950. SHORT TITLE.

This Article 29A shall be known as the "Empty Homes Tax Ordinance," and the tax it imposes shall be known as the "Empty Homes Tax."

SEC. 2951. FINDINGS AND PURPOSE.

(a) Residential vacancies are an ongoing concern in San Francisco. According to census data, there were tens of thousands of vacant residential units in San Francisco as of 2019. A report published in January 2022 by the Budget and Legislative Analyst found that the total number of vacant units in San Francisco increased by about 20% between 2015 and 2019, to 40,500 units in 2019.

(b) According to the Budget and Legislative Analyst report, vacant units in 2019 were concentrated in the South of Market area, downtown, and in the Mission District; generally the same areas where new, large-scale housing construction has been concentrated. Such units are disproportionately in multiunit buildings.

(c) The Empty Homes Tax is limited to buildings with more than two residential units because such buildings are more likely to include one or more units held vacant by choice and are more likely to include multiple vacancies.

(d) Prolonged vacancy restricts the supply of available housing units and runs counter to the City's housing objectives. Prolonged vacancies can also decrease economic activity in neighborhoods and lead to blight.

(e) The Empty Homes Tax is intended to disincentivize prolonged vacancies, thereby increasing the number of housing units available for occupancy, while also raising funds for rent subsidies and affordable housing.

SEC. 2952. DEFINITIONS.

Unless otherwise defined in this Article 29A, the terms used in this Article shall have the meanings given to them in Article 6 of the Business and Tax Regulations Code, as amended from time to time. For purposes of this Article, the following definitions shall apply:

“Affiliate” means a person under common majority ownership or common control, whether that ownership or control is direct or indirect, with any other person, including but not limited to a person that majority owns or controls, or is majority owned or controlled by, any other person.

“Building Permit Application Period” means the period following the date that an application for a building permit for repair, rehabilitation, or construction with respect to a Residential Unit is filed with the City through the date the Department of Building Inspection or its successor agency grants or denies that application, not to exceed one year. Notwithstanding the preceding sentence, if more than one building permit application is filed by or on behalf of one or more persons in the Owner’s Group for the same Residential Unit, the Building Permit Application Period shall mean only the applicable period following the date the first application is filed with the City by or on behalf of anyone in the Owner’s Group.

“Construction Period” means the one-year period following the date that the City issues a building permit for repair, rehabilitation, or construction with respect to a Residential Unit, provided that if the City issues multiple building permits to or for the benefit of one or more persons in the Owner’s Group for the same Residential Unit, the Construction Period shall mean only the one-year period following the issuance of the first building permit to or for the benefit of anyone in the Owner’s Group.

“Disaster Period” means the two-year period following the date that a Residential Unit was severely damaged and made uninhabitable or unusable due to fire, natural disaster, or other catastrophic event.

“Homeowners’ Exemption Period” means the period during which a Residential Unit is the principal place of residence of any owner of that Residential Unit and for which such owner validly has claimed either the homeowners’ property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans’ exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

“Lease Period” means the period during which any owner of a Residential Unit or any person in the Owner’s Group of that owner leases that Residential Unit to one or more tenants under a bona fide lease intended for occupancy, but not including any lease or rental of that Residential Unit to anyone in the Owner’s Group or to travelers, vacationers, or other transient occupants.

“New Construction Period” means the one-year period following the date that the City issues a certificate of final completion and occupancy with respect to a Residential Unit in a newly erected building or a newly added Residential Unit in an existing building.

“Owner Death Period” means, with respect to a co-owner or decedent’s estate, heirs, or beneficiaries, the period during which a Residential Unit is unoccupied, uninhabited, or unused because of the death of any owner of a Residential Unit who was the sole occupant of that Residential Unit immediately prior to such owner’s death, provided that such period shall not exceed the longer of one year or the period during which the Residential Unit is subject to the authority of a probate court.

“Owner In Care Period” means the period during which a Residential Unit is unoccupied, uninhabited, or unused because all occupants of the Residential Unit who used that Residential Unit as their principal residence are residing in a hospital, long term or supportive care facility, medical care or treatment facility, or other similar facility.

“Owner’s Group” means for each owner of a Residential Unit, with respect to each Residential Unit, the owner, any current or former co-owner, and any Related Person or Affiliate of the owner or any current or former co-owner.

“Related Person” means a spouse, domestic partner, child, parent, or sibling.

“Residential Unit” means a house, an apartment, a mobile home, a group of rooms, or a single room that is designed as separate living quarters, other than units occupied or intended for occupancy primarily by travelers, vacationers, or other transient occupants. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have a kitchen and direct access from the outside of the building or through a common hall. For purposes of this Article 29A, a Residential Unit shall not include a unit in a currently operational nursing home, residential care facility, or other similar facility, or any unit that is fully exempt from property tax under the welfare exemption under Section 214(g) of the California Revenue and Taxation Code, as may be amended from time to time.

“Vacancy Exclusion Period” means the Building Permit Application Period, Construction Period, Disaster Period, Homeowners’ Exemption Period, Lease Period, New Construction Period, Owner Death Period, or Owner In Care Period.

“Vacant” means unoccupied, uninhabited, or unused, for more than 182 days, whether consecutive or nonconsecutive, in a tax year.

SEC. 2953. IMPOSITION OF TAX.

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

(b) The tax on an owner keeping a Residential Unit Vacant for the 2024 tax year shall be as follows:

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

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

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

(c) The tax on an owner keeping a Residential Unit Vacant for the 2025 tax year, if that owner has not kept that Residential Unit Vacant in the 2024 tax year, shall be as follows:

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

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

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

(d) The tax on an owner keeping a Residential Unit Vacant for the 2025 tax year, if that owner has kept that Residential Unit Vacant in the 2024 tax year, shall be as follows:

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

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

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

(e) The tax on an owner keeping a Residential Unit Vacant for the 2026 tax year and subsequent tax years, if that owner has not kept that Residential Unit Vacant in the immediately preceding tax year, shall be as follows:

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

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

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

(f) The tax on an owner keeping a Residential Unit Vacant for the 2026 tax year and subsequent tax years, if that owner has kept that Residential Unit Vacant in the immediately preceding tax year but has not kept that Residential Unit Vacant in the tax year immediately preceding that tax year, shall be as follows:

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

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

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

— (g) The tax on an owner keeping a Residential Unit Vacant for the 2026 tax year and subsequent tax years, if that owner has kept that Residential Unit Vacant in the immediately preceding tax year and has kept that Residential Unit Vacant in the tax year immediately preceding that tax year, shall be as follows:

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

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

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

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

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

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

(k) The Empty Homes Tax shall take effect on January 1, 2024. The Empty Homes Tax shall expire on December 31, 2053.

SEC. 2954. RETURNS; PRESUMPTION OF VACANCY.

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

(b) Each person that owns a Residential Unit at any time during a tax year and that is not exempt from the Empty Homes Tax with respect to that Residential Unit under any one of subsections (a) through (d) of Section 2955 shall file a return for that tax year in the form and manner prescribed by the Tax Collector. A person that fails to file the return required by this subsection (b) for a Residential Unit shall be presumed to have kept that Residential Unit Vacant for the tax year for which such return is required. The person who fails to file the required return may rebut the presumption by producing satisfactory evidence that such person did not keep the Residential Unit Vacant during the tax year for which the return is required.

SEC. 2955. EXEMPTIONS AND EXCLUSIONS.

(a) For only so long as and to the extent that the City is prohibited from imposing the Empty Homes Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Empty Homes Tax shall be exempt from the Empty Homes Tax.

(b) Any organization that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be exempt from the Empty Homes Tax.

(c) The City, the State of California, and any county, municipal corporation, district, or other political subdivision of the State shall be exempt from the Empty Homes Tax, except where any constitutional or statutory immunity from taxation is waived or is not applicable.

(d) A person that owns any Residential Unit located in a building with two or fewer Residential Units shall be exempt from the Empty Homes Tax with respect to any Residential Unit located in that building.

(e) For purposes of this Article 29A, the Empty Homes Tax shall not apply with respect to a Residential Unit for any tax year for which any person is liable for the Vacancy Tax imposed under Article 29 of the Business and Tax Regulations Code with respect to that Residential Unit.

SEC. 2956. ADMINISTRATION; PENALTIES.

(a) Except as otherwise provided under this Article 29A, the Empty Homes Tax shall be administered pursuant to Article 6 of the Business and Tax Regulations Code.

(b) Transactions with the principal purpose of avoiding or evading all or a portion of the Empty Homes Tax shall be disregarded for purposes of determining the amount of the Empty Homes Tax and whether the Empty Homes Tax is due. In addition to the Empty Homes Tax due as a result of this subsection (b), any owner liable for any Empty Homes Tax as a result of this subsection (b) shall be liable for a penalty in an amount equal to the Empty Homes Tax due as a result of this subsection (b).

SEC. 2957. DEPOSIT OF PROCEEDS.

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

(b) Commencing with a report filed no later than February 15, 2026, covering the fiscal year ending on June 30, 2025, the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a report containing the amount of monies collected in and expended from the Fund during the prior fiscal year, the status of any project required or authorized to be funded by Section 2958, and such other information as the Controller, in the Controller's sole discretion, shall deem relevant to the operation of this Article 29A.

SEC. 2958. EXPENDITURE OF PROCEEDS.

Subject to the budgetary and fiscal provisions of the Charter, monies in the Housing Activation Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following purposes:

(a) To the Tax Collector and other City Departments, for administration of the Empty Homes Tax and administration of the Housing Activation Fund.

(b) Refunds of any overpayments of the Empty Homes Tax, including any related penalties, interest, and fees.

(c) All remaining amounts to provide funding, including administrative costs, for Eligible Programs, 50% of which shall be used for the programs described in subsection 2958(c)(1)(A) and 50% of which shall be used for the programs described in subsection 2958(c)(1)(B). The voters intend that these remaining amounts be spent on Eligible Programs at levels in addition to amounts currently spent on such Eligible Programs and that such remaining amounts not be used to supplant existing expenditures.

(1) For purposes of this Section 2958, "Eligible Programs" means:

(A) Rental subsidies for individuals age 60 or older and rental subsidies for households with a household income of not more than 50% of Area Median Income; and

(B) The acquisition and rehabilitation of multi-unit buildings, in which at least one-third of the units are unoccupied, for affordable housing, and the operation of such buildings acquired and/or rehabilitated under this subsection 2958(c)(1)(B). Buildings subject to expenditures under this subsection 2598(c)(1)(B) shall be restricted through a recorded deed restriction or restrictions mandated for the useful life of the building to households with an average household income that does not exceed 80% of Area Median Income.

(2) For purposes of this Section 2958, "Area Median Income" means the median income as published annually by the Mayor's Office of Housing and Community Development for the City and County of San Francisco, derived in part from the income limits and area median income determined by the United States Department of Housing and Urban Development, or its successor agency, for the San Francisco County metro fair market rent area, adjusted solely for household size, but not for high housing cost area. The Board of Supervisors may modify this definition of Area Median Income solely for purposes of subsection 2958(c)(1)(B) to determine area median income by zip code area.

SEC. 2959. TECHNICAL ASSISTANCE TO THE TAX COLLECTOR.

The Department of Public Works, the Department of Building Inspection, the Rent Board, and the Assessor-Recorder's Office shall provide technical assistance to the Tax Collector, upon the Tax Collector's request, to administer the Empty Homes Tax.

SEC. 2960. AUTHORIZATION AND LIMITATION ON ISSUANCE OF BONDS.

The City is hereby authorized to issue from time to time limited tax bonds or other forms of indebtedness to finance the costs of the projects described in Section 2958. The City shall be authorized to pledge revenues generated by the Empty Homes Tax to the repayment of limited tax bonds or other forms of indebtedness authorized under this Section 2960. The Board of Supervisors shall by ordinance or resolution, as applicable, establish the terms of any limited tax bonds or other forms of indebtedness authorized hereby, including but not limited to, the amount of the issue, date, covenants, denominations, interest rate or rates, maturity or maturities, redemption rights, tax status, manner of sale, and such other particulars as are necessary or desirable.

SEC. 2961. AMENDMENT OF ORDINANCE.

The Board of Supervisors may amend or repeal this Article 29A by ordinance by a two-thirds vote and without a vote of the people except as limited by Articles XIII A and XIII C of the California Constitution.

SEC. 2962. SEVERABILITY.

(a) Except as provided in Section 2962(b), if any section, subsection, sentence, clause, phrase, or word of this Article 29A, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Article. The People of the City and County of San Francisco hereby declare that, except as provided in Section 2962(b), they would have adopted this Article 29A and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Article or application thereof would be subsequently declared invalid or unconstitutional.

(b) If the imposition of the Empty Homes Tax in Section 2953 is held in its entirety to be facially invalid or unconstitutional in a final court determination, the remainder of this Article 29A shall be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax Regulations Code.

SEC. 2963. SAVINGS CLAUSE.

No section, clause, part, or provision of this Article 29A shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

Section 3. Chapter 10 of the Administrative Code is hereby amended by adding Section 10.100-76 to Article XIII, to read as follows:

SEC. 10.100-76. HOUSING ACTIVATION FUND.

(a) Establishment of Fund. The Housing Activation Fund ("Fund") is established as a category four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all taxes, penalties, interest, and fees collected from the Empty Homes Tax imposed under Article 29A of the Business and Tax Regulations Code.

(b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the Fund shall be used exclusively for the purposes described in Section 2958 of Article 29A of the Business and Tax Regulations Code.

(c) Administration of Fund. As stated in Section 2957(b) of Article 29A of the Business and Tax Regulations Code, commencing with a report filed no later than February 15, 2026, covering the fiscal year ending June 30, 2025, the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a report containing the amount of monies collected in and expended from the Fund during the prior fiscal year, the status of any project required or authorized to be funded by Section 2958, and such other information as the Controller, in the Controller's sole discretion, deems relevant to the operation of Article 29A.

Section 4. Appropriations Limit Increase. Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 8, 2022, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the tax imposed under this ordinance.

Section 5. No Conflict with Federal or State Law. Nothing in this measure shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 6. Effective Date. The effective date of this ordinance shall be ten days after the date the official vote count is declared by the Board of Supervisors.