



# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Katano Kasaine  
Director of Finance

**SUBJECT:** Business Tax on  
Rental Property

**DATE:** July 6, 2018

City Administrator Approval

Date:

*7/12/18*

## RECOMMENDATIONS

**Staff Recommends That The City Council Consider Adoption Of A Resolution On The City Council's Own Motion Submitting To The Voters At The General Municipal Election On November 6, 2018, A Proposed Ordinance To Adopt A Special Supplemental Business License Tax On Rental Of Property At A Rate Of 1% Of Annual Gross Receipts In Excess Of \$200,000 To Fund Solutions For Homelessness, Illegal Dumping Remediation, And Related Programs; And Directing The City Clerk To Take Any And All Actions Necessary Under Law To Prepare For And Conduct The November 6, 2018 General Municipal Election.**

## EXECUTIVE SUMMARY

Councilmember Kaplan's proposed ballot measure amends Title 4 of the Oakland Municipal Code, Revenue and Finance, creating Chapter 4.56, Supplemental Business License Tax on Rental Property. The proposed measure seeks voters' approval to impose an additional one percent, on top of the existing tax rate of \$13.95 per \$1,000, applicable to rental property that generates total gross receipts above \$200,000 annually. This measure would result in a rate of 2.40 percent<sup>1</sup> per \$1,000 and raise an estimated \$7.6 million in additional revenue annually. The revenue would be restricted and placed in a newly created Homeless Services Fund to fund solutions for homelessness, illegal dumping remediation and related programs. The proposed tax would be considered a special tax requiring a minimum two-thirds vote of the electorates to pass.

## BACKGROUND / LEGISLATIVE HISTORY

The City of Oakland's Business Tax Ordinance was first established on June 26, 1975 and became effective on January 1, 1976. The current Business Tax rate of \$13.95 per \$1,000 on gross receipts from the rental of residential property was last increased in 1978 while the same tax rate on gross receipts from the rental of commercial and industrial properties was last

<sup>1</sup> Additional 1% tax rate would only be applicable to the portion of the gross receipts that are above \$200,000.

increased in 1981. **Table 1** below shows the history of the tax rates applicable to rental properties since the Business Tax on the gross receipts of rental properties was first adopted in 1975.

<b>Ordinance No.</b>	<b>Property Type</b>	<b>Adopted Date</b>	<b>Effective Date</b>	<b>Tax Rate/ \$1,000</b>
9177 C.M.S.	Residential & Commercial	6/26/1975	1/1/1976	\$0.90
9623 C.M.S.	Commercial	6/29/1978	7/1/1978	\$1.80
9625 C.M.S.	Residential	6/29/1978	6/29/1978 <sup>2</sup>	\$13.95
10088 C.M.S.	Commercial & Industrial	6/30/1981	1/1/1982	\$13.95

**ANALYSIS AND POLICY ALTERNATIVES**

*Business Tax Rates on Rental Property*

As summarized above, the City’s Business Tax rates on gross receipts from the rental of residential and commercial properties are at \$13.95, or 1.395 percent, per \$1,000. The last increases of the tax rates applicable to the gross receipts generated from the rental of residential and commercial property occurred 40 and 36 years ago, respectively. Per the data compiled and published by US Bureau of Labor Statistics and analyzed by the Data Foundation, a research and educational organization, nationwide cost for the renting of primary residence is 290.58 percent<sup>3</sup> higher in 2018 than the cost for renting the same primary residence in 1980. In other words, a primary residence that costed \$1,000 to rent in 1980 would cost \$3,905.81 to rent in 2018. For the Bay Area, the increase was more than 339 percent<sup>4</sup>. The tax rate has not changed over that same period of time.

*Business Tax Accounts on Rental Properties*

There are 25,383 active business tax accounts on rental properties that are subject to the tax rate of \$13.95 per \$1,000 in gross receipts. Residential property makes up 87 percent, or 22,193, of the 25,383 total business tax accounts on rental properties. Commercial properties account for the remaining 13 percent, or 3,190, of the 25,383 total business tax accounts shown in **Table 2**.

<b>Property Type</b>	<b>No. of Accounts</b>	<b>Percentage (%) of Total</b>
Residential	22,193	87%
Commercial	3,190	13%
Total	25,383	100%

<sup>2</sup> Emergency Ordinance - Proposition 13 passed on 6/6/1978

<sup>3</sup> Data Foundation, <http://www.in2013dollars.com/Rent-of-primary-residence/price-inflation/1980>

<sup>4</sup> Paragon Real Estate Group, <https://www.paragon-re.com/trend/3-recessions-2-bubbles-and-a-baby>

For each type of property, there were 770, or 3.47 percent of residential properties and 633, or 19.84 percent of commercial properties which generated more than \$200,000 in total gross receipts for each property in the calendar year of 2017 as noted in **Table 3**.

Table 3: Business Tax Accounts on Rental Properties					
Property Type	No. of Accounts	2017 Gross Receipts			
		Less Than \$200K (in #)	Less Than \$200K (in %)	More than \$200K (in #)	More than \$200K (in %)
Residential	22,193	21,423	96.53%	770	3.47%
Commercial	3,190	2,557	80.16%	633	19.84%
<b>Total</b>	<b>25,383</b>	<b>23,980</b>		<b>1,403</b>	

*Proposed Ballot Measure*

The proposed 20-year term ballot measure requires approval by a two-thirds majority of voters. The tax proceeds will be deposited a special fund and spent exclusively on programs and services for homeless individuals, including job training, assistance connecting homeless individuals or those at risk of becoming homeless with services, assistance with housing or move-in expenses, sanitation and cleaning programs as well as illegal dumping. The fund could be used to pay for the audit costs associated with the expenditures of the additional tax proceeds and up to 15 percent of administrative costs.

As set forth in the proposed ordinance, the Commission on Homelessness could be understood to have extensive jurisdiction over a broad array of programs and services throughout several different City and Community Development and Planning. The support needed for the broad jurisdiction could be significant and the cost implications are unclear from the measure. Moreover, the measure does not include funding to staff and support this commission.

*Alternative Placement of the Proposed Ordinance*

Councilmember Kaplan’s entire proposed ordinance is being proposed to reside in Chapter 4 of the Oakland Municipal Code (“OMC”) as a standalone Special Gross Receipts Supplemental Business Tax. **Governance of business taxes reside in Chapter 5.04 of the OMC. Given that the proposed one percent tax rate is a supplemental tax to an existing business tax rate of \$13.95 per \$1,000 on rental property, the ideal placement of the proposed supplemental business tax rate is in the creation of a new section, Section 5.04.431 in Chapter 5.04 of the OMC.** Staff recommends that the new section that is being proposed be placed right after the existing two sections (Sections 5.04.420 and 5.04.430) that govern the existing tax rates on residential and commercial/industrial property, respectively.

Staff proposes the following text as a replacement text for the imposition of the Special Supplemental Business Tax:

*5.04.431 – Imposition of Special Supplemental Business Tax*

- A. *Residential Property: In addition to the business tax of thirteen dollars and ninety-five cents (\$13.95) for each one thousand dollars, as imposed separately under Section 5.04.420, there shall be an additional one percent special supplemental business tax on gross receipts in excess of \$200,000 per year on every person engaging in the business*

*of conducting or operating an apartment house, lodging house, and every person engaged in the business of conducting or letting rooms, and/or any building structure, for dwelling, sleeping or lodging, including, and limited to, a single-family house, duplex, townhouse, condominium or co-operative*

- B. Commercial/Industrial Property: In addition to the business tax of thirteen dollars and ninety-five cents (\$13.95) for each one thousand dollars, as imposed separately under Section 5.04.430, there shall be an additional one percent special supplemental business tax on gross receipts in excess of \$200,000 per year on every person engaging in the business of renting or letting a building, structure, or other property for commercial/industrial purposes, or a portion of such building, structure or property within the city for a purpose other than dwelling, sleeping, or lodging to a tenant.*
- C. The tax basis for persons, taxed pursuant to subsection A and B of this section shall include gross receipts as defined per Section 5.04.030 plus all payments made to the lessor, and/or paid to third parties on behalf of the lessor as part of said lease agreement, including but not limited to, all taxes, insurance, mortgage payment, rent, and the cash value of all services rendered to or on behalf of the lessor by said lessee in lieu of rental or lease fee payments.*
- D. A lessor otherwise subject to the business tax described in subsections A and B of this section shall not be exempt therefrom by reason of the fact that one or more persons may reside within a building or structure where the primary purpose of the particular tenancy or the primary use or right to use by the tenant is for some purpose other than dwelling, sleeping, or lodging.*
- E. To the extent that a person qualifying for a five-year exemption as authorized under Section 5.04.430.C, the same five-year exemption extends to include the special supplemental business tax on gross receipts in excess of \$200,000 per year.*
- F. The Special Supplemental Business Tax imposed as described in subsections A & B of this section is intended as an additional tax to be imposed in addition to the existing tax rate of thirteen dollars and ninety-five cents (\$13.95), applicable under Sections 5.04.420 and 5.04.430.*
- G. The calculation of the Special Supplemental Business Tax imposed as described in subsections A & B of this section is only on the portion of gross receipts in excess of \$200,000 per year.*

Staff recommends the remainder of the proposed text in the ordinance be placed in Title 8, Health and Safety, of the OMC since Title 8 governs health and safety regulations. Perhaps a new chapter, such as Chapter 8.61 or after, could be created for the remainder of the text of the ordinance. **Table 4** below is staff's recommended location for provisions of the proposed ordinance.

<b>Table 4: Placement of the Proposed Ordinance</b>		
<b>Proposed Chapter &amp; Section</b>	<b>Title</b>	<b>Ideal Placement</b>
Chapter 4.56	Special Gross Receipts Supplemental Business Tax	Title 8, Chapter 8.61 (new)
Section 4.56.010	Definitions	Title 8, Chapter 8.61 (new)
Section 4.56.030	Imposition of Increased Business License Tax on Rental Property	Title 5, Section 5.04.431 (new)
Section 4.56.040	Homeless Services Fund	Title 8, Chapter 8.61 (new)
Section 4.56.050	Use of Tax Act Revenue	Title 8, Chapter 8.61 (new)
Section 4.56.060	Commission on Homelessness	Title 8, Chapter 8.61 (new)
Section 4.56.070	Accountability	Title 8, Chapter 8.61 (new)

**FISCAL IMPACT**

Based on the breakdown of the number of business tax accounts which generated more than \$200,000 in total gross receipts in 2017, there are 1,403 total business tax accounts on rental properties that would be eligible for an additional one percent special supplemental tax if the proposed ballot measure passed. The revenue estimated to be generated from the special supplemental tax is approximately \$7.6 million annually (\$2.4 million from residential property and \$5.2 million from commercial properties) in addition to the revenue generated from the existing rate of \$13.95 per \$1,000 on the first \$200,000 of gross receipts.

<b>Estimated Special Supplemental Business Tax on Rental Property</b>		
<b>Property Type</b>	<b>No. of Accounts Subject to Special Supplemental Tax</b>	<b>Estimated Revenue</b>
Residential	770	\$2,444,083
Commercial	633	\$5,211,772
<b>Total</b>	<b>1,403</b>	<b>\$7,655,855</b>

The fiscal impact of the proposed Commission on Homelessness is unknown, unfunded, and extensive.

**PUBLIC OUTREACH / INTEREST**

No outreach was deemed necessary for this informational report beyond the standard Council agenda noticing procedures.

**COORDINATION**

This report is informational only and did not require coordination with other departments.

**SUSTAINABLE OPPORTUNITES**

**Economic:** The proposed measure provides an equitable means to fund government homelessness, illegal dumping remediation and related programs.

**Environmental:** The proposed measure provides a dedicated source of funding to remedy illegal dumping activities which impede the natural runoff of water during heavy rain, horrible eyesore in an otherwise beautiful place, adversely affect many native species of plants and animals, and cause pollution due harmful chemicals that included in many house appliances.

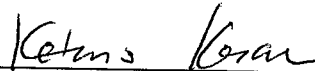
**Social Equity:** The proposed measure creates an accelerating schedule with property owners generating more than \$200,000 in gross receipts paying more than those generating less.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council consider adoption of a resolution on the City Council's own motion submitting to the voters at the General Municipal Election on November 6, 2018, a proposed ordinance to adopt a special supplemental business license tax on rental of property at a rate of 1 percent of annual gross receipts in excess of \$200,000 to fund solutions for homelessness, illegal dumping remediation, and related programs; and directing the City Clerk to take any and all actions necessary under law to prepare for and conduct The November 6, 2018 General Municipal Election

For questions regarding this report, please contact Margaret O'Brien, Revenue & Tax Administrator, (510) 238-7480.

Respectfully submitted,



Katano Kasaine  
Director of Finance  
Finance Department

Prepared by:  
Margaret O'Brien  
Revenue and Tax Administrator  
Revenue Management Bureau