



CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND

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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Adam Benson
Director of Finance

SUBJECT: Vacant Property Tax
Questions and Answers

DATE: October 1, 2019

City Administrator Approval

Date:

10/10/19

RECOMMENDATIONS

Staff Recommends The City Council:

1. **Adopt An Ordinance Amending Oakland Municipal Code Title 4, Chapter 4.56 To Clarify And Further Define Various Sections Of The Oakland Vacant Property Tax And Establish A Method To Identify Vacant Property; And,**
2. **Adopt A Resolution Authorizing The City Administrator, Or Designee, To Negotiate And Execute The First Amendment To The Agreement With SCI Consulting Group For The Implementation, Administration And Management Of The Vacant Property Tax For A Term Of Three Years Ending December 31, 2022 With Two One-Year Options To Renew, At The City's Complete Discretion, The Agreement Through December 31, 2024, Without Returning To The City Council For Approval, For A Not-To-Exceed Compensation Of \$1,270,000 For All Five Years.**

REASON FOR SUPPLEMENTAL

On November 6, 2018, Oakland voters approved Measure W, the Vacant Property Tax Act, by a margin of 70.04 percent, which established an annual tax on vacant property for 20 years to raise revenue necessary to support and fund homelessness programs and services, affordable housing, Code Enforcement, and clean-up of blighted properties and illegal dumping.

On September 24, 2019, the Oakland Finance and Management Committee held a public meeting to consider the Administration's proposed Implementation Ordinance that further clarifies the definition of "use" for determining vacancy status and each of the 10 allowable exemptions.

At the September 24, 2019 regular meeting of the Finance & Management Committee, members of the public and the Committee raised many questions covering a wide range of issues ranging from the Finance Department's noticing process to the taxability of certain specific circumstances, etc. This supplemental report is meant to address those questions.

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City Council
October 15, 2019

As the members of the public and the City Council review the answers to the questions, **it is important to keep in mind that the answers are strictly based on the version of the Implementation Ordinance presented to the Finance & Management Committee on September 24, 2019 and are subject to change to the extent that the City Council approves any revisions or amendments.**

Any revisions or amendments, however minor as it may seem, should be carefully considered in the context of ensuring the ordinance can be objectively read and uniformly applied. As stated in the staff report that accompanied the proposed Implementation Ordinance, the Administration "is specifically attempting to avoid having City staff make subjective determinations about what activities should and should not be taxed."

(1) Why did residents whose properties are not vacant receive a notice?

Many public speakers asked why they received a notice from the City about the Vacant Property Tax, even though their properties have been occupied continuously, sometimes for many years.

Since December 2018, the City has sent several notices about the planned levy of the Vacant Property Tax and the Implementation Ordinance. The City sent those notices to all property owners whose mailing address is different from the physical address of the property they own, as shown in county assessor records. As a result, every owner who owns a property that they do not personally live on should have received a notice.

The overwhelming majority of notice recipients do not own "vacant" property. But, the City's notification method was intended to get word of the impending levy of the Vacant Property Tax and the Implementation Ordinance to nearly all owners who could possibly be subject to tax, either now or at some time in the future.

The City will attempt to send further notices regarding consideration of the Implementation Ordinance. But when the City begins the process of identifying and levying vacant properties, the City's intent will be to send initial vacancy determinations only to owners who the City has reason to believe may actually own vacant properties.

(2) How will owners demonstrate that properties occupied by a tenant who does not pay rent, such as a relative, are not "vacant"?

If the Implementation Ordinance is approved, the City will begin sending initial vacancy determinations in January and February 2020.

The City will make initial determinations about vacancy status based on City owned and publicly available information. As a result, nearly all occupied properties, including properties occupied by a non-rent paying relative, should not receive an initial vacancy determination.

In the event an owner does receive a vacancy notice, the owner will have the opportunity to submit proof of occupancy, which may include utility data or any other objective evidence that demonstrates that the property was occupied for at least 50 days in the year.

(3) What are the HUD financial income limits? What income levels qualify as “very low income” and “low income”?

Exemptions for “very low income” and “low income seniors” are pegged to income limits developed by the United States Housing and Urban Development Department (“HUD”) for the “Oakland-Fremont, California HUD Metro Fair Market Rent Area”. HUD updates those income limits annually.

For 2019, HUD has set the following income limits for the Oakland-Fremont Metro Area:¹

	Persons in Family							
	1	2	3	4	5	6	7	8
“Low Income Limit”	\$69,000	\$78,850	\$88,700	\$98,550	\$106,450	\$114,350	\$122,250	\$130,100
“Very Low Income Limit”	\$43,400	\$49,600	\$55,800	\$61,950	\$66,950	\$71,900	\$76,850	\$81,800

Relevant Sections: Measure W, §§ 4.56.030(J)(1)(a) (‘very low income’ exemption); 4.56.030(J)(1)(g) (‘low income senior’ exemption)

(4) Why are the income limits for the disability exemption different from the income limits for the “very low income” and “low income seniors” exemptions?

Measure W created exemptions for ‘very low income’ and ‘low income senior’ taxpayers, as described in response to question (3), based on HUD developed income limits for the “Oakland-Fremont, CA HUD Metro Fair Market Rent Area.”

Measure W also created a disability exemption for persons who receive Supplemental Security Income for a disability or Social Security Disability Insurance benefits and whose yearly income does not exceed 250% of the 2012 federal poverty guidelines issued by the Department of Health and Human Services (“HHS”).

Measure W itself does not disclose a rationale for the distinction between using HUD and HHS guidelines.

If the Council wishes to make these three income related exemptions more consistent, it could allow taxpayers to reference either the HUD or HHS income limits, whichever is more favorable to the individual taxpayer. The Council could also choose to give taxpayers applying for the disability exemption the option to reference more recent HHS poverty guidelines or tie the referenced 2012 guidelines to inflation. But that change would add to the administrative burden of implementing the tax.

¹ Source:
https://www.huduser.gov/portal/datasets/il/il2019/2019summary.odn?states=%24states%24&data=2019&inputname=METRO41860MM5775*Oakland-Fremont%2C+CA+HUD+Metro+FMR+Area&stname=%24stname%24&statefp=99&year=2019&selection_type=hmfa

Relevant Sections: Measure W, §§ 4.56.030(J)(1)(a) ('very low income' exemption), 4.56.030(J)(1)(g) ('low income senior' exemption), 4.56.030(J)(1)(h) ('disability' exemption).

(5) Can "exceptional special circumstance" exemptions be renewed?

Measure W creates an exemption for owners "who can demonstrate that exceptional specific circumstances prevent the use or development of the property."

As written in the Draft Implementation Ordinance presented to the Finance & Management Committee on September 24, 2019, it is not clear whether taxpayers may renew any exceptional special circumstances exemptions.

City staff recommends adding the following language to the exemption in the Implementation Ordinance to clarify this issue:

"Exemptions granted pursuant to this section may be renewed by the City Administrator, for up to five (5) years, if the City Administrator determines that the conditions prohibiting development of the parcel persist and that the person(s) who owned the parcel during the term of the previously granted exemption made all reasonable attempts to put the property into use."

Relevant Sections: Measure W, § 4.56.030(J)(1)(d) ('exceptional special circumstances' exemption); Implementation Ordinance [v. 9.24.19], § 4.56.090(D) (further explanation of 'exceptional special circumstances' exemption).

(6) Can the collection of the tax be delayed for one year?

Yes. Although the City is currently preparing to levy the tax with respect to properties deemed vacant for calendar year 2019, the Council could choose to delay such levy.

Councilmembers interested in a delay option should request assistance from the City Attorney's office with respect to appropriate procedure. A delay may require that the City Council adopt an ordinance. A delay would require the Council to either identify an alternate funding source for expenditures budgeted in the FY 2020-21 Adopted Policy Budget or forgo the budgeted services.

Relevant Sections: Measure W, § 4.56.030(D)

(7) Can the City levy the Vacant Property Tax at a rate lower than the \$6,000 and \$3,000 rates listed in Measure W?

Yes. Measure W gives the City Council explicit authority to set the actual tax rate for any given year at any rate that does not exceed the maximum allowed.

Relevant Sections: Measure W, § 4.56.030(G)

(8) Can the City levy the Vacant Property Tax at a rate that depends on the value of the property?

No. The California Constitution prohibits the City from imposing taxes on a value of property, or "ad valorem," basis.

Relevant Sections: California Constitution, Article XIII A, § 1

(9) Will the City impose the tax on my property?

Numerous public speakers asked whether the specific circumstances of their property may be considered "in use" or subject to an exemption.

Although no final answers can be provided for specific circumstances until the City Council adopts an Implementation Ordinance, **the following answers address how the version of the Implementation Ordinance presented to the Finance & Management Committee on September 24, 2019 would apply.**

a. Will the City impose the tax on undeveloped properties that are contiguous to an occupied residential parcel?

No, if the occupied residential property is contiguous or within 500 feet of the occupied residential property and both properties are owned by the same owner.

In numerous parts of the City, homeowners own the lot upon which their house is built, and an adjacent lot. In many of these situations, there is no visible, obvious, or physical distinction between the two properties. Property owners often use their adjacent parcels as backyards, for garages, or as community gathering spaces.

The September 24, 2019 version of the Implementation Ordinance clarifies that such adjacent lots are "in use" so long as the owner provides "maintenance" of the parcel. Maintenance is not further defined but the intent of the language is to require some minimum level oversight and management to ensure that such lots are not, for example, allowed to become a blight or a fire hazard.

Relevant Sections: Implementation Ordinance [v. 9.24.19], § 4.56.080(C).

b. Will the City impose the tax on properties that provide access to creeks and other natural resources?

Yes, unless the property is in use or an exemption applies.

The September 24, 2019 version of the Implementation Ordinance does not create any explicit use or exemption definition with respect to this category. Properties in this category will be subject to taxation if they are otherwise deemed vacant.

But, owners of property in this category may be able qualify for an exemption. For example, in exceptional circumstances, owners may apply for the "exceptional special circumstances" exemption. The City will grant that exemption if, as provided in Measure W, the owner can demonstrate that the "exceptional specific circumstance" affecting their property "prevent[s] the use or development of the property."

The City Council, at its discretion, may consider and adopt explicit use or exemption definitions with respect to this category.

Relevant Sections: Measure W, § 4.56.030(J)(1)(d) ('exceptional special circumstances' exemption); Implementation Ordinance [v. 9.24.19], § 4.56.090(D) (further explanation of 'exceptional special circumstances' exemption).

c. Will the City impose the tax on properties that have limited development opportunities because of greenbelt, open space, or similar restrictions?

Yes, unless the property is in use or an exemption applies.

See response to 9(b).

d. Will the City impose the tax on properties that are difficult to develop for financial, physical, or zoning reasons?

Yes, unless the property is in use or an exemption applies.

See response to 9(b).

e. Will the City impose the tax on properties in a fire hazard zones?

Yes, unless the property is in use or an exemption applies.

See response to 9(b).

f. Will the City impose the tax on properties with an “extreme slope?”

Yes, unless the property is in use or an exemption applies.

See response to 9(b).

g. Will the City impose the tax on properties that are currently listed for sale or rent, or are in escrow?

Yes, unless the owner of the property qualifies for an exemption.

The September 24, 2019 version of the Implementation Ordinance does not create any explicit use or exemption definition with respect to this category. Properties in this category will be subject to taxation if they are otherwise deemed vacant.

City staff received several comments throughout the public input process requesting an exemption for vacant properties in this category. But staff read the intent of the Measure W as, in part, to create an incentive for properties in this category to be sold or rented more expeditiously. Therefore, staff did not address this category in the Implementing Ordinance.

The City Council, at its discretion, may consider and adopt explicit use or exemption definitions with respect to this category.

h. Will the City impose the tax on properties that include “community gardens?”

No, if the property’s use as a “community garden” complies with the Oakland Municipal Code.

The September 24, 2019 version of the Implementation Ordinance defines “use” as including any “civic, commercial, industrial, agricultural, or extractive activity, as those terms are defined by the Planning Code”

Section 17.10.140 of the Planning Code identifies “community gardens” as a “civic activity.” So long as an owner’s community garden complies with that and any other applicable portions of the law, it would be considered “in use.”

Relevant Sections: Implementation Ordinance [v. 9.24.19], § 4.56.080(B)

i. Will the City impose the tax on properties used for bee keeping?

No, if the property's use for bee keeping complies with the Oakland Municipal Code.

The September 24, 2019 version of the Implementation Ordinance defines "use" as including any "civic, commercial, industrial, agricultural, or extractive activity, as those terms are defined by the Planning Code"

Sections 17.10.610 and 17.10.615 of the Planning Code identify "bee keeping" as an "agricultural activity." So long as an owner's bee keeping operation complies with those and any other applicable portions of the law, the property would be considered "in use."

j. Will the City impose the tax on properties used as parking lots?

No, if the property's use as a parking lot complies with the Oakland Municipal Code.

The September 24, 2019 version of the Implementation Ordinance defines "use" as including any "civic, commercial, industrial, agricultural, or extractive activity, as those terms are defined by the Planning Code"

Various section of the Planning Code address and define parking lots as a "civic activity." So long as an owner's use of property as a parking lot complies with those sections and any other applicable portions of the law, the property would be considered "in use."

(10) Is the vacancy determination appeal process mandatory?

Yes. Although all vacancy determinations may ultimately be reviewed by the court, taxpayers will be required to exhaust all available administrative appeal remedies before filing a lawsuit.

To clarify this issue, staff recommends adding the following language to § 4.56.110(E):

"Any person whose complaint, claim, or petition may be resolved by employing the administrative remedies provided in Sections 4.56.100 or 4.56.110 must exhaust those remedies before filing any suit for refund, rebate, exemption, cancellation, amendment, adjustment, or other modification of the Tax."

PUBLIC OUTREACH / INTEREST

Staff has conducted extensive research and public outreach campaign to gather comments on the implementation of the Measure W. Staff has also notified potential affected property owners the purpose, date and time of the October 15, 2019 City Council meeting. This item is also posted on the City's Online Meeting Schedule for the October 15, 2019 City Council meeting.

COORDINATION

This report has been coordinated with the Office of City Attorney.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends The City Council Adopt An Ordinance Amending Oakland Municipal Code Title 4, Chapter 4.56 To Clarify And Further Define Various Sections Of The Oakland Vacant Property Tax And Establish A Method To Identify Vacant Property And Adopt A Resolution Authorizing The City Administrator, Or Designee, To Negotiate And Execute The First Amendment To The Agreement With SCI Consulting Group For The Implementation, Administration And Management Of The Vacant Property Tax For A Term Of Three Years Ending December 31, 2022 With Two One-Year Options To Renew, At The City's Complete Discretion, The Agreement Through December 31, 2024, Without Returning To The City Council For Approval, For A Not-To-Exceed Compensation Of \$1,270,000 For All Five Years.

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

Respectfully submitted,



Adam Benson
Director of Finance
Finance Department

Reviewed by:
Margaret O'Brien
Revenue and Tax Administrator
Finance Department

Prepared by:
Huey Dang
Revenue Analyst
Finance Department

REVISED
10-10-19

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY

DRAFT

CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

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OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 4, CHAPTER 4.56 TO CLARIFY AND FURTHER DEFINE VARIOUS SECTIONS OF THE OAKLAND VACANT PROPERTY TAX AND ESTABLISH A METHOD FOR IDENTIFYING VACANT PROPERTY

WHEREAS, on July 24, 2018, the City of Oakland adopted Resolution 87319 C.M.S calling for voter consideration of a ballot measure to adopt a special parcel tax on vacant properties ("Measure W"); and

WHEREAS, on November 6, 2018, Oakland voters approved Measure W by greater than a 2/3rds margin; and

WHEREAS, Measure W established an annual tax on vacant property at a maximum rate of \$6,000 for certain properties and \$3,000 for other properties to support and fund homelessness programs and services, affordable housing, code enforcement, and clean-up of blighted properties and illegal dumping (the "Vacant Property Tax"); and

WHEREAS, pursuant to Measure W, a property will generally be considered "vacant" if it is in use less than fifty (50) days during a calendar year; and

WHEREAS, Measure W defines "use" as "the performance of a function or operation"; and

WHEREAS, Measure W defines ten (10) categories of tax exemptions, including exemptions for financial and non-financial hardships, exceptional circumstances, and properties in active development or construction;

WHEREAS, Measure W calls for the City Council to establish, by ordinance, a method of determining and identifying the use and vacancy status of each parcel of real property in the City;

WHEREAS, Measure W allows the City Council to provide supplemental definitions for the categories of exemptions;

WHEREAS, establishment of a method for determining and identifying the use and vacancy status of real property and further supplemental definitions to the categories of exemptions is critical to the administration of the Vacant Property Tax; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 4, Chapter 4.56 of the Oakland Municipal Code containing the operative sections of the Vacant Property Tax is amended to add, delete or modify sections as set forth below (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strike-through type.) Portions of regulations not cited or not shown in underscoring or strike-through are not changed.

SECTION 2. Code Amendments.

Title 4, Chapter 4.56 is amended as follows:

4.56.010 – Definitions.

"City" means the City of Oakland.

"Commission" means the Commission on Homelessness authorized by this Chapter.

"Calendar Year" refers to the 12-month period from January 1 through December 31 pursuant to which the City will determine whether any parcel, property, or unit is subject to the Tax.

"County" means Alameda County.

"Ground Floor Commercial Space" means the ground floor space of any parcel of land where ground floor commercial activities are allowed by the applicable zoning (with or without a use permit) or are a legal nonconforming use.

"Heavily Impacted Neighborhoods" means the geographic area defined by the boundaries of 2010 Census Tracts 4007, 4008, 4009, 4010, 4014, 4015, 4016, 4017, 4018, 4022, 4024, 4025, 4026, 4027, 4030, 4033, 4057, 4053.02, 4054.01, 4054.02, 4055, 4056, 4058, 4059.01, 4059.02, 4060, 4061, 4062.01, 4062.02, 4063, 4064, 4065, 4071.01, 4071.02, 4072, 4073, 4074, 4075, 4076, 4077, 4085, 4086, 4087, 4088, 4089, 4090, 4091, 4092, 4093, 4094, 4095, 4096, 4097, 4102, 4103, 4104, and 4105. See Map (Attachment A) below.

"Mixed-Use Parcel" means a parcel that is improved with both:

- i) At least one (1) residential unit; and
- ii) Uses other than a residential unit.

"Multifamily Residential Parcel" means all parcels that are improved with more than one (1) residential unit.

"Net General Purpose Fund Budget for Non-Safety Departments" means the total general purpose fund appropriation to the operating budgets of the non-safety departments, excluding expenditures that are offset by fees or other non-tax revenues.

"Nonresidential Parcel" means all parcels that are improved with uses other than residential units.

"Non-Safety Departments" means all operating departments of the City, except police and fire.

"Owner" means the owner or owners of the real property located within the City of Oakland as of the first day of January following the calendar year pursuant to which a property is deemed to be vacant or not vacant. For the purposes of applying any exemptions defined in Section 4.56.090, the Owner shall not be exempt from the Tax unless each person or entity that owns a portion of the real property can separately demonstrate that they are entitled to an exemption.

"Parcel" shall mean a unit of real property in the City of Oakland as shown on the most current official assessment role of the Alameda County Assessor.

"Residential Parcel" means all parcels that are improved with one (1) or more residential units.

"Residential Unit" means a building or structure, or portion thereof, designed for or occupied exclusively by one (1) household, including unrelated persons who live together and maintain a common household.

"Single-Family Residential Parcel" means all parcels which are improved with only one (1) residential unit.

"Tax" or "Oakland Vacant Property Tax" means the special tax authorized by this Chapter.

"Undeveloped Parcel" means all parcels, regardless of zoning or other land use designation, upon which no permanent improvements have been constructed or placed.

"Use" means the performance of a function or operation.

4.56.080 – “In Use” Determinations.

For the purpose of making a determination of vacancy pursuant to Section 4.56.020, the following functions or operations are considered “use”:

- A. Physical occupancy of a Residential Parcel, condominium, duplex, or townhouse unit by a lawful inhabitant.
- B. Carrying on of any civic, commercial, industrial, agricultural, or extractive activity, as those terms are defined by the Planning Code, and including any religious or community gatherings, on or in a Nonresidential Parcel, Undeveloped Parcel, or Ground Floor Commercial Space, except that:
 - 1. Any Nonresidential Parcel, Undeveloped Parcel, or Ground Floor Commercial Space used for warehousing, storage, or distribution activities, as those terms are used in OMC section 17.10.583, will not be considered in use unless at least 40% of the parcel or unit’s floorspace available for warehousing, storage, or distribution is occupied;
 - 2. Any Ground Floor Commercial Space will not be considered in use unless either leased out to a bona fide tenant intending to use the space for a legal activity, or actually occupied, by an Owner or some other party, for some substantially similar purpose.
- C. Maintenance of an Undeveloped Parcel that is contiguous or within 500 feet of an occupied Residential Parcel owned by the same Owner.
- D. Ingress and egress of persons or vehicles across substantially all of the parcel.
- E. Other functions or operations as the City Administrator may deem appropriate.

4.56.090 – Exemptions.

For the purpose of determining whether an Owner is entitled to claim an exception pursuant to Section 4.56.030(J)(1) the following rules and clarifications apply:

- A. “Very Low Income” - - 4.56.030(J)(1)(a)

The “very low income” exemption applies if the Owner’s combined family income for the relevant Calendar Year is equal to or less than the United States Department of Housing and Urban Development “Very Low Income Limit” for the Oakland-Fremont, CA HUD Metro FMR Area.

B. "Financial Hardship" - - 4.56.030(J)(1)(b)

The following circumstances constitute a "financial hardship due to specific factual circumstances":

1. The Owner, for any period of time during the relevant Calendar Year, was a natural person and a debtor-party in an individual bankruptcy action.
2. The Owner, for any period of time during the relevant Calendar Year, experienced a significant medical event that kept the Owner from engaging in their normal work or business activities for at least thirty (30) days.
3. The Owner, on or after December 1 of the year preceding the relevant Calendar Year, was involuntarily terminated from employment and was unemployed for at least sixty (60) days during the relevant Calendar Year.

C. "Demonstrable Hardship Unrelated to Personal Finances" - - 4.56.030(J)(1)(c)

The following circumstances constitute a "demonstrable hardship":

1. The subject property was, for at least one-hundred and eighty (180) days during the relevant Calendar Year, subject to a lis pendens, or similar court order, giving notice of a conflict regarding title or ownership interests, pursuant to any pending lawsuit, bankruptcy proceeding, probate action, condemnation action or other action or proceeding filed with any court.
2. The Owner, for at least sixty (60) days during the relevant Calendar Year, was serving in the military and deployed overseas.
3. The then Owner died at some time during the relevant Calendar Year.
4. The Owner inherited the subject property during the relevant Calendar Year or in the immediately preceding calendar year.

D. "Exceptional Specific Circumstances" - - 4.56.030(J)(1)(d)

An exceptional specific circumstance includes any circumstance that, in the judgment of the City Administrator, prevents any use or development of the property. The City Administrator may request and consider any relevant evidence to determine whether an exceptional specific circumstance exists. The City Administrator shall consider any evidence that the property was damaged by a recent natural disaster, that the property adjoins a residential parcel and is used as a yard, or that a licensed engineer, or similar professional, has endorsed a written opinion concluding that physical conditions of the property prevent any development. If the City Administrator determines that an exceptional specific circumstance exists, the City Administrator may grant an exemption for up to five (5) calendar years. But such exemption shall not be effective unless and until the Owner of the subject property records a notice against the subject property, approved by the City Attorney, summarizing the basis for the exemption.

Exemptions granted pursuant to this section may be renewed by the City Administrator, for up to five (5) years, if the City Administrator determines that the conditions prohibiting development of the parcel persist and that the person(s) who owned the parcel during the term of the previously granted exemption made all reasonable attempts to put the property into use.

E. "Active Construction" - - 4.56.030(J)(1)(e)

The "active construction" exemption applies if the Owner held, for at least fifty (50) days during the relevant Calendar Year, a valid and active building permit for the subject parcel.

F. "Building Permit Application" - - 4.56.030(J)(1)(f)

The "building permit application" exemption applies if during or previous to the relevant Calendar Year, the Owner submitted a building permit application to the City and the total number of days during which the application was pending *plus* any number of days after the application was approved but before the end of the relevant Calendar Year was at least fifty (50) days.

G. "Low Income Seniors" - - 4.56.030(J)(1)(g)

The "low income seniors" exemption applies if the Owner is at least sixty-five (65) years of age or older and their combined family income for the relevant Calendar Year is equal to or less than the United States Department of Housing and Urban Development "Low Income Limit" for the Oakland-Fremont, CA HUD Metro FMR Area.

H. "Disabled Owner" - - 4.56.030(J)(1)(h)

The "disabled owner" exemption applies if the Owner, for any period in the relevant Calendar Year received supplemental security income for disability or social security disability insurance benefits and the Owner's income for the relevant Calendar Year did not exceed two hundred fifty percent (250%) of the 2012 federal poverty guidelines issued by the United States Department of Health and Human Services.

I. "Non-profit organization" - - 4.56.030(J)(1)(i)

The "non-profit organization" exemption applies if the Owner was, for at least one hundred and eighty (180) days during the relevant Calendar Year, a lawfully functioning organization pursuant to Internal Revenue Code section 501(c)(3).

J. “Substantially Complete Application for Planning Approvals” - - 4.56.030(J)(1)(j)

The “substantially complete application for planning approvals” exemption applies if the Owner held a notice from the City stating that an application for planning approvals with respect to the subject property was complete and such application remained pending for at least fifty (50) days during the relevant Calendar Year. After an application for planning approvals is approved for a subject parcel, the Owner may apply for an administrative two-year exemption, exempting the subject property from being deemed vacant for the calendar year during which the application for planning approvals was approved and for the following calendar year.

4.56.100 – Method for Identifying Vacancy Status.

A. Initial Determination.

The City Administrator may develop administrative methods appropriate to identify, based on objective, available data, properties that are most likely to be vacant, and not exempt from tax, pursuant to Section 4.56.020. The City Administrator may send initial determination notices for the properties that the City Administrator determines are most likely to be vacant.

B. Petition of Vacancy.

Upon receiving an initial determination notice pursuant to Section 4.56.100(A), an owner may, within twenty (20) days of service of the notice, file a petition of vacancy. The petition of vacancy must be submitted in a form and manner determined by the City Administrator and include appropriate evidence demonstrating that the property was not vacant pursuant to Section 4.56.020 or was entitled to an exemption. Such evidence may include sworn statements, pictures, utility records, and any records necessary to demonstrate entitlement to an exemption.

C. Decision on Vacancy.

Upon receiving a petition of vacancy pursuant to Section 4.56.100(B), the City Administrator may request further evidence or clarification and shall issue a decision.

D. No Waiver.

Nothing in the section may be interpreted as waiving an Owner’s obligation to pay the tax if they do not receive a notice pursuant to this Section.

4.56.110 – Appeal Process.

A. Request for Hearing.

Following the issuance of a decision on vacancy pursuant to Section 4.56.100, an Owner may, within twenty (20) days of service of such decision on vacancy, file a petition and request an appeal hearing before a hearing officer. Upon such request, the City Administrator shall appoint an independent hearing officer.

B. Pre-Hearing Procedure.

Prior to the hearing, the hearing officer may receive supplemental materials and evidence from the petitioner and the City. As soon as practical, the hearing officer shall set a deadline to receive any supplemental materials and evidence and shall set a hearing date.

C. Hearing Procedure.

Formal rules of evidence shall not apply to the conduct of the hearing. The hearing officer shall have the authority and discretion to permit examination of witnesses. Any party to a hearing may be assisted by a representative, including an attorney.

D. Decision Following Hearing.

As soon as practical following the hearing, the hearing officer shall issue a written decision regarding the vacancy status of the subject property. In the discretion of the hearing officer, the decision may, but is not required to, include findings of fact. The hearing officer's decision shall be considered final on the day it is executed by the hearing officer.

E. Further Action.

After the hearing officer issues a final decision, any party may seek further appropriate relief from the superior court. Any person whose complaint, claim, or petition may be resolved by employing the administrative remedies provided in Sections 4.56.100 or 4.56.110 must exhaust those remedies before filing any suit for refund, rebate, exemption, cancellation, amendment, adjustment, or other modification of the Tax.

4.56.120 – Administrative Regulations & Delegation

The City Administrator is authorized to adopt rules and regulations consistent with this Chapter as needed to implement this Chapter, subject to the review and approval of the Office of the City Attorney, and to develop all related forms and/or other materials and take other steps as needed to implement this Chapter, and make such interpretations of this Chapter as they may consider necessary to achieve the purposes of this Chapter.

The City Administrator may delegate any authority within their discretion pursuant to this Chapter 4.56 as they deem reasonably necessary.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

In Council, Oakland, California,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

Attest:

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation:

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 4, CHAPTER 4.56 TO CLARIFY AND FURTHER DEFINE VARIOUS SECTIONS OF THE OAKLAND VACANT PROPERTY TAX AND ESTABLISH A METHOD FOR IDENTIFYING VACANT PROPERTY

This ordinance amends portions of the City of Oakland's Vacant Property Tax, Oakland Municipal Code, Chapter 4.56. The Vacant Property Tax ordinance, originally approved by Oakland voters as Measure W in November 2018, imposes a special parcel tax on parcels deemed "vacant" in a calendar year, each year for twenty (20) years following the initial imposition of the tax. Parcels are deemed vacant if they, or in some situations permanent improvements built upon them, are not "in use" for at least fifty (50) days during the calendar year, and are not subject to any of ten (10) listed exemptions. This ordinance further defines the functions and operations of a parcel or permanent improvement that constitute "use" for purposes of the Vacant Property Tax, and further defines the various exemptions. The ordinance also describes an administrative process for the City to determine whether a parcel is vacant in any given calendar year, and establishes a process for parcel owners to appeal the City's determination.