

CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND

2019 OCT 10 PM 4:10

AGENDA REPORT

TO: City Council and members of the Public

FROM: Dan Kalb and Noel Gallo, City Councilmembers

SUBJECT: Business Tax Exemption for Small Landlords

DATE: October 10, 2019

RECOMMENDATION

ADOPT An Ordinance Amending The Oakland Municipal Code, Chapter 5.04, Section 5.04.420, to Fully or Partially Exempt From The Business Tax on Residential Property Rentals those Landlords with Personal Income of 120 Percent of Area Median Income or Less Who Rent Out (1) Three or Fewer Rooms From Their Single Family Home of Personal Residence or (2) A Unit From Their Owner-Occupied Two-Unit Parcel

SUMMARY

This legislation would create a limited exemption for the business tax on gross receipts from the rental of residential property. Specifically, residential landlords with a personal income of 120% of Area Median Income or Less who (1) rent out three or fewer rooms from their personal residence and/or the second unit from their owner-occupied 'covered' two-unit parcel, and (2) have owned the property for at least four consecutive years, and (3) have no other ownership interest in any other residential rental property in the City of Oakland are eligible for the tax exemption. This creates an exemption for applicable room rentals within the owner's own home and reduces the tax by 50% for applicable second units, unless the second unit is rented to member of the owner's immediate family, in which case it is a full exemption from the tax.

BACKGROUND/LEGISLATIVE HISTORY

In October of 2018, Councilmember Noel Gallo filed a scheduling request regarding a possible initial version of this ordinance, which, after some rescheduling and rethinking, was ultimately not submitted. The current proposed ordinance accompanying this report is the result of Councilmembers Gallo and Kalb collaborating on this matter.

REASON FOR SUPPLEMENTAL

The authors of the legislation have filed an updated version of the legislation that includes certain changes that expand eligibility for the tax exemption/reduction.

The revised ordinance includes the following new provisions:

Item: _____
Finance & Management Committee
Oct. 22, 2019

1. Provides a tax exemption for the rental income from two bedrooms in one's primary residence even if the owner rents out three bedrooms, thereby effectively creating a marginal rate. This ensures that an owner who chooses to rent out a third bedroom does not lose the tax exemption on the first two rooms.
2. Provides for a full tax exemption for the rental income when renting out a residential unit on an owner-occupied two-unit parcel when the renter is a member of the owner's immediate family. Immediate family member is defined in the ordinance.
3. Changes the income threshold from 100% of Area Median Income (AMI) to 120% of AMI to fully incorporate all moderate income small landlords.
The 2019 120% Area Median Income (AMI) threshold for Oakland is as follows:
 - One-person household: \$104,100
 - Two-person household: \$118,950
 - Three-person household: \$133,800
 - Four-person household: \$148,700
4. Ensures that the incomes from non-family member renters in an owner's single family home are not counted toward the calculation of Area Median Income.
5. Reduces the number of consecutive years the owner must have lived in the unit from five to four years.
6. Ensures that property owners who rent out their second unit or additional bedrooms as short term residential rentals (STRRs) are *not* eligible for this tax exemption/reduction.
7. Provide the City Administration the option of creating a regulation that conveys the tax exemption/reduction as a tax rebate. The Finance Department estimates that implementing this in the form of a rebate would not require any additional FTEs to operationalize this ordinance. If this is implemented as a tax traditional reduction/exemption, one-half to one new FTE would likely be required due to this ordinance.

ANALYSIS

The City of Oakland's current business license tax rate on gross receipts for residential rental property is a flat 1.395%. In other tax areas of the City of Oakland such as certain parcel taxes, various tax provisions provide specific tax exemptions for persons of low or even moderate income. The authors of this legislation would like to provide tax relief to low-to-moderate income homeowners who are only minimally involved in the residential rental property business by virtue of renting one to three rooms in their own primary residence and/or only one other unit on their 2-unit property in which they live. This could be particularly helpful for owners of newly covered owner-occupied duplexes.

FISCAL IMPACT

The authors of this ordinance have requested information from the Finance Department regarding the business tax revenue loss resulting from this ordinance, which, due to be limited to low-to-moderate income landlords, is anticipated to be relatively small. IF the maximum amount of potential revenue is not realized, the city would lose approximately \$500,000 in General Purpose Fund revenue per year over the next two years. As additional units come on the market, lost revenue likely would go up. However, the income threshold requirement for eligibility would limit lost revenue to a much smaller dollar amount. Also, please note that this proposal is not retroactive.

PUBLIC OUTREACH / INTEREST

Councilmember Gallo and Councilmember Kalb have conducted outreach with multiple residents requesting relief from the business license tax for rental property activity.

COORDINATION

The Finance Department and the City Attorney's office were consulted extensively on this proposed legislation.

SUSTAINABLE OPPORTUNITIES

Economic: The ordinance is intended to promote the economic vitality of Oakland by providing financial relief to low-to-moderate income home owners who are the smallest of landlords, only providing rentals where they live. The amount of GPF revenue loss to the city would be very modest due to the income threshold for eligibility.

Environmental: There appear to be no environmental opportunities associated with this ordinance.

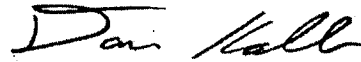
Social Equity: The ordinance is intended to promote social equity by eliminating or reducing the business license tax bill for many low-to-moderate income landlords only renting up to three rooms and/or one other unit from the property on which they live.

ACTION REQUESTED BY THE CITY COUNCIL

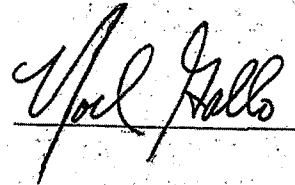
Councilmembers Kalb and Gallo recommend the City Council:

Adopt an Ordinance Amending The Oakland Municipal Code, Chapter 5.04, Section 5.04.420, to Fully or Partially Exempt From The Business Tax On Residential Property Rentals those Landlords with Personal Income of 120 Average Median Income or Less Who Rent Out (1) Three or Fewer Rooms From Their Single-Family Home of Personal Residence or (2) A Unit From Their Owner-Occupied Two-Unit Parcel.

Respectfully submitted,



Dan Kalb
Council President Pro Tempore, District 1



Noel Gallo
Councilmember, District 5

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APPROVED AS TO FORM AND LEGALITY

Thad Duto
CITY ATTORNEY'S OFFICE
For Jennifer Logue

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY PRESIDENT PRO TEMPORE DAN KALB AND COUNCILMEMBER NOEL GALLO

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE, CHAPTER 5.04, SECTION 5.04.420, TO FULLY OR PARTIALLY EXEMPT FROM THE BUSINESS TAX ON RESIDENTIAL PROPERTY RENTALS THOSE LANDLORDS WITH PERSONAL INCOME OF 120 PERCENT OF AREA MEDIAN INCOME OR LESS WHO RENT OUT: (1) THREE OR FEWER ROOMS FROM THEIR SINGLE FAMILY HOME OF PERSONAL RESIDENCE; OR (2) A UNIT FROM THEIR OWNER-OCCUPIED TWO-UNIT PARCEL

WHEREAS, the City of Oakland's current business tax rate on gross receipts for residential rental property is a flat 1.395%; and

WHEREAS, in 2005, the Oakland City Council amended the business tax ordinance to: (1) provide a small business exemption for persons with annual gross receipts of \$2,500 or less; and (2) eliminate an exemption for low income individuals (see Ordinance No. 12691 C.M.S.); and

WHEREAS, the City of Oakland has various tax provisions providing exemptions from other taxes, such as parcel taxes, for persons of low and even moderate income; and

WHEREAS, the Oakland City Council desires to provide tax relief to low-to-moderate income homeowners who are only minimally involved in the residential rental property business by virtue of renting three or fewer rooms in their own single-family home and/or only one other unit on the two-unit property where they live.

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

SECTION 1. Title 5, Chapter 5.04 of the Oakland Municipal Code containing the business tax requirements applicable to the rental of residential property 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 5, Chapter 5.04, sections 5.04.420 is amended as follows:

5.04.420 – Rental of residential property – Gross receipts.

- A.** Every person engaged 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, shall pay a business tax of thirteen dollars and ninety-five cents (\$13.95) or each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.
- B.** Every person engaged in the business of conducting or operating a hotel or motel shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three thousand three hundred thirty-five dollars (\$33,335.00) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of thirty-three thousand three hundred thirty-five dollars (\$33,335.00), received from rentals to transients, as defined in Section 4.24.020. All other residential rental hotel and motel owners shall be taxed under the provisions of subsection A of this section.
- C.** The tax basis for persons taxed pursuant to subsection A 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 and/or paid to third parties on behalf of lessor as part of said lease agreement, including but not limited to, all taxes, insurance, mortgage payment, rent, and 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. Tax Exemption/Reduction for Owner-Occupied Rental Property.**
- 1. For the purpose of this subsection D, "Owner" is defined as a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property.**
 - 2. For the purpose of this subsection D, "Immediate Family Member" is defined as the Owner's Child (including stepchildren), Grandparent, Parent (including step-parent), Sibling (including step-siblings), Grandchild (including step-grandchildren), Mother-In-Law, Father-In-Law, Brother-In-Law, Sister-In-Law, and the Grandparent of Owner's Spouse or Domestic Partner.**
 - 3. For the purposes of this subsection D, "household income" shall not include the income of a person renting a room in a single-family house, townhouse or condominium unless the person is a member of the Owner's family.**
 - 4. An Owner of a single-family house, townhouse or condominium who offers for rent no more than two (2) rooms in said house, townhouse or condominium shall be exempt from the business tax described in subsection A of this section if:**

- a. the Owner currently lives in the house, townhouse or condominium as his or her principal place of residence and has received the homeowner property tax exemption on their County property assessment under California Revenue and Taxation Code section 218; and
 - b. the Owner has owned and lived in the house, townhouse or condominium as his or her principal place of residence for at least four (4) consecutive years immediately preceding application of this exemption; and
 - c. the Owner's total household income from all sources is less than or equal to 120% of the Area Median Income (AMI); and
 - d. the Owner has no ownership interest in any other residential rental property in the City of Oakland.
5. An Owner of a single-family house, townhouse or condominium who offers for rent three (3) rooms in said house, townhouse or condominium shall only be required to pay the business tax described in subsection A of this section on one-third (1/3) of the total gross receipts if the Owner satisfies all of the conditions set forth above in subsections D.4.a-d of this section.
6. An Owner of a duplex or a single-family house with an accessory dwelling unit (ADU) shall receive a 50% reduction in the business tax described in subsection A of this section if:
- a. the Owner currently lives in one of the dwelling units as his/her principal place of residence and has received the homeowner property tax exemption on their County property assessment under California Revenue and Taxation Code section 218; and
 - b. the Owner has owned the property and lived in one of the dwelling units as his/her principal place of residence for at least four (4) consecutive years immediately preceding application of this tax reduction; and
 - c. the rental unit is a "Covered Unit" as defined in O.M.C. section 8.22.020; and
 - d. the Owner's total household income from all sources is less than or equal to 120% of the Area Median Income (AMI); and
 - e. the Owner has no ownership interest in any other residential rental property in the City of Oakland.
7. An Owner of a duplex or a single-family house with an accessory dwelling unit (ADU) shall be exempt from the business tax described in subsection A of this section if the Owner satisfies all of the conditions set forth above in subsections D.6.a-e of this section and the tenant(s) renting the second dwelling unit is (are) the Owner's Immediate Family Member(s).
8. The exemption and reduction to the business tax described in subsection A provided for in this subsection D shall apply only to rental agreements with a tenancy term of 30 days or more; it shall not apply to Short Term Residential Rentals.
9. The exemption and reduction to the business tax described in subsection A provided for in this subsection D shall not be applied retroactively to taxes paid or due on or before December 31, 2019.

10. The exemption and reduction to the business tax described in subsection A provided for in this subsection D is a provisional adjustment to the business tax and shall be effective from January 1, 2020 through December 31, 2030 ("Effective Term"). On January 1, 2031 and thereafter, the tax rate described in subsection A shall be applied without consideration of subsection D, unless the Effective Term is further extended by the City Council.

11. The City Administrator or designee may create regulations to implement this subsection including, but not limited to, documentation requirements to verify Owner occupancy requirements set forth in this subsection D, and an administrative option of receiving tax savings pursuant to subsection D through rebate to property owner. Prior to adoption of any regulations pursuant to this section, the City Administration must publicize and hold at least one community meeting for stakeholders and the public.

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, this ordinance 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 THE OAKLAND MUNICIPAL CODE, CHAPTER 5.04, SECTION 5.04.420, TO FULLY OR PARTIALLY EXEMPT FROM THE BUSINESS TAX ON RESIDENTIAL PROPERTY RENTALS THOSE LANDLORDS WITH PERSONAL INCOME OF 120 PERCENT OF AREA MEDIAN INCOME OR LESS WHO RENT OUT: (1) THREE OR FEWER ROOMS FROM THEIR SINGLE FAMILY HOME OF PERSONAL RESIDENCE; OR (2) A UNIT FROM THEIR OWNER-OCCUPIED TWO-UNIT PARCEL

This ordinance amendment will provide a provisional tax exemption or tax reduction for certain owner-occupied residential rental properties under certain conditions.

Specifically, an owner of a single-family house, townhouse or condominium who offers for rent no more than two (2) rooms in said house, townhouse or condominium will be exempt from the residential rental business tax if the owner: 1) currently lives in the house, townhouse or condominium as his/her principal place of residence and has received the homeowner property tax exemption on their County property assessment under California Revenue and Taxation Code section 218; 2) has owned and lived in the house, townhouse or condominium as his/her principal place of residence for at least four (4) consecutive years immediately preceding application of the exemption; 3) has a total household income from all sources of no more than 120% of the Area Median Income; and 4) has no ownership interest in any other residential rental property in the City of Oakland.

An owner of a single-family house, townhouse or condominium who satisfies all four of the above-noted conditions and offers for rent no more than three (3) rooms in said house, townhouse or condominium will only be required to pay the residential rental business tax on 1/3 of their total gross receipts.

An owner of a duplex or a single-family house with an accessory dwelling unit (ADU) will receive a 50% reduction in the residential rental business tax if: 1) the owner currently lives in one of the dwelling units as his or her principal place of residence and has received the homeowner property tax exemption on their County property assessment under California Revenue and Taxation Code section 218; 2) the owner has owned the property and lived in one of the dwelling units as his or her principal place of residence for at least four (4) consecutive years immediately preceding application of this tax reduction; 3) the rental unit is a "Covered Unit" as defined in O.M.C. section 8.22.020; 4) the owner's total household income from all sources is no more than 120% of the Area Median Income; and 5) the owner has no ownership interest in any other residential rental property in the City of Oakland.

An owner of a duplex or a single-family house with an accessory dwelling unit (ADU) who satisfies all five of the above-noted conditions *and* rents his or her second dwelling

unit to an Immediate Family Member, as that term is defined in the ordinance, will be exempt from the residential rental business tax.

The tax exemptions and reductions set forth above will not apply to Short Term Residential Rentals; they will only apply to rental agreements with tenancy terms of 30 days or more.