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AGENDA REPORT

TO: City Council and members of the Public

FROM: Dan Kalb & Noel Gallo, City Councilmembers

SUBJECT: Business tax exemption for small landlords

DATE: June 6, 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 100 Percent of Area Median Income or Less Who Rent Out (1) Two or Fewer Rooms From Their Single Family Home of Personal Residence or (2) A Unit From Their Owner-Occupied Two-Unit Parcel

REASON FOR SUPPLEMENTAL

The authors of the legislation have filed a supplemental version of the legislation that includes some edits to the Whereas clauses.

In addition, a few Oakland residents have lobbied the authors to expand the proposed ordinance. The legislation's authors respond to Mr. Brill's suggestions, as follows:

1. Extending eligibility for the exemption from two or fewer rooms to three or fewer

As noted in the April 30th supplemental report from the Finance Department, the maximum projected annual business tax revenue reduction for owner-occupied single family residences, townhouses, or condominiums is approximately \$560,000 beginning in FY 2019-2020. Every limitation in the proposed legislation on eligibility for the exemption (income threshold, residency, number of rooms) reduces the amount of that revenue loss. Conversely, eliminating or expanding such limitations, such as increasing the number of rooms that may be rented while receiving the exemption, will increase the amount of tax loss within the estimated \$560,000 in revenue that might not be realized.

2. Changing the 50% reduction in the tax for owner-occupied two-unit parcels to a 100% reduction

The April 30th supplemental report from the Finance Department notes that the projected FY 19-20 business tax revenue from owner-occupied two-unit parcels would be approximately \$185,000 if the new law gave a full exemption. Our proposed 50% exemption creates maximum revenue loss of approximately \$92,500. A full exemption would double the maximum possible revenue loss, which could increase slightly each subsequent year

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3. *Elimination of the 5-year residence requirement before exemptions kick in*

A residency requirement reduces the incentive that the tax exemption would create for owners to conduct evictions in order to occupy units. The authors are open to considering modifying the number of years for residency plus or minus one year.

4. *Elimination of income threshold for exemptions*

The income threshold ensures that tax exemption is limited to low-to-moderate income owners. **The authors unequivocally do not support a blanket exemption that would apply to higher income owners.** Removing the income threshold would mean a much larger reduction in tax revenue to the city each year. Keeping the income threshold ensures the annual tax revenue loss is modest.

5. *Retroactive application of exemptions to 2008-2015*

Using the FY 2019-20 \$652,500 (\$560,000 + \$92,500) maximum revenue loss as a base estimate, the amount of tax retroactively proposed for exemption would be approximately eight times \$652,500, plus interest and penalty amounts, easily amounting to \$3 to 5 million or more. Retroactive application would mean that the City would be required to spend that amount on refunds to people who paid their taxes that they were legally required to pay. The Finance Department strongly recommends against this. The proposal from the authors is prospective only.

6. *No tax levy for rental income derived from owner's family members*

The existing proposal would already provide a full exemption for occupying owners of single family residences who rent a room or two to a family member and a 50% reduction for occupying owners of two-unit parcels who rent the other unit to a family member.

ACTION REQUESTED BY THE CITY COUNCIL

Councilmembers Kalb and Gallo recommend the City Council:

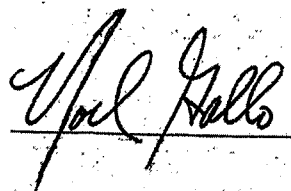
Adopt an Ordinance Amending The Oakland Municipal Code, Chapter 5.04, Section 5.04.420, to Fully or Partially Exempt From The Business Tax On Residential Property Rentals those Landlords with Personal Income of 100 Average Median Income or Less Who Rent Out (1) Two or Fewer Rooms From Their Single Family Home of Personal Residence or (2) A Unit From Their Owner-Occupied Two-Unit Parcel

For questions regarding this report, please contact Oliver Luby, Chief of Staff, Office of Councilmember Dan Kalb, at 510-238-7013.

Respectfully submitted,



Dan Kalb
Council President Pro Tempore, District 1

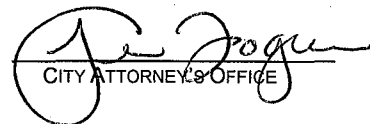


Noel Gallo
Councilmember, District 5

Prepared by: Oliver Luby, Chief of Staff,
Office of Council President Pro Tempore Dan Kalb

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

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 100 PERCENT OF AREA MEDIAN INCOME OR LESS WHO RENT OUT (1) TWO 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 only one or two 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. 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/her principal place of residence; and
 - b. the Owner has owned and lived in the house, townhouse or condominium as his/her principal place of residence for at least five (5) 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 100% of the Area Median Income; and
 - d. the Owner has no ownership interest in any other residential rental property in the City of Oakland.
2. 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
 - 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 five (5) 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 100% of the Area Median Income; and
 - e. the Owner has no ownership interest in any other residential rental property in the City of Oakland.
3. 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.
 4. 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.
 5. For the purpose of subsection D, "Owner" means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property.
 6. 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.

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 100 PERCENT OF AREA MEDIAN INCOME OR LESS WHO RENT OUT (1) TWO OR FEWER ROOMS FROM THEIR SINGLE FAMILY HOME OF PERSONAL RESIDENCE OR (2) A UNIT FROM THEIR OWNER-OCCUPIED TWO-UNIT PARCEL

This ordinance 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; 2) has owned and lived in the house, townhouse or condominium as his/her principal place of residence for at least five (5) consecutive years immediately preceding application of the exemption; 3) has a total household income from all sources of no more than 100% 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 duplex or a single-family house with an accessory dwelling unit (ADU) will receive a 50% reduction residential rental business tax if: 1) the owner currently lives in one of the dwelling units as his/her principal place of residence; 2) the owner has owned the property and lived in one of the dwelling units as his/her principal place of residence for at least five (5) 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 100% of the Area Median Income; and 5) the owner has no ownership interest in any other residential rental property in the City of Oakland.