


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 4, CHAPTER 4.56, VACANT PROPERTY TAX TO 1) ADD AN EXEMPTION FOR PARCELS THAT CHANGE OWNERSHIP AFTER ASSESSMENT, 2) REQUIRE THE HEARING OFFICER TO INCLUDE FINDINGS OF FACT IN THEIR DECISIONS, AND 3) ESTABLISH A TWELVE MONTH TIME PERIOD WITHIN WHICH OWNERS OF PARCELS DEEMED VACANT AND ASSESSED THE VACANT PROPERTY TAX MUST FILE A PETITION TO REVERSE THE ASSESSMENT, CLAIM AN EXEMPTION, OR TO SEEK REFUND OF TAXES PAID

WHEREAS, on July 24, 2018, the Oakland City Council adopted Resolution 87319 C.M.S calling and giving notice, on its own motion, for a voter consideration of the ballot measure to adopt a Special Parcel Tax on vacant properties (“Measure W”) to fund solutions for homelessness, illegal dumping remediation, the protection and production of affordable housing, and other specified programs; and

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

WHEREAS, Measure W allows the City Council, by ordinance, to establish exemptions to the tax and to provide supplemental definitions for the categories of tax exemptions; and

WHEREAS, on November 19, 2019, the Oakland City Council adopted Resolution 13571 C.M.S establishing a method for determining and identifying the use and vacancy status of real property and further supplemental definitions to the categories of exemptions for the administration of the Vacant Property Tax as part of the collection of the tax; and

WHEREAS, the method of including the Vacant Property Tax on the secured property tax bill creates an unavoidable delay of at least ten months from the time a parcel is deemed vacant and assessed the tax to the time the property owner receives the property tax bill; and a new owner who acquires the parcel at any time between January and October does not know the prior tax year might have already been assessed until receipt of the tax bill and cannot contest the assessment or file for an exemption because they were not the owner of record for the year in which the tax was assessed; and

WHEREAS, existing language under OMC Section 4.56.110(D) provides the hearing officer the discretion to include findings of fact in their written decisions, however without stating the findings of fact into the record and consistently showing the factual basis for the decisions, it is difficult for any party to defend or challenge them in court; and

WHEREAS, the existing ordinance does not include a provision that establishes a time period from which the owner of a parcel must file a petition to reverse the assessment, claim an exemption or file for refund and the lack of such a provision creates ambiguity as to the time within which an owner may act; and setting a clear twelve-month period within which an owner may seek reversal of the assessment, claim an exemption or file for refund for any previous tax year eliminates the ambiguity and establishes a clear framework, which allows for a more just and fair 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.

“Arm’s Length Transaction” means a transfer or a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more unrelated and unaffiliated parties, neither of which is under any compulsion to participate in the transaction. A sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.

"Calendar Year" refers to the twelve-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.

"City" means the City of Oakland.

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

"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.

4.56.030 Imposition of parcel tax on vacant property.

A.

J. Exemptions.

1. The following shall be exempt from the tax imposed by this Chapter:

- a. An owner who qualifies as very low income, as the term "very low income" is defined by the United States Department of Housing and Urban Development.
- b. An owner for whom the payment of the tax imposed by this Chapter would be a financial hardship due to specific factual circumstances.
- c. An owner whose property is vacant as a result of a demonstrable hardship that is unrelated to the owner's personal finances.
- d. An owner who can demonstrate that exceptional specific circumstances prevent the use or development of the property. By way of example only and without limiting the generality of the foregoing, exceptional specific circumstances that prevent the use or development of property include property damage by a recent natural disaster, an undeveloped parcel adjoining a developed residential parcel and used by the occupants as part of the yard, and property with physical conditions that prevent development. The details of this exemption shall be further defined by separate ordinance of the City Council.
- e. An owner of a property that is under active construction. To qualify for this exemption, an owner must call for inspections of the construction with sufficient frequency to keep the building permit or permits active.
- f. An owner of property for which an active building permit application is being processed by the City.
- g. An owner:
 - (1) Who is sixty-five (65) years of age or older; and
 - (2) Who qualifies as "low income," as the term "low income" is defined by the United States Department of Housing and Urban Development.
- h. An owner who, regardless of age:
 - (1) Receives supplemental security income for a disability; or
 - (2) Social security disability insurance benefits, regardless of age and whose yearly income does not exceed two hundred fifty (250) percent of the 2012 federal poverty guidelines issued by the United States Department of Health and Human Services.
- i. An owner that is a non-profit organization or entity owned or controlled by a non-profit organization.
- j. An owner of a parcel included in a substantially complete application for planning approvals that has not yet received approval. An owner of a parcel for which a project with development entitlements have been approved but needing time for completion may apply for and receive an administrative two-year exemption.
- k. An owner who acquires a property through an Arm's Length Transaction (as defined in Section 4.56.010), with fewer than fifty (50) calendar days remaining in the calendar year in which the tax was assessed, or if the transaction occurred during the calendar year immediately following the assessment year.

2. The City Administrator's Designee (which if not otherwise designated shall be the Finance Director) shall establish the procedures and guidelines for owners to apply for, and grant, the exemptions identified in this Section. Owners who claim an exemption may be required to submit information annually to substantiate their continuing qualification for the exemption.
3. The City Council may, by ordinance, establish such other exemptions to the tax imposed by this Chapter and the authorized methods of collection of the tax, as it determines to be appropriate.
4. The City Council may, by ordinance, provide supplemental definitions for the exemptions in this Section and for the administration of the exemptions as part of the collection of the tax.

4.56.090 Exemptions.

For the purpose of determining whether an owner is entitled to claim an exception pursuant to Subsection 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 (250) percent 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.i. 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.

- K. "Change of Ownership"—4.56.030 J.1.k. The "Change of Ownership" exemption applies if an "Arm's Length Transaction," as defined in Section 4.56.010, occurs with less than fifty (50) calendar days remaining in the relevant calendar year in which the tax was assessed or in the year immediately following the year in which the tax was assessed.

4.56.100 – Method for Identifying Vacancy or Entitlement to Exemption

- 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 or Entitlement to Exemption. Upon receiving an initial determination notice pursuant to Subsection 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.
1. Statute of Limitations to File Petition. Notwithstanding the foregoing, a Petition of Vacancy or Entitlement to Exemption filed more than 12 months after the due date of the second installment of the secured property tax bill for the fiscal year in which the tax was assessed will be deemed ineligible.
- C. Decision on Vacancy or Exemption. Upon receiving a petition of vacancy or entitlement to exemption pursuant to Subsection 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. The hearing officer's decision shall include findings of fact. 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 codification of the tax.

4.56.115. Refunds.

A. An owner may claim a refund of the taxes paid by submitting a form and in a manner determined by the City Administrator and including appropriate evidence that the property was not vacant pursuant to Section 4.56.020.

B. No refund of tax collected will be granted if the request for refund exceeds twelve (12) months from the due date of the second installment payment. The 12-month statute of limitations shall begin on the due date of the second installment of the annual secured property tax bill issued by the County of Alameda. Once the statute expires, any requests seeking to reverse the assessment or refund of the taxes paid shall not be allowed.

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 – BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND
PRESIDENT JENKINS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 4, CHAPTER 4.56, VACANT PROPERTY TAX TO 1) ADD AN EXEMPTION FOR PARCELS THAT CHANGE OWNERSHIP AFTER ASSESSMENT, 2) REQUIRE THE HEARING OFFICER TO INCLUDE FINDINGS OF FACT IN THEIR DECISIONS, AND 3) ESTABLISH A TWELVE MONTH TIME PERIOD WITHIN WHICH OWNERS OF PARCELS DEEMED VACANT AND ASSESSED THE VACANT PROPERTY TAX MUST FILE A PETITION TO REVERSE THE ASSESSMENT, CLAIM AN EXEMPTION, OR TO SEEK REFUND OF TAXES PAID

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 often (10) listed exemptions. This ordinance further adds an exemption for change of ownership on parcel if an "Arm's Length Transaction" takes place after a decision made on vacancy status; requires a hearing officer to include the findings of fact in their decisions; and establishes a statute of limitations for filing a petition to reverse the assessment or entitlement to exemption or seek refund of taxes paid to within 12 months from the due date of the second installment of the secured property tax bill.