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OAKLAND

2019 FEB 27 PM 4: 32

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Katano Kasaine
Director of Finance

SUBJECT: Means-Tested Rental Housing
\$30,000 Gross Receipts Business Tax
Exemption

DATE: January 2, 2019

City Administrator Approval

Date:

[Handwritten signature]
2/20/19

RECOMMENDATIONS

Staff Recommends That The City Council Receive An Informational Report Regarding Resolution No. 87129 C.M.S., Requesting A Proposed Amendment To The Oakland Municipal Code Chapter 5.04, Section 5.04.420 To Exempt The First \$30,000 Of Rental Income From The Assessment Of Annual Business Tax Derived From Property Rented Or Leased Through Section 8 Or Other Means-Tested Housing Assistance Programs, As A Means Of Encouraging The Development Of Low Cost Housing Alternatives.

EXECUTIVE SUMMARY

The City currently has several mechanisms in place to exempt from local business taxes organizations that provide housing to households that fall below the median income threshold for the Oakland-Fremont Metro area as defined by the United States Department of Housing and Urban Development (HUD). Chapter 5.04.630 of the Oakland Municipal Code allows for the exemption from business taxes to "Every institution, corporation, organization, or association that qualifies for nonprofit tax-exempt status under either state or federal law." Therefore, if the organization that provides means tested housing holds nonprofit status, it is exempt from paying the City's business taxes. Additionally, on December 4, 2007, the City Council adopted Ordinance No. 12838 C.M.S., amending chapter 5.04.630 of the Oakland Municipal Code to exempt owners of low income housing tax credit financed developments from the business tax.

This informational report provides a fiscal analysis of the City Council's direction on April 17, 2018, with the adoption of Resolution No. 87129 C.M.S. (**Attachment A**) included with this report, regarding consideration to amend the City's business tax ordinance to exempt the first \$30,000 annually in residential rental property income from tax for property rented through section 8 or other means-tested housing. There are approximately 12,800 rental units in the City that participate in the Section 8 program and that are required to pay business taxes. **If all property owners apply for the \$30,000 gross receipts tax exemption, the total business tax resulting in an annual decrease of \$1.5 million in tax revenue to the City.**

Based on the high cost of the \$1.5 million and the fact that property owners participating in Section 8 housing programs are made whole by HUD, staff recommends against the adoption of the proposed ordinance.

BACKGROUND / LEGISLATIVE HISTORY

The Oakland Municipal Code ("OMC") Section 5.04.420 requires that "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)¹ or each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof."

Existing exemptions, codified under OMC Section 5.04.630², from the assessment of business taxes are afforded to 1) "every institution, corporation, organization or association that qualifies for nonprofit tax-exempt status under either state or federal law," and 2) "the owner of an affordable housing project that has received federal and/or state low income housing tax credits in connection with the affordable housing ownership."

On April 17, 2018, the City Council adopted Resolution No. 87129 C.M.S. directing staff to return with, among other directives, a draft ordinance for the City Council's consideration amending the City's business tax ordinance "to waive the first \$30,000 annually in residential rental property income from tax for property rented through Section 8 or other means-tested housing assistance programs, as a means of encouraging the development of low cost housing alternatives." This report contains proposed Ordinance language.

The Department of Housing and Urban Development ("HUD") provides an incentive for landlords to provide Section 8 housing to qualifying families by providing vouchers to low-income families. Families with Section 8 vouchers pay an adjusted gross income toward rent, and the federal housing assistance provided by HUD pays the remainder of the assessed fair market rent to landlords, thus making the provider of Section 8 housing whole. This program is at no cost to the City. Further, the City and the Oakland Housing Authority currently provide incentives to landlords to rent to Section 8 households. The Oakland Housing Authority's Owner Benefits Program³ offers a \$500 signing bonus and also will cover rent for two months during a vacancy if the property owner rents to another Section 8 renter. These existing programs have no adverse impact to General Purpose Fund (GPF) revenues.

¹ Ordinance No. 9625 C.M.S. adopted by Emergency Ordinance on June 29, 1978.

² Ordinance No. 12838 C.M.S adopted December 4, 2007. Estimated revenue loss in 2007, \$400,000

³ <http://www.oakha.org/PropertyOwners/Pages/Owner-Benefits-Program.aspx>

ANALYSIS AND POLICY ALTERNATIVES

In support of the City Council's goals of pursuing and adopting strategies to address homelessness or those at risk of becoming homeless, Council is suggesting amending the OMC to incentivize private residential owners to participate in government-backed and other means-tested housing assistance programs in the renting or leasing of their residential properties, and, in return, receiving an exemption up to the maximum of \$30,000 of annual gross receipts from the assessment of business tax.

Government-backed Housing Assistance Programs

The Housing Choice Voucher Program (and other Section 8 voucher programs), established by Section 8 of the Housing Act of 1937, is the federal government's primary program to provide housing for those who are living in poverty as well as the elderly and the disabled. The housing choice voucher program places the choice of housing in the hands of the individual family. The US Department of Housing and Urban Development ("HUD") provides funds to public housing agencies, such as the Housing Authority of the County of Alameda or the Oakland Housing Authority, to administer the program.

The program is designed to provide qualifying families with assistance in paying the monthly rental fee by paying directly to the landlord for home and apartments that are located anywhere, not just in subsidized housing projects. According HUD, "the housing voucher family must pay 30% of its monthly adjusted gross income for rent and utilities, and if the unit rent is greater than the payment standard, then the family is required to pay the additional amount. By law, whenever a family moves to a new unit where the rent exceeds the payment standard, the family may not pay more than 40 percent of its adjusted monthly income for rent." Unlike Section 8 Housing Choice Voucher Program where the choice of housing is in the hands of the individual family, the Project-based Housing Choice Voucher Program, also established by Section 8 of the Housing Act of 1937, is tied to the rental unit, not the individual family. Therefore, once the tenant moves they can no longer benefit from the project-based voucher program.

The HUD provides an incentive for landlords to provide Section 8 housing to qualifying families by providing vouchers to low-income families. Families with Section 8 vouchers pay an adjusted gross income toward rent, and the federal housing assistance provided by HUD pays the remainder of the assessed fair market rent to landlords, thus making the provider of Section 8 housing whole. This program is at no cost to the City. Further, the City and the Oakland Housing Authority currently provide incentives to landlords to rent to Section 8 households. Program offers a \$500 signing bonus and also will cover rent for two months during a vacancy if the property owner rents to another Section 8 renter. These existing programs have no adverse impact to GPF revenues.

2018⁴ Housing and Urban Development incomes for the Oakland-Fremont metro area are detailed in Table 1 and should be used to consider section C. 2. ii of the proposed ordinance language.

⁴ At the time this report was drafted, HUD had yet to release income limits for 2019.

Table 1 2018 HUD Income Limits - Oakland-Fremont Metro Area

HUD 2018 Income Limits	Household Size							
Median Family Income (\$104,000)	1	2	3	4	5	6	7	8
Very low income 50%	\$ 40,700	\$ 46,500	\$ 52,300	\$ 58,100	\$ 62,750	\$ 67,400	\$ 72,050	\$ 76,700
Extremley low income	\$ 24,400	\$ 27,900	\$ 31,400	\$ 34,850	\$ 37,650	\$ 40,450	\$ 43,250	\$ 46,050
Low (80%) income	\$ 62,750	\$ 71,700	\$ 80,650	\$ 89,600	\$ 96,800	\$ 103,950	\$ 111,150	\$ 118,300

A residential property owner who has contractually agreed to participate in the government-backed Housing Choice Voucher Program is subject to pay the business tax, just as those who do not participate in the renting of residential property through the program. Under the proposed tax incentive program, the owner would qualify to receive the tax exemption up to \$30,000 annually of gross receipts for each property contractually rented through government backed-housing assistance program. The owner would qualify for a reduction in gross receipts subject to business taxes in a pro-rata share of \$2,500 for each month the property is rented through the government-backed housing assistance program.

Other Means-Tested Housing Assistance Programs

The reference about Other Means-Tested Housing Assistance Programs refers to housing assistance programs that are either authorized by the government or supported by an organization that is organized and operated exclusively for exempt purposes, as set forth in the Section 501(c)(3) of the Internal Revenue Code. Any such organization formed for exempt purposes and approved by the internal Revenue Services is already exempted from the payment of Business Tax.

On April 17, 2018, the City Council adopted Resolution No. 87129 directing staff to return with, among other directives, a draft ordinance for the City Council's consideration amending the City's business tax ordinance "to waive the first \$30,000 annually in residential rental property income from tax for property rented through Section 8 or other means-tested housing assistance programs, as a means of encouraging the development of low cost housing alternatives." This proposed language is provided below. Staff is seeking guidance regarding the proposed language in Section C.2 ii below. Specifically, the percent of area median household income that would qualify the means-tested residential landlord for the exemption.

The City of Oakland Municipal Code is hereby amended to add, delete or modify sections as set forth in the below: Ordinance Sections, Numbers, and Titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strikethrough type~~; portions of the regulations not cited or not shown in underscoring or strikethrough type are not changed.

Proposed Ordinance Language as Requested Under Resolution No. 87129 C.M.S.

Chapter 5.04.60 if the Municipal Code is hereby amended in its entirety to read as follows:

**5.04.630 - Exemption for nonprofit corporation, association, means-tested housing, etc.—
Exemption for owners of low-income housing tax-credit financed affordable housing developments.**

A. Every institution, corporation, organization or association that qualifies for nonprofit tax-exempt status under either state or federal law seeking an exemption pursuant to this section shall submit ~~an annual~~ a statement to the Business Tax Section Revenue Management Bureau by November 1 of each calendar year setting forth such information as required to determine eligibility for such exemption.

B. Exemption for property owners of low-income housing tax credit financed by affordable housing developments.

The owner of an affordable housing project that has received federal and/or state low income housing tax credits in connection with the affordable housing ownership, is exempt from the payment of business taxes pursuant to this chapter in connection with such affordable housing project; provided that the property is owned and operated by a limited liability company, or corporation, including limited partnerships ~~by a partnership~~ in which the managing partner is an eligible nonprofit corporation or limited liability company and provided that the property qualifies for the property tax exemption pursuant to Section 214(g) of the California Revenue and Taxation Code. The gross receipts of the owner's business derived solely from the portion of the property that is eligible for the exemption pursuant to Section 214(g) shall be exempt from the Business Tax. The owner must submit an application and statement to the Business Tax Section setting forth evidence establishing its qualifications for this exemption, including a copy of the Section 214(g) exemption, in form and substance satisfactory to the Business Tax Section. The owner shall file ~~annual~~ statements setting forth such information necessary to determine continued eligibility for the exemption with the Revenue Management Bureau by November 1 of each calendar year.

C. Exemption for rental of means-tested housing.

1. Notwithstanding any other provisions of this chapter, any person engaged in the rental of residential property as defined in section 5.04.420, shall be exempt from payment of business taxes on the first \$30,000 of gross receipt revenue per registered business earned annually from that portion derived from the rental of "means tested housing" as hereinafter defined.
2. The term "means tested housing" shall mean and include any residential property meeting the following conditions:
 - (i) The unit was created or occupied pursuant to a federal, state or local program that requires the household to annually verify their income; and
 - (ii) The household income may not exceed XX% of Alameda County area median income adjusted for household size appropriate for the unit.

Staff Recommendations

Staff is recommending against adoption of a business tax exemption for Section 8 and other means-tested housing as there would be an ongoing, negative financial impact of at least \$1.5 million on the General Purpose Fund.

FISCAL IMPACT

Ultimately, approval of a business tax exemption will adversely impact the General Purpose Fund ("GPF"), as business tax is a significant component of the unrestricted revenues that support city programs.

Under the proposed ordinance, landlords would qualify to receive an annual tax exemption of up to \$418.50 (\$30,000 annually of gross receipts, which equates to rent up to \$2,500 per month), if the property is rented through the program for a full year. There are approximately 12,800 rental units in the City that participate in the Section 8 program that are required to pay business taxes. If all property owners apply for the tax exemption, **the total business tax exemption would be at least \$1.5 million annually of existing tax revenue.** This is a minimum, conservative estimate as staff *has not identified other types of means-tested housing* that may be operating in the City and currently paying business taxes; and all Section 8 housing which may be currently remitting business taxes to the City and would subsequently be exempted if the new ordinance were adopted. Among Section 8 landlords staff was able to identify, approximately 60% would be completely exempt from paying business taxes, and approximately 17% would have their tax bills reduced by one half, while the remainder would see tax bills reduced by \$418.50 for each property rented.

Staff is recommending against adoption of a business tax exemption for Section 8 and other means-tested housing as there would be an ongoing, negative financial impact of no less than \$1.5 million on the General Purpose Fund.

PUBLIC OUTREACH / INTEREST

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

COORDINATION

This report has been coordinated with the Budget Bureau and the City Attorney's Office.

SUSTAINABLE OPPORTUNITES

Economic: Private residential property owners who rent or lease to Section 8 Housing Choice Voucher Program or make property available for the development of low income housing alternatives receive direct economic benefit in the form of the tax exemption.

Environmental: Broadening access to Section 8 housing or other means-tested housing may help prevent at risk families from becoming homeless.


Social Equity: Owners of multiple single-family Section 8 rental units may receive a greater benefit than owners of units located in multi-family dwellings, such as apartment complexes, duplexes and triplexes.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive an informational report regarding Resolution No. 87129 C.M.S., requesting a proposed amendment to the Oakland Municipal Code Chapter 5.04, Section 5.04.420 to exempt the first \$30,000 of rental income from the assessment of annual business tax derived from property rented or leased through Section 8 or other means-tested housing assistance programs, as a means of encouraging the development of low cost housing alternatives.

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

Respectfully submitted,



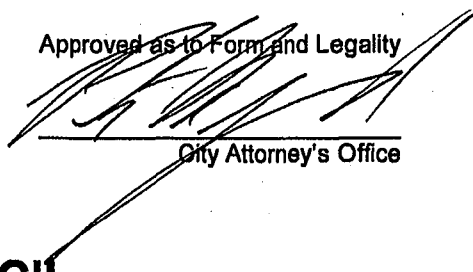
Katano Kasaine
Director of Finance
Finance Department

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

Prepared by:
Huey Dang
Revenue Analyst
Revenue Management Bureau

Attachment A

Approved as to Form and Legality



City Attorney's Office

FILED
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OAKLAND

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OAKLAND CITY COUNCIL

Resolution No. 87129 C.M.S.

**INTRODUCED BY COUNCILMEMBERS REBECCA KAPLAN, ABEL GUILLEN AND
LYNETTE MCELHANEY**

RESOLUTION ENCOURAGING THE PRIVATE DEVELOPMENT OF EXPANDED HOUSING OPTIONS, INCLUDING FOR NON-PROFITS, FAITH-BASED ORGANIZATIONS, PRIVATE PROPERTY OWNERS, AND SERVICE PROVIDERS WORKING ON PRIVATE LAND, TO PROVIDE HOUSING AND SANITARY FACILITIES FOR THE HOMELESS THROUGH STRATEGIES INCLUDING "SMALL HOMES," SHIPPING CONTAINER CONVERSION HOMES, RECREATIONAL VEHICLES, UNATTACHED TRAILERS, RESTROOM STRUCTURES, AND OTHER OPTIONS TO PROVIDE DIGNITY, PRIVACY, AND DISEASE CONTROL

WHEREAS, the number of homeless persons in the City of Oakland continues to increase, with the latest 2017 point-in-time count of over 2,700, and this number is likely to increase given the substantial upward pressure of residential rents; and

WHEREAS, the long term and recent decreases in Federal and State funding for housing programs have resulted in an erosion of shelter options for the most vulnerable populations including the elderly, youth, victims of domestic violence, sexually exploited minors, and persons suffering from mental illness, HIV/AIDS, substance abuse and disabilities; and

WHEREAS, the current number of homeless individuals in Oakland far outpaces the number of existing shelter beds, transitional housing, or permanent supportive housing units available; and

WHEREAS, unauthorized homelessness encampments have increased substantially across Oakland, within the public right of way, thus exposing homeless individuals to traffic hazards, increased vulnerability to crime, risk of death and injury, exposure to weather, lack of adequate sanitation and debris services, and other conditions that are detrimental to their health and safety; and

WHEREAS, Oakland residents are being affected by the increasing number of unsheltered individuals with regard to traffic and pedestrian safety, lack of sanitation, and debris services; and

WHEREAS, California Government Code Section 8698, et seq., allows the governing body of a city to declare a shelter crisis when a significant number of persons are without the ability to obtain shelter, resulting in a threat to their health and safety; and

WHEREAS, in September of 2017, the Oakland City Council passed Ordinance Number 13456, which declared a shelter crisis in the City of Oakland and, pursuant to California Government Code Section 8698.1, "authorized [the City Administrator] in her discretion to suspend the provisions of state and local regulatory statutes, regulations, or ordinances prescribing standards of housing, health, or safety as needed for the interim establishment of shelters for the homeless to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis"; and

WHEREAS, California Government Code Section 8698.2 provides that, upon a declaration of a shelter crisis, a city may allow persons unable to obtain housing to occupy designated public facilities (including facilities leased by the city) during the duration of the crisis; and

WHEREAS, there are numerous non-profit and religious organizations that are willing to provide shelter and sanitation services on private land, but have expressed a need for additional support from the City; and

WHEREAS, the City Council finds that urgent and expeditious efforts are necessary to develop additional shelter solutions that are safe and meet basic habitability standards, and that flexibility and broad-based approaches are essential to increase capacity; now, therefore, be it

RESOLVED, that the City of Oakland shall encourage and support the private development of expanded housing options, including those offered by non-profits, faith-based organizations, private property owners, and service providers working on private land to provide housing and sanitary facilities for the homeless through strategies including "small homes," shipping container conversion homes, manufactured housing, recreational vehicles, unattached trailers, restroom structures, and other options to provide dignity, privacy, and disease control; and be it

FURTHER RESOLVED, that the City of Oakland may pursue multiple strategies to accomplish this goal, including by entering into leases with these non-profits and faith-based organizations, so that the land on which the organizations seek to provide temporary shelter and sanitation services may fall under California Government Code Section 8698.2, and therefore allow persons to take shelter there during the duration of the crisis; and be it

FURTHER RESOLVED, that the City of Oakland shall accomplish this goal by permitting the disposal of sewage through a temporary holding tank with a contract for regular pumping; and be it

FURTHER RESOLVED, that the City Council hereby directs the City Administrator to return to the City Council within 3 months with a draft Ordinance for the City Council's consideration amending the City's business tax ordinance to waive the first \$30,000 annually in residential rental property income from tax for property rented through Section 8 or other means-tested housing assistance programs, as a means of encouraging the development of low cost housing alternatives; and be it

FURTHER RESOLVED, that the City Administrator or her designee shall identify available public land for these efforts, and report back to Council on her findings within 3 months of the passage of this Resolution; and be it

FURTHER RESOLVED, that the City of Oakland asks Alameda County, Oakland Unified School District, and the California Department of Transportation to also identify available public land for these efforts, and help provide and/or fund support services for sites designated by the City of Oakland; and be it

FURTHER RESOLVED, that the City of Oakland calls upon external funders, including Alameda County and the U.S. Department of Housing and Urban Development (HUD), to maximize the funding and support that they make available for these efforts; and be it

FURTHER RESOLVED, that the City Administrator or her designee shall work to find funding sources to support these efforts and report back to Council on her findings within 3 months of the passage of this Resolution; and be it

FURTHER RESOLVED, that the City Administrator or her designee shall work to identify options to deal with issues related to liability and insurance, and report back to Council with options for action, within 3 months of the passage of this Resolution.

IN COUNCIL, OAKLAND, CALIFORNIA,

APR 17 2018

PASSED BY THE FOLLOWING VOTE:

AYES - ~~WILLIAMS~~, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB,
KAPLAN AND PRESIDENT ~~WILLIAMS~~ - 6

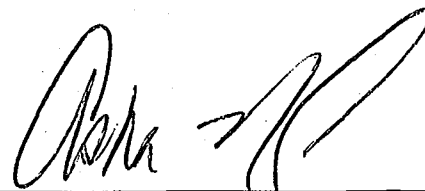
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Brooks, Reed

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California