


INTRODUCED BY COUNCILMEMBER _____

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CITY ATTORNEY'S OFFICE
Ravi S. Patel

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.