



City of Hudson – Revising the City’s Existing Vacancy Law

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This technical memorandum has been prepared at the request of the City of Hudson as part of an analysis of revising the City’s existing vacancy law, with suggestions on potential changes based on best practices from other municipalities around the country.

1. Overview

As municipalities continue to deal with the impacts of housing shortages and vacant commercial storefronts, new tools are being developed to help address these issues. One of these tools is a “Vacancy Tax or Law.” Vacancy tax legislation can handle several formats of vacancy, from encouraging storefront development to addressing housing inequity issues caused by short-term rentals. Vacancy Tax can also treat landowners differently based on characteristics the law is looking to address. For example, in Washington, D.C., blighted homes are assessed and taxed accordingly. At the same time, the vacancy tax in Vancouver, Canada, is defined by the amount of time the property is unused. The revenue raised from these types of taxes can be used in several ways, but it also has been a contentious issue in many municipalities. For example, for vacant storefronts and housing, money derived from the legislation could go into a fund to improve the commercial area with façade improvements and streetscape improvements or, in residential areas, bring vacant homes back into a liveable condition. Money raised by short-term rental fees could be used to develop workforce housing, as a means to increase housing stock, or for the promotion of tourism in the area.

The City of Hudson has passed two local laws targeting vacant properties and buildings and short-term rentals. The City feels these two issues are contributing to a degradation in the quality of life in the neighborhoods, and residents are finding a lack of affordable housing. The purpose of Hudson’s Chapter 91 Vacant Buildings law is to deal with empty properties or buildings that have been vacated and are now boarded up. These buildings have a history in the City that once the building is boarded up, they will remain this way for many years. The local law aims to establish a program for identifying and registering vacant buildings, to determine the responsibilities of owners of vacant buildings and structures, and to speed up the rehabilitation of these vacant properties. The Code Enforcement Office is responsible for submitting an annual report to the Mayor and Common Council listing all buildings in the City that have been declared vacant under Chapter 91. The report includes the date upon which they were declared vacant and whether a vacant building registration and vacant building plan have been filed for the building. According to the latest report, thirty-five buildings or properties are listed as vacant. Of these buildings, four buildings have received building permits, one building has a site plan submitted, one building has building plans approved, and two have been fire damaged. The Code Enforcement Office collects the fees generated from this law and is allocated to the City’s general fund. The fees are not allocated to any specific portion of the budget for programming.

The City of Hudson also regulates short-term rentals within the City through ARTICLE VIII Short-Term Lodging Tax and has changed its zoning code to include § 325-28.3. *Short-term rentals*. The City collects a tax of 4% per day of the rent for a room used to provide short-term lodging within the City. The City does not collect a tax on a single room (that may include an on-suite bathroom) occupied for short-term accommodation as long as the single room is in the host's primary sole residence within the City of Hudson. The City’s treasurer collects the tax, and the monies go directly into the city’s general fund for allocation during the annual budget process for any municipal purpose, including a portion that may be allocated to market the City of Hudson as a destination for overnight and day-trip visitors.

In reviewing the Vacant Building law, it is essential to look at the Short-Term Rentals law and how the funds generated by it can be used to increase housing supplies. There is the potential to incentivize the owners of vacant housing units to put them on the market, either for rent or sale, which would add to the overall active housing

supply. This could have the supply-side economic effect of eventually helping to bring down housing prices. Secondly, the tax revenue could be an allocation line in the City’s budget to fund more affordable housing through the Housing Trust Fund. If the owner chooses to leave the building vacant, the fees generated from this could also be allocated to the Housing Trust fund.

Housing Market Background

The City of Hudson is experiencing a shortage of affordable housing for its residents and workers due to several market impacts. The first was a home-buying boom spurred by the COVID-19 pandemic by an influx of remote workers fleeing cities for open space, and the second was the increased demand for vacation rentals as investment properties. These factors are part of the more significant contributing causes for the local housing market experiencing low vacancy rates. The City will need to decide how they plan to address this by looking at the existing data and then deciding how it proceeds with either modifying current laws or making changes to how the existing laws are administered by staff.

Homeownership Market

Since the 1960s, the homeownership rate in the United States has remained in the 61- to 65-percent range. The 2022 second-quarter national homeownership rate is 65.8%, which aligns with the historical ownership range. The current rate is slightly more than the first quarter of 2022 rate of 65.4% and identical to the 2021 second-quarter rate for the homeownership rate. However, the City should monitor these numbers as the Federal Bank continues to increase the interest rate to control the inflation rate and assess the impact on the local housing market.

In looking at national housing trends, the City can evaluate how it measures at national and county levels to see if there are anomalies in the local market. Nationally, in the second quarter of 2022, approximately 89.3 percent of the housing units were occupied, while 10.7 percent were considered vacant. Owner-occupied housing units made up 58.8 percent of total housing units, while renter-occupied units made up 30.6 percent of the inventory during this point in time. Vacant year-round units comprised 8.1 percent of total housing units, while 2.5 percent were vacant for seasonal use.

At the County level, Columbia County has 33,362 housing units, of which 25,323 (75.3%) are occupied housing units, and 8,299 (24.7%) units are considered vacant. A breakdown of the 25,323 occupied units shows that 18,530 (73.2%) units are owner-occupied, and 6,793 (26.8%) units are renter-occupied.

In the City of Hudson, the American Community Survey 5-Year survey (2015-2022) notes that there are 3,393 housing units in the City. There are 2,606 (76.8%) occupied housing units in the City and 787 (23.2%) units considered vacant. A breakdown of the 2,606 occupied units shows that 903 units (34.7%) are owner-occupied and 1,703 (65.4%) are renter-occupied.

Data from Realtor.com, as of December 2022, shows there are approximately 60 houses listed for sale in Hudson, NY (zip code 12534) ranging in price from \$125,000 to \$2.8 Million, and 35 rental properties, ranging in monthly rent from \$1,236 to \$6,300. According to the U.S. Census Bureau, in the United States, the national vacancy rates in the second quarter of 2022 were 5.6 % for rental housing and 0.8% for homeowner housing. While the data is starting to show an increase in the number of houses for sale (inventory increase), the price of homes has decreased slowly. It is expected that as the Federal Reserve increases interest rates, housing pricing will decrease over the next six months.

In September 2022, Hudson home prices were up 80.2% compared to last year, selling for a median price of \$775K. On average, homes in Hudson sell after 77 days on the market compared to 167 days last year. Nine homes were sold in September this year, up from 5 last year.

	New Listings		%	Properties for Sale		%	Median Sold Price		%	Median DOM		%
	Q3 2022	Q3 2021	Change	Q3 2022	Q3 2021	Change	Q3 2022	Q3 2021	Change	Q3 2022	Q3 2021	Change
Hudson	63	37	70%	33	27	22%	\$377 K	\$530 K	-29%	35	21	67%
Single-Family	62	37	68%	33	27	22%	\$377 K	\$530 K	-29%	35	21	67%

In looking at the Housing Inventory: Median Listing Price for Columbia County by the St. Louis Federal Reserve, the median price was around \$399,995 during the start of the pandemic (February 2020). The median price of homes began to climb over the next 24 months. There was a peak in August 2020 of \$527,000, followed by a small retreat to \$499,000 in October 2020, and finally, a peak of \$571,995 in April 2021. The median price of homes decreased and leveled off for about eight months from its peak in April 2021 to January 2022, when the prices moved back up to \$599,995 in August 2022 as buyers tried to lock in existing mortgages or purchase new homes as the Federal Reserve continued to raise interest rates. During the same period, new housing starts dropped to under 80 new homes in Columbia for 2019-2020 and only picked up during the pandemic.

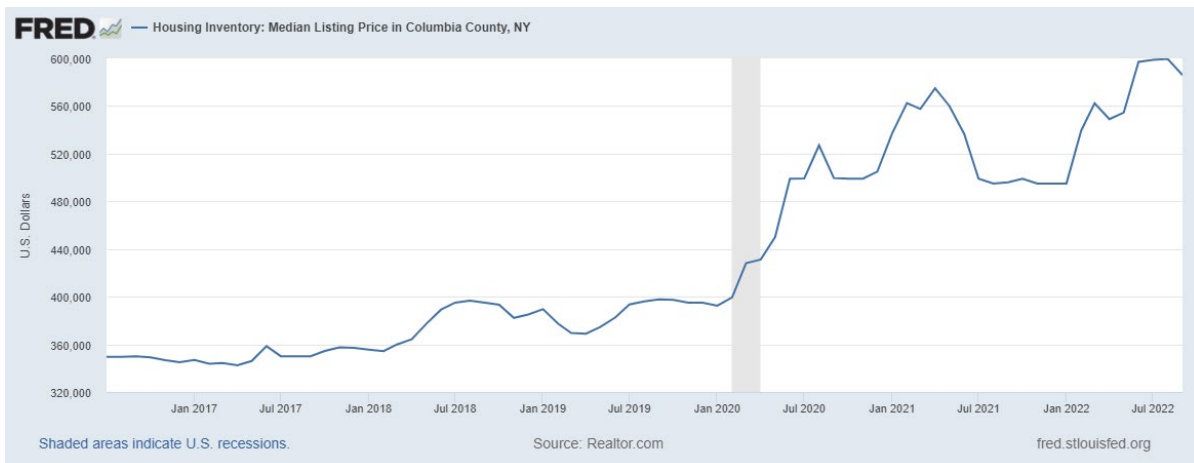
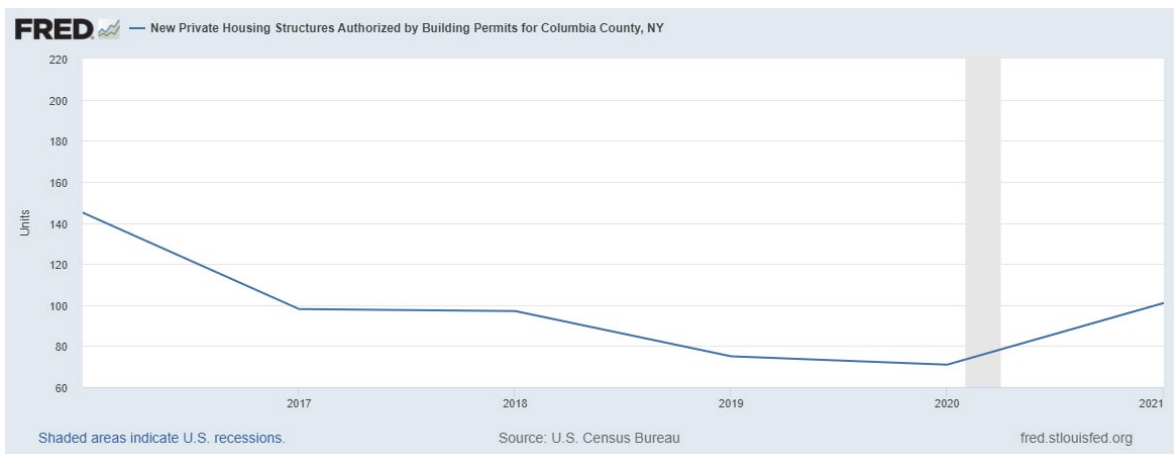


Figure 1 <https://fred.stlouisfed.org/series/MEDLISPRIPERSQUFEE36021>



Short-Term Vacation Rental Market

The City of Hudson is one of the primary "second home" areas in the Hudson Valley for New Yorkers who need a weekend retreat. In a blog post, Patrick Harker, president and CEO of the Philadelphia Federal Reserve, noted that "Short-term rentals are partly to blame for the shortage of homes on the market and that housing supply in the U.S. was constrained due to a rise in people buying homes to turn into vacation rentals."¹ In looking at the City and the County, the City has a more significant issue with the type of home ownership as 65.35% of the occupied housing units are being rented out as compared to the 26.8%

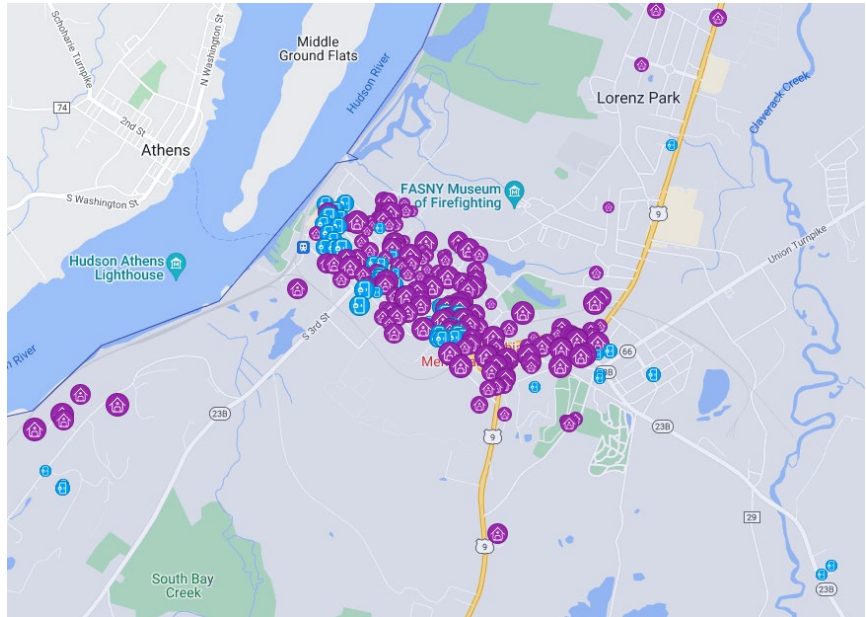


Figure 2 Vacation rentals in city of Hudson

of occupied housing units in Columbia County. This problem is further exacerbated by 787 units of housing being considered vacant.

According to data from AIRDNA, approximately 201 units (private rooms, hotel rooms, and homes) are listed for rent in Hudson, with a total of 366 for Columbia County. The overnight rentals in the City of Hudson make up over 55% of the County’s online vacation rental market. These rental units range from a private room to a whole house and range in price from \$126 to \$1,236 per night, with nightly availability ranging from 30 days to 365 days.²

Current Vacancies in Hudson

The current list of vacant properties from the building inspector indicates a total of 49 properties on the list. Of these properties, there are 19 vacant houses, 15 apartment buildings, five commercial buildings, one commercial property with apartments over top of the area, 1 Church, one duplex, and seven vacant parcels.

¹ <https://www.philadelphiafed.org/the-economy/macro-economics/unpacking-shelter-inflation> - October 12, 2022

² <https://www.airdna.co/vacation-rental-data/app/us/new-york/hudson/12534/overview> - October 12, 2022

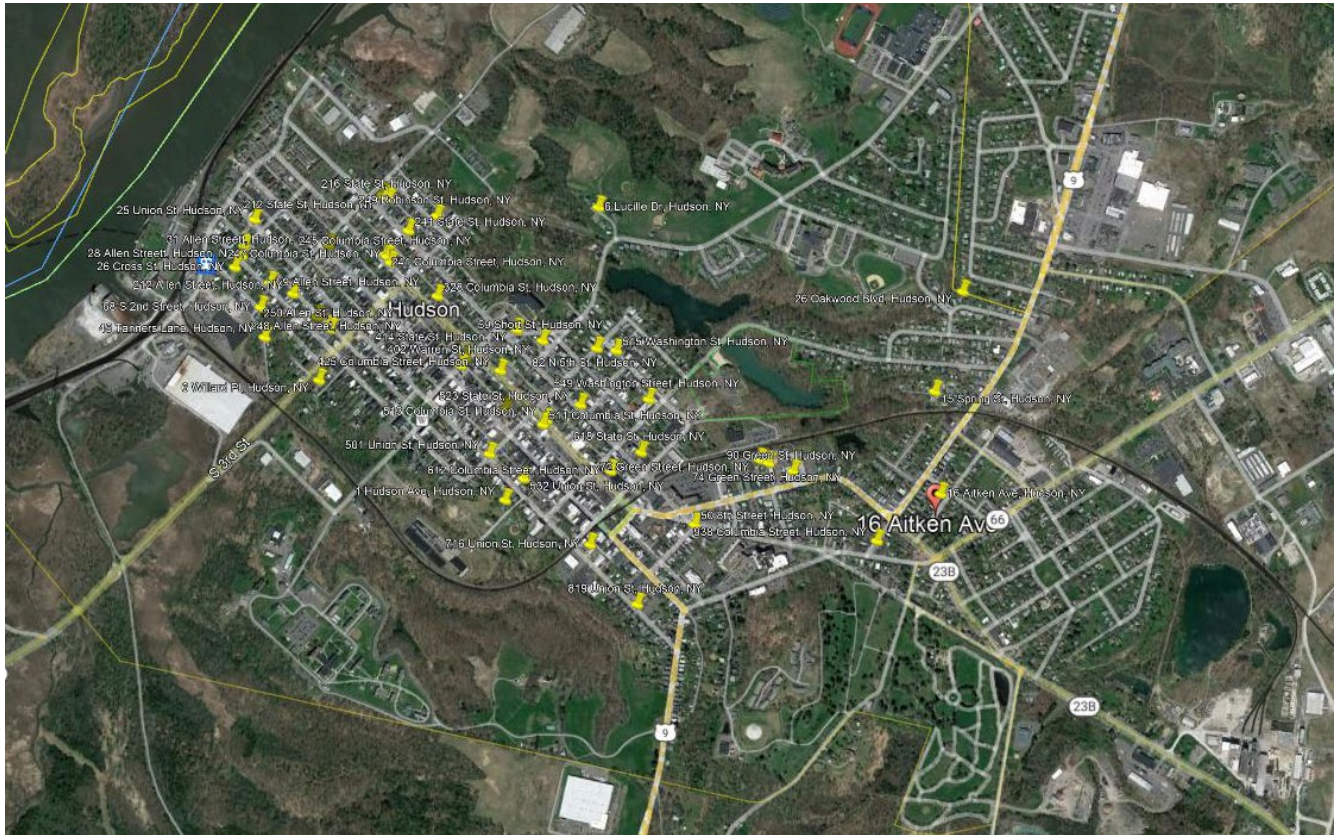


Figure 3. Vacant property list

2. Current Best Practices

The City of Hudson can take advantage of the work of numerous municipalities that are facing the same housing circumstances caused by vacant commercial areas and short-term rental housing. Municipalities across the country are imposing a vacancy tax or law as a means to address the need to reduce commercial and residential vacancies. Despite the efforts of some cities, there still needs to be more research into the active data on vacancies and the intended outcomes of these types of programs. The City of Hudson should start collecting the historical data necessary to calculate an effective vacancy tax. The following are examples of best practices that could be used as a basis to modify the existing local laws.

San Francisco, CA – Commercial Store Fronts and Vacant Homes

In 2020, San Francisco voters passed Proposition D, which amended the Business and Tax Regulations Code and Administrative Code “to impose an excise tax on persons keeping ground floor commercial space in certain neighborhood commercial districts and certain neighborhood commercial transit districts vacant, to fund assistance to small businesses” known as Article 29: Vacancy Tax Ordinance.³

The purpose of the Vacancy Tax is to encourage the rehabilitation of long-term storefront retail vacancies as a means to revitalize existing commercial corridors and, in turn, to stabilize commercial rents, which would allow new small businesses to open and existing small businesses to thrive. The proceeds from the Vacancy Tax are deposited into the Small Business Assistance Fund and used to assist small businesses and provide relief to those small businesses adversely affected by blight, crime, and other negative impacts caused by vacant storefronts in San Francisco. The fund is kept separate from all other City funds and is subject to appropriation. Any balance remaining in the fund at the close of any fiscal year shall be deemed to have been provided for a special purpose and will be carried forward and accumulated for the following fund year.

The law defines “Vacant” as “unoccupied, uninhabited, or unused for more than 182 days, whether consecutive or nonconsecutive, in a tax year.” An exception is when a person has applied for a Building Permit or during a construction period, disaster period, and/or conditional use application for that commercial space. The law does allow for exemptions which include; 1) Any organization that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be exempt from the Vacancy Tax, and 2) a lessee or sublessee has operated a business in Taxable Commercial Space for more than 182 consecutive days during a lease or sublease of at least two years, such lessee or sublessee shall not be liable for the Vacancy Tax for the remainder of that lease or sublease, regardless of whether that lessee or sublessee keeps the Taxable Commercial Space Vacant. The City itself is not exempt from this law.

The tax imposes a levy on keeping taxable commercial space vacant in a tax year of \$250 per linear foot of frontage for the first year and \$500 per linear foot of frontage if the store frontage has been kept vacant for a second consecutive year by any person. It increases to \$1,000 per linear foot if the storefront is left vacant for the third year.

Additionally, San Francisco voters will consider another ballot initiative in November 2022 to decide if landlords should pay a price for leaving San Francisco homes vacant. The Empty Homes Tax measure hopes to reduce San

³ https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_business/0-0-0-48959

San Francisco’s housing shortage by motivating landlords to fill empty units expediently. Funds collected from landlords keeping properties off the market would be put toward public housing. The Empty Homes Tax will tax owners of buildings of three units or more where a residential unit has been vacant for more than six months in a given year. The tax rate is higher for larger units, increasing the longer a home is kept vacant.

The Empty Homes Tax is modeled after Vancouver, Canada’s residential vacancy tax, passed in 2016. This tax is credited with bringing more than 18,000 units online in the city of Vancouver since it went into effect. If the same model of law is adopted in San Francisco, the city is estimated to see an activation of around 4,500 units within two years. The proposition imposes a levy for owners of three or more residences and is calculated based on the size of those units. For the first year, small homes, those less than 1,000 square feet, would be charged \$2,500; medium-sized units, from 1,000 to 2,000 square feet, could be charged \$3,500; and large units more than 2,000 square feet would be charged \$5,000, according to the proposal. The levy is expected to generate an additional \$38 million projected to be raised annually.

Steamboat Colorado

Proposition 2A is going before the electorate in 2022, in which voters will decide whether to levy an additional 9 percent tax on stays at short-term rentals for a period of twenty (20) years, such as AirBnB or Vrbo. There is a feeling among locals that they blame the proliferation of short-term rentals for driving up housing costs in their communities. It is important to note that short-term rental owners in Colorado don’t pay the commercial-property taxes that hotels and other traditional lodging businesses are required to pay. The ordinance would have owners that rent their homes to visitors pay more to support the local community.

If the voters approve the ballot question, the Council will adopt a second ordinance creating a new section in the City’s Tax Code, Chapter 22 of the Municipal Code, to implement the short-term rental tax. The ordinance would exempt properties from the tax if reservations were made and fully paid prior to the effective date of the implementation and prior to the end of the 2022-2023 ski season. The proceeds from the tax would be earmarked for affordable housing in the area.

The City defines “Short-Term Rentals” as dwelling units offered, provided, used, or operated as a lodging accommodation to guests in exchange for remuneration for a period of less than 30 consecutive days while the owner or other permanent resident does not reside in the dwelling unit. The term short-term rental shall only apply to periods of time when the owner or other permanent resident is not residing in the dwelling unit. This ordinance is similar to several other resort vacation communities, including Ouray, Crested Butte, and Telluride.

Oakland CA

On November 6, 2018, Oakland voters approved Measure W, the Oakland Vacant Property Tax (“VPT”). The VPT Act establishes an annual tax of \$3,000 to \$6,000 on vacant property within the City. The City considers property to be vacant if the property is used less than fifty (50) days in a calendar year and is not subject to any ten (10) exemptions outlined in the ordinance.

The allowable exemptions for qualified owners and properties are: Very Low Income, Financial Hardship, Demonstrable Hardship Unrelated to Personal Finances, Exceptional Specific Circumstances, Active Construction, Building Permit Application, Low Income Senior, Disabled Owner, Non-profit Organization, Substantially Complete Application for Planning. In order to qualify for an exemption and be granted relief from the VPT, property owners must submit a completed exemption application, with evidence that the property was not vacant or was entitled to an exemption within twenty days of the date of notice from the City.

In Oakland, a property is considered vacant if it is in use less than 50 days in a calendar year; the city’s vacant property exceptions include but are not limited to: “very low income,” “financial hardship,” “demonstrable hardship unrelated to personal finances,” “exceptional specific circumstances” and “active construction.”

The City has instituted five property type categories with a corresponding tax rate. The tax rate ranges from \$3,000 for multifamily units and vacant ground floor retail and moves up to \$6,000 for a single-family residential and undeveloped property.

Property Type	2021 Special Tax Rate
Residential	\$6,000 per parcel
Condominium, duplex, or townhome unit under separate ownership	\$3,000 per vacant residential unit
Nonresidential	\$6,000 per parcel
Parcel with ground floor commercial activity allowed but vacant	\$3,000 per parcel
Undeveloped	\$6,000 per parcel

The spirit of the City of Oakland legislation is to encourage more housing to be built. A review of the properties that were paying the tax found that a majority of the property owners that are paying the tax are investors. The City did experience some pushback from property owners when developing the legislation. Property owners had concerns with properties that were impacted by steep slopes or had environmental concerns such as wetlands. The City adjusted the legislation by making exclusions for slope and environmental consideration when determined by a professional in this field and for exemptions with parcel sizes that were too small to develop. The City also is looking at making some revisions to the existing law, including changing how they issue liens on the property and what happens if an error happens in issuing a lien. The City plans to change the half-year exception for vacancies to make it easier for this exemption as they found property owners were having problems during the COVID pandemic, meeting noticing requirements and filing paperwork.

In speaking with City of Oakland staff regarding the implementation, the City hired a consultant to develop their internal policy documents, forms, and website portal to help inform and collect the information and payments for the tax.

Washington DC

Washington DC adopted a vacancy tax legislation in 2011 as part of the "Fiscal Year 2011 Budget Support Act of 2010." The purpose of the law is to encourage owners to bring more vacant buildings back to productive use. The law created a Class 3 property tax rate for vacant commercial and residential properties and a Class 4 tax rate for blighted properties within the District.

The Department of Buildings (DOB) is responsible for enforcing the law and receiving complaints, identifying and processing the registration of vacant properties by owners, maintaining a complete list of vacant and blighted buildings, and administering fines if property owners do not register. Vacant properties are defined as a property that is not occupied and do not meet any of the following criteria: Is under active construction, the Owner is actively seeking to rent or sell, the Property is subject to a probate proceeding, or the title is subject of litigation, Property is the subject of a pending application for development that requires approval of the Board of Zoning

Adjustment, Zoning Commission, Commission on Fine Arts, Historic Preservation Review Board, Mayor’s Agent for Historic Preservation, or National Capital Planning Commission.

The properties considered Class 3, vacant property, are taxed at \$5.00 per \$100 of assessed value, and properties considered Class 4, blighted property, are taxed at \$10.00 per \$100 of assessed value. The legislation allows for exceptions that may allow a vacant property to receive the lower Class 1 or Class 2 tax rate, provided that certain conditions are met.

Since the inception of the law. There have been over 4,200 confirmed vacant buildings out of the 8,000 inspections since October 2021.

Vancouver, BC, Canada

Vancouver is one of Canada’s most expensive housing markets, with an influx of foreign buyers purchasing properties as investments. In 2017, the City of Vancouver introduced “The Empty Homes Tax” (Vacancy Tax) as a tool to help return empty and under-utilized properties back to the market to make empty long-term rental homes available for people in need of housing.

Vancouver homeowners are required to submit a declaration each year to determine if their property is subject to the Empty Homes Tax. If a property used as a principal residence by the owner or other permitted occupier for at least six months of the vacancy reference year or a property rented for residential purposes for at least six months of the vacancy reference year, in periods of 30 or more consecutive days, are not subject to the tax. Vacant properties that are deemed or declared empty in the current taxable year are subjected to a 3% tax of the property’s assessed taxable value in 2021 and 2022 and increasing to 5% of the taxable assessed value of a parcel of taxable property for the 2023 vacancy reference period and any time after this.

The Collector of Taxes is responsible for enforcing the bylaw. The law requires the registered property owner to provide information at any time and up to a period of two years, including: (a) the property; (b) the identity and address of the registered owner, (c) the identity and address of any person occupying the property; (d) the status of the property; and (e) the nature of the occupancy of the property during the vacancy reference period. The Collector of Taxes must prepare a report regarding the vacancy tax from the previous vacancy reference period, which must include: the amount of monies raised by the vacancy tax; and how the monies raised by the vacancy tax were or are intended to be used. Vancouver’s Vacancy Tax generated \$33.6 million in revenue in 2018, \$23.3 million in 2019, \$27.9 million in 2020, and \$20.8 million as of December 2021, helping to fund affordable housing initiatives in the city.

The above laws have been attached as Appendix A

3. Analysis of Existing Ordinance

In 2016, the NYS Legislature passed the Abandoned Property Neighborhood Relief Act, which made lenders accountable for maintaining vacant houses and their property where the home is in the foreclosure process (threatened or initiated) but not completed, leaving the property in legal limbo. Under this law, creditors must keep the property maintained and secure while they complete the foreclosure process or face fines. Banks also are required to list these properties in a state registry. The law has established the abandoned property neighborhood relief fund as well.

The Common Council of the City of Hudson adopted Chapter 91, Vacant Buildings, on September 18, 2018. The purpose of the law was to establish a program for identifying and registering vacant buildings as means to speed up the rehabilitation of vacant properties within the City. The City has delegated the Code Enforcement Officer's responsibility to enforce the law.

The law requires an owner to register with the Code Enforcement Officer no later than 30 days after a building becomes vacant. The Code Enforcement Officer may identify vacant buildings through its routine inspection process and notify residents, neighborhood associations, and other community groups that a building may be eligible for inclusion on the registry. Buildings have at most 30 days to register after being notified by the Code Enforcement Officer.

The registration process requires the owner to submit the following information:

1. A description of the premises.
2. The names, addresses, copies of driver's license, social security number, and telephone numbers of the owner or owners.
3. If the owner does not reside in Columbia County or any adjoining county, the name, address, copy of driver's license, social security number, and telephone number of any third party with whom the owner has entered into a contract or agreement for property management.
4. The names and addresses of all known lienholders and all other parties with an ownership interest in the building.
5. A telephone number where a responsible party can be reached at all times during business and nonbusiness hours.
6. A vacant building plan as described in Subsection C.
7. Incomplete registration forms will not be accepted, and if the lack of compliance results in nonregistration of the building, the owner can be prosecuted under § 93-12.

The only exemption the law offers is for the property not to be considered vacant when a building has suffered fire damage or damage caused by extreme weather conditions. The Code Enforcement Office has the right to inspect any premises within the City to enforce and ensure compliance with the law's provisions. The Code Enforcement Office is required to submit an annual report to the Mayor and Common Council listing all buildings in the City declared vacant. The report requires the date upon which the building was declared vacant and whether a vacant building registration and vacant building plan have been filed for the building. Penalties for violating the law are subject to a fine of not more than \$1,000 per day of violation or imprisonment not exceeding one year, or both such fine and imprisonment.

The current list of vacant properties from the building inspector indicates that there are approximately 41 properties that should be paying the fees to the City. The list provided to BFJ did not contain any dates when a property was put on the list; we have assumed that for the last three years, only one property has paid the fine. That leaves approximately 41 properties that still need to pay the fine to the City. The calculations for the amount of money the City should have received are as follows:

41 Properties x \$1,000 = \$41,000
41 Properties x \$2,000 = \$82,000
<u>41 properties x \$3,000 = \$123,000</u>
Total = \$226,000

If the assumptions are correct, the City should have received \$226,000 over the last three years into the general fund.

The list provided to BFJ does not meet the local law requirements, and a suggested database format has been attached as Appendix B.

Potential Amendments

The city of Hudson’s Affordable Housing Development Plan (2021) analyzed potential sites for development and policies or programs to either preserve affordability or increase affordable options. The Study noted that “many long-term residents have been displaced, and there’s the risk of further displacement due to rising housing prices and limited inventory of affordable units.”

In looking at other municipalities that have passed vacant building laws, the City of Hudson could make changes to its law to add clarity and allow for the direction of collected funds to help address affordable housing issues within the City. City leaders must determine whether they would like to adopt new policies for staff enforcement and reporting, modify the existing laws to suit the community’s needs, or change how funds collected are received and allocated in the general budget.

A. Legislative findings and purpose.

The City should consider modifying the legislative findings and purpose to clarify the law’s intent if the law is to encourage the activation of the property again. The City has the potential to use the law to address the need for affordable housing and to use the funds received to help create new affordable housing opportunities by offsetting costs associated with affordable housing development. The current law notes:

“The purpose of this chapter is to establish a program for identifying and registering vacant buildings; to determine the responsibilities of owners of vacant buildings and structures; and to speed the rehabilitation of the vacant properties.”

This could be modified to read:

“The purpose of this chapter is to establish a program for identifying and registering vacant buildings; to determine the responsibilities of owners of vacant buildings, ~~and~~ structures, ~~and~~ land; and to speed the rehabilitation of the vacant properties ~~and buildings to meet the need for affordable and market housing within the municipality.~~”

B. Definitions

The City should modify the existing definitions to add clarity on the time frame for determination of when a building or property is considered vacant:

§ 91-2. Definitions.

VACANT BUILDING OR PROPERTY — A building or portion of a building or property or portion of same, which is:

- A. Unoccupied and unsecured for greater than (insert time period) days;
- B. Unoccupied and secured by other than normal means;
- C. Unoccupied and ~~an~~ unsafe building as determined by the Code Enforcement Officer;
- D. Unoccupied and has multiple housing or building code violations;
- E. Illegally occupied.

C. Determination of Vacancy

The City could go further and apply a methodology for the Code Enforcement Officer to use in determining when the building or property is vacant. The City of San Francisco law further breaks out the types of properties that the City of Hudson addresses in its law. The San Francisco law states:

4.56.020 Determination of vacancy.

- A. For the purposes of this Chapter, a parcel of real property shall be deemed "vacant" and subject to the tax imposed by Section 4.56.030 below if the parcel is any of the following:
 - 1. A parcel of land, whether undeveloped, residential (including multifamily residential), or non-residential, that is in use less than fifty (50) days during a calendar year.
 - 2. A condominium, duplex, or townhouse unit under separate ownership that is in use less than fifty (50) days during a calendar year.
 - 3. A 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 and all of the ground floor space that could be lawfully occupied by commercial activities is in use less than fifty (50) days in a calendar year.
- B. The City Council shall establish, by ordinance, a method for determining and identifying the use and vacancy status of each parcel of real property in the City.

(Res. No. 87319, § 3, 7-24-2018)

D. Registration

The City could look at how it handles vacant buildings and property registration with regard to whether the building or property is in foreclosure or whether it was determined to be vacant by the code enforcement official.

If the property is in foreclosure, the City could follow the City of Kingston, NY local law.

§ 179-3. Registration.

- A. Within 10 days of the filing of a lis pendens and/or an action to foreclose upon a mortgage or similar security instrument, all mortgagees must register with the Building Official/Code Enforcement Officer of the City of Kingston, on forms provided by said official, all property in foreclosure within the City of Kingston.

For properties for which a lis pendens and/or action for foreclosure upon a mortgage or a similar security instrument has been instituted prior to the effective date of this chapter and which has not yet been registered pursuant to this chapter, all mortgagees must register such properties within 60 days of the effective date of this chapter.

B. Mortgagees must designate and retain a local individual or local agent or property management company as the local agent responsible for the security and maintenance of the property. Owners of property that do not reside in the City of Kingston must provide a name, address and contact information of a local agent with whom the owner has entered into a contract or agreement for property management.

Additionally, the City should require the following information as well, in which the Kingston, NY law requires:

(2) The names and addresses of the owner or owners, or mortgagee or mortgagees.

(3) Whether or not the owner or owners, or mortgagee or mortgagees, reside in the City of Kingston, the name and address for the owner, owners, mortgagee, or mortgagees, mailing address, telephone number, local agent's name, mailing address, telephone number and e-mail address for the owner, owners, mortgagee or mortgagees. Mailing addresses may not be a post office box but must be an actual street address where the owner, owners, mortgagee, or mortgagees reside or do business.

(4) The name, street address, telephone number and e-mail address of a natural person 21 years of age or older designated by the owner, owners, mortgagee, or mortgagees as the authorized agent for receiving notices of code violations and/or receiving process in any court proceeding or administrative enforcement proceeding on behalf of such owner, owners, mortgagee or mortgagees in connection with the enforcement of any applicable code, ordinance, local law, regulation or statute. The agent for service of process must maintain an office or reside in Ulster County, New York.

The City should also have a contact for the firm of individuals responsible for property maintenance.

(5) The name, street address, telephone number and e-mail address of the firm or individual responsible for maintaining the property. The individual or representative of the firm responsible for maintaining the property must maintain an office or reside within Ulster County, New York, and shall be available by telephone or in person on a twenty-four-hour-per-day, seven days- per-week basis.

E. Appeal process

The city should consider defining an appeals process for buildings and properties determined to be vacant or for the fees by a code enforcement officer. The appeals process would allow for a fair adjudication of the determination. The City of Oakland defines its appeal process as follows:

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 codification of the tax.

(Ord. No. 13571 , § 2, 11-19-2019)

The City of Kingston allows for an appeal process to the Mayor.

§ 179-11. Exceptions.

B. A building which has been vacant for longer than one year, but less than two years, may request waiver of the fees set forth above upon submission of satisfactory proof of reasonable attempts to secure appropriate occupants or tenants for the building. The decision regarding said waiver shall rest in the discretion of the Deputy Chief of the Building Department and may be appealed in writing within 30

days to the Mayor of the City of Kingston. [Amended 3-5-2019 by L.L. No. 1-2019, approved 3-19-2019]

F. Obligations of the owner under the Vacant Building Plan

The current law allows the Enforcement Officer to decide the factors that will be included in the Vacant Building Plan, which includes at a minimum either a demolition plan indicating the proposed time frame for demolition, a plan for the securing of the building, along with the procedure that will be used to monitor and maintain the property in accordance with all applicable building codes or a rehabilitation plan for the property. It is important to note that the current law does not give any standards as to how the owner will monitor or maintain the vacant property or building.

The City should consider a standard of monitoring and maintenance to ensure that each property is equally assessed. Standards similar to Kingston could include:

- Smoke and carbon dioxide alarms installed
- How the property will be kept free of trash and debris
- Structured members of the building shall be capable of bearing both live and dead loads, and the foundation walls likewise shall be capable of supporting an appropriate load.
- It has all doors and windows and other openings in a weathertight condition
- All roof and roof flashings shall be sound and tight such that no rain will penetrate the structure
- The structure's exterior shall be free of loose or rotten materials and holes.
- All combustibles must be removed from the interior of all buildings and the exterior of the property

If the standards are not met, the city installs and cleans the property and puts a lien against the property for the cost of work. Also, in looking at other municipalities, some owners of the vacant property have tried to skirt the law by filing for exemptions, or asking for building permits and then never making improvements. There needs to be time limits for the completion of these work requests.

G. Insurance

Submit and maintain liability insurance in the amount of not less than \$300,000 for buildings designated primarily for a one-to-two-unit residential use and not less than \$1,000,000 for any other building, including but not limited to buildings designated for multifamily, manufacturing, storage, or commercial uses covering any damage to any person or any property caused by any physical condition of or in the building. The City of Hudson shall be named as an additional insured and shall be entitled to notification of any renewal or lapse of coverage in writing of said policy.

H. Fees

The City’s current fee structure starts with a first-year annual fee of \$1,000 and shall be paid no later than 30 days after the building becomes vacant. If the fee is not paid within 30 days of being due, the owner shall be subject to prosecution as prescribed in § 91-6. If a plan is extended beyond 365 days, subsequent annual fees shall be paid as follows:

- (a) For the second year that the building remains vacant: \$2,000;
- (b) For the third year that the building remains vacant: \$3,000;
- (c) For the fourth year that the building remains vacant: \$4,000; and
- (d) For the fifth and each succeeding year that the building remains vacant: \$5,000.

However, vacant building registration fees will only be accepted once a registration application form has been completed with a plan for securing of the building. This wording could be clearer as the property owner must submit the fee within 30 days, but the Code Enforcement Officer may only accept the vacant building plan for up to thirty days. The City should clarify this language and the intent of the fees. If the fees are not paid each year on the property, the City should consider putting a lien on the property for the fee amount.

The City should consider increasing the fees to cover the cost of staff for maintaining the program, quarterly inspection, and fee collection. The current rate of \$1,000 for the first year seems low for the amount of staff time (wage plus fringe benefits) needed to maintain the program while encouraging the property owner to bring it back to the market.

I. Exemptions

The City of Hudson only allows property owners to be considered for two exemptions under the law; fire or an extreme weather event. The City should consider additional exemptions to the current code. The City of Vancouver allows the following exemptions:

1) Death of registered owner

2) Property undergoing redevelopment or major renovations

- (a) *redevelop or safely carry out major renovations to the property;*
- (b) *carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units or the rehabilitation and conservation of heritage property*
- (c) *carry out either redevelopment or initial development of a parcel of residential property which is unimproved with any dwelling units and is part of a phased development which either:*

3) Property of owner in care

A) previously occupying the residential property as a principal residence or all tenants or subtenants who were previously occupying the residential property for residential purposes are residing in a hospital, long-term or supportive care facility, except that this exemption shall not be allowed for more than two consecutive vacancy reference periods unless there is a reasonable expectation that the occupiers, or tenants or subtenants, may be able to return to the residential property, in which case this exemption may be allowed for up to an additional two consecutive vacancy reference periods.

4) Rental restriction or prohibition

- (a) the residential property is a strata unit in a strata development;*
- (ii) restricted the number of strata units that could be rented and the maximum number of permitted strata rentals for the strata development has already been reached, provided that:*
- (b) the registered owner is able to submit evidence that they were unable to rent the residential property during the vacancy reference period due to this restriction; and*
- (c) provided that a registered owner may only claim this exemption for one strata unit.*

5) Transfer of property**6) Occupancy for full-time employment**

If the property is the principal residence of the registered owner during the vacancy reference period was outside of Greater Vancouver, but the residential property was occupied by the registered owner for residential purposes for a minimum aggregate of six months during the vacancy reference period because the registered owner was employed full-time and the nature of that employment required their physical presence in Greater Vancouver.

7) Court order**8) Limited use residential property**

- (a) the lawful use of the property is limited to vehicle parking; or*
- (b) as a result of the size, shape, or other inherent limitations of the parcel, a residential building cannot be constructed on the parcel.*

8) Combined period of redevelopment or renovation and occupation by tenant

- (a) unoccupied in order to redevelop or safely carry out major renovations to the property:

 - (i) for which permits have been issued by the City by July 1st of the vacancy reference period, and*
 - (ii) which, in the opinion of the Chief Building Official or the Chief Building Officer’s delegates, are being carried out diligently and without unnecessary delay; and**
- (b) occupied for residential purposes by an arm’s length tenant under a tenancy agreement, or by an arm’s length subtenant under a sublease agreement, for a term of at least 30 consecutive days either:

 - (i) prior to the issuance of such permits by the City, where the tenant or subtenant gave notice to end their tenancy, or*
 - (ii) after the redevelopment or renovation work has been completed.**

The City of San Francisco defines its exemptions in terms of income and construction to activate the property as follows:

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.*

The City should also consider exemptions for:

- Nursing homes, residential care facilities, or certain properties that are exempt from property tax under State law are not considered residential units.
- 501(c)3 non-profits and governments would be exempt from the tax, and units subject to the City’s vacancy tax would not be subject to this tax.

J. Complaint and review process

The City should consider adding a process for residents to report properties they suspect of being vacant. This could be as simple as an online form on the City’s website or an email address, where residents can send the information to the Code Enforcement Officer.

K. Forms

The City should consider changing the current Vacant Building Registration Application form to be fillable .pdf format. The fillable format could be linked to a database that allows for easy transfer of information.

L. Staffing and Auditing of existing laws

In our discussions with the Housing Justice Coordinator, there is a need for additional staffing to ensure compliance with the existing ordinance for Chapter 91 Vacant Buildings and § 325-28.3. Short-term rentals. As noted in this report, there is the potential for additional collection of money to support affordable housing in the City. The additional staff could be responsible for updating the database of buildings and properties under Chapter 91 and the property rental listings under the Short-term rentals law, with the Housing Justice Coordinator acting as an auditor on behalf of the City Council to ensure enforcement and compliance by departments responsible for administering these laws. The Housing Coordinator would be responsible for completing a yearly report back to the Mayor.

M. Eminent domain

The United States and New York Constitutions require that there be a public use in order for a municipality to use its power of eminent domain. (US Const, 5th Amdt; NY Const, art I, § 7). In *Kelo v City of New London, Conn.*, 545 US 469 [2005], Justice O’Connor, in her dissenting opinion, explained that prior to the Court’s opinion in *Kelo*, there were three categories of takings that complied with the public use requirement:

- When the sovereign transfers private property to public ownership—such as for a road, a hospital, or a military base;
- When the sovereign transfers private property to private parties, often common carriers, who make the property available for the public use—such as with a railroad, a public utility, or a stadium; and
- Takings that serve a public purpose even if the property is destined for subsequent private use. These takings have been allowed in certain circumstances to meet certain exigencies.

The City could consider the use of eminent domain as part of its affordable housing strategy, similar to how the King County Housing Authority (KCHA) in Washington State uses it. Under Washington State law, public housing authorities are authorized to use eminent domain to acquire housing projects within their area of operation. KCHA has successfully used the threat of eminent domain to encourage owners to sell affordable multifamily rental properties to the housing authority. In 2019, KCHA used eminent domain to acquire 5 properties for \$245 million. The multifamily properties targeted for acquisition were considered to be at high risk of losing affordability, which would result in the displacement of residents.

The City of Hudson should investigate the use of eminent domain as a part of its affordable housing strategy as a means to have vacant buildings rehabilitated to provide housing. If the City were to use these powers, the properties could be turned over to the Community Land Trust (CLT) to implement development on behalf of the City.

4. Conclusion

If the City of Hudson is to address the need for more affordable housing, the Vacant Buildings and Short-Term Rental Housing laws need to work together to encourage compliance.

- 1) Changes to the fee structure for both laws. The City should adopt an approach that encourages compliance with the laws and payment of the fees but also uses the legal system for property liens and fines as means of enforcing compliance by property owners.
- 2) Changes are needed for clarity of current laws and equity of enforcement by City officials. Our review of the current Vacant Building law suggests that minor changes are needed to make the existing law stronger but also equitable in how it is enforced. Clear standards are important as these standards are easily enforceable in the City Court for non-compliance.
- 3) The City should consider changes to budget allocations and appropriations to help fund affordable housing in the City. If the City was to allocate the fees received from the Vacant buildings law and a portion of the receipts from the Short-Term Rental Housing law, this would provide initial seed money for the Community Land Trust to work on providing affordable housing in the City. The measure could establish a new fund known as the Housing Activation Fund. The Fund would provide rental subsidies and fund the acquisition, rehabilitation, and operation of multi-unit buildings for affordable housing. If the City decided to use the eminent domain process as an additional tool for developing affordable housing, we have estimated that the section 8 waiting list could be reduced in half.
- 4) There is a need for stronger compliance by the City staff to enforce existing laws. Our evaluation of current practices shows that the City is not collecting the full revenue it is owed each year from the existing laws. The City should look at its own internal policy and department practices for enforcement and collection of fees.
- 5) The City should have yearly audit reports to Mayor and Council as specified by the law. The City could have the Housing Justice Coordinator be responsible for working with the departments on a quarterly basis to ensure that the prescribed actions are taken. The City should also consider hiring additional staff to help with the database development and monitoring of the programs.

These five suggested changes will help bring in additional revenue to the City, provide clarity and equity for the existing laws, and potentially provide an additional funding source for the Community Land Trust.

Appendix A

Sample Laws

City of San Francisco

ARTICLE 29: VACANCY TAX ORDINANCE

- Sec. 2901. Short Title.
- Sec. 2902. Findings and Purpose.
- Sec. 2903. Definitions.
- Sec. 2904. Imposition of Tax.
- Sec. 2905. Exemptions and Exclusions.
- Sec. 2906. Administration.
- Sec. 2907. Deposit of Proceeds; Expenditure of Proceeds.
- Sec. 2908. Technical Assistance to the Tax Collector.
- Sec. 2909. Amendment of Ordinance.
- Sec. 2910. Severability.
- Sec. 2911. Savings Clause.

SEC. 2901. SHORT TITLE.

This Article 29 shall be known as the “Vacancy Tax Ordinance,” and the tax it imposes shall be known as the “Vacancy Tax.”

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021)

SEC. 2902. FINDINGS AND PURPOSE.

(a) San Francisco’s neighborhood commercial districts prioritize street-level, customer-facing businesses as a means of stimulating a bustling, pedestrian-friendly urban environment. Retail storefronts are the building blocks of neighborhood vitality, encouraging people to stroll through San Francisco’s streets, sidewalks, parks, and other open spaces, and inviting them in.

(b) San Francisco residents and visitors have an interest in preserving the vitality of commercial corridors in these districts. Vacant storefronts in otherwise vibrant neighborhood commercial districts degrade the urban environment and reduce the quality of life in those neighborhoods, leading to blight and crime, particularly when storefronts stay empty for extended periods of time. Further, the resulting blight negatively impacts other small businesses in the area by discouraging foot traffic and eroding the character and uniqueness of San Francisco’s diverse neighborhoods and communities.

(c) Retail vacancies may occur when property owners are performing tenant improvements for prospective tenants, while actively seeking a new commercial tenant, or following a disaster requiring wholesale rehabilitation of a structure. These temporary vacancies reflect a property owner’s desire to maintain the active retail storefront

environment of San Francisco's neighborhood commercial corridors and to continue contributing to the surrounding community.

(d) But in other instances, retail vacancies occur when a property owner or landlord fails to actively market a vacant retail storefront to viable commercial tenants and/or fails to offer the property at a reasonable rate. Retail vacancies may persist as property owners and landlords hold storefronts off of the market for extended periods of time or refuse to offer the space for a reasonable market rate.

(e) The purpose of the Vacancy Tax is to stimulate the rehabilitation of long-term retail vacancies, and, in turn, to reinvigorate commercial corridors and stabilize commercial rents, thereby allowing new small businesses to open and existing small businesses to thrive.

(f) By dedicating proceeds from the Vacancy Tax to the Small Business Assistance Fund, the Vacancy Tax will also assist small businesses and provide relief to those small businesses adversely affected by blight, crime, and other negative impacts caused by vacant storefronts in San Francisco.

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021)

SEC. 2903. DEFINITIONS.

Unless otherwise defined in this Article 29, the terms used in this Article shall have the meanings given to them in Article 6 of the Business and Tax Regulations Code, as amended from time to time. For purposes of this Article, the following definitions shall apply:

"Affiliate" means a person under common majority ownership or common control with any other person, whether that ownership or control is direct or indirect. An Affiliate includes but is not limited to a person that majority owns or controls any other person or a person that is majority owned or controlled by any other person.

"Building Permit Application Period" means the period following the date that an application for a building permit for repair, rehabilitation, or construction with respect to Taxable Commercial Space in a building or structure is filed with the City through the date the Department of Building Inspection or its successor agency grants or denies that application, but not to exceed one year. Notwithstanding the preceding sentence, if more than one building permit application is filed by or on behalf of one or more persons in the Taxpayer's Group for the same Taxable Commercial Space, the Building Permit Application Period shall mean only the applicable period following the date the first application is filed with the City by or on behalf of anyone in the Taxpayer's Group.

"Conditional Use Application Period" means the 183-day period following the date that a complete application for a conditional use permit for use of Taxable Commercial Space is filed with the City, but if the Planning Commission or its successor agency does not grant or deny that application within 183 days, the Conditional Use Application Period means the period following the date that the application is filed through December 31 of the year in

which the date 183 days from the application filing date falls. Notwithstanding the preceding sentence, if more than one complete conditional use permit application is filed by or on behalf of one or more persons in the Taxpayer's Group for the same Taxable Commercial Space, the Conditional Use Application Period shall mean only the applicable period following the date the first complete application is filed with the City by or on behalf of anyone in the Taxpayer's Group.

"Construction Period" means the one-year period following the date that the City issues a building permit for repair, rehabilitation, or construction with respect to Taxable Commercial Space in a building or structure, provided that if the City issues multiple building permits to or for the benefit of one or more persons in the Taxpayer's Group for the same Taxable Commercial Space, the One-Year Construction Period shall mean only the one-year period following the issuance of the first building permit to or for the benefit of anyone in the Taxpayer's Group.

"Disaster Period" means the two-year period following the date that Taxable Commercial Space was severely damaged and made uninhabitable or unusable due to fire, natural disaster, or other catastrophic event.

"Frontage" means the number of linear feet of Taxable Commercial Space that is adjacent or tangent to a Public Right of Way, rounded to the nearest foot.

"Public Right of Way" means the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, spaces, streets, and ways within the City, which are under the permitting jurisdiction of the Department of Public Works.

"Related Person" means a spouse or domestic partner, child, parent, or sibling (these latter three relationships including biological, adoptive, and "step" relationships; and the sibling relationship also including half-siblings).

"Residential Real Estate" means real property where the primary use of or right to use the property is for the purpose of dwelling, sleeping or lodging other than as part of the business activity of accommodations. For purposes of this Article 29, "accommodations" means the activity of providing lodging or short-term accommodations for travelers, vacationers, or others, including the business activity described in code 721 of the North American Industry Classification System as of November 6, 2012.

"Taxable Commercial Space" means the ground floor of any building or structure, or the ground floor of any portion of a building or structure, where such ground floor (1) is adjacent or tangent to a Public Right of Way, (2) is located in one of the "Named Neighborhood Commercial Districts" or "Named Neighborhood Commercial Transit Districts" listed in Section 201 of the Planning Code, as those districts exist on March 3, 2020, and irrespective of whether those districts are expanded, narrowed, eliminated, or otherwise modified subsequent to that date, and (3) is not Residential Real Estate.

"Taxpayer's Group" means for each taxpayer, with respect to each Taxable Commercial Space, the taxpayer, any current or former co-owner or co-tenant of the taxpayer, and any

Related Person or Affiliate of the taxpayer or the taxpayer's current or former co-owner or co-tenant.

"Vacant" means unoccupied, uninhabited, or unused for more than 182 days, whether consecutive or nonconsecutive, in a tax year. Notwithstanding the previous sentence, a person shall not be considered to have kept a building or structure Vacant during the Building Permit Application Period, Construction Period, Disaster Period, and/or Conditional Use Application Period if that Building Permit Application Period, Construction Period, Disaster Period, and/or Conditional Use Application Period applies to that person for that Taxable Commercial Space. In determining whether a person has kept Taxable Commercial Space Vacant, days within the Building Permit Application Period, Construction Period, Disaster Period, and Conditional Use Application Period shall be disregarded if that Building Permit Application Period, Construction Period, Disaster Period, and/or Conditional Use Application Period applies to that person for that Taxable Commercial Space.

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021)

SEC. 2904. IMPOSTION OF TAX.

(a) Except as otherwise provided in this Article 29, for the purposes described in Section 2907, the City imposes an annual Vacancy Tax on keeping Taxable Commercial Space Vacant.

(b) The tax on keeping Taxable Commercial Space Vacant in a tax year shall be as follows:

(1) For the 2022 tax year, \$250 per linear foot of Frontage.

(2) For the 2023 tax year, \$250 per linear foot of Frontage for Taxable Commercial Space that has not been kept Vacant by any person in the 2022 tax year and \$500 per linear foot of Frontage for Taxable Commercial Space that has been kept Vacant by any person in the 2022 tax year.

(3) For the 2024 tax year and subsequent tax years:

(A) \$250 per linear foot of Frontage for Taxable Commercial Space that has not been kept Vacant by any person in the immediately preceding tax year;

(B) \$500 per linear foot of Frontage for Taxable Commercial Space that has been kept Vacant by any person in the immediately preceding tax year but not kept Vacant by any person in the tax year immediately preceding that tax year; and

(C) \$1,000 per linear foot of Frontage for all situations in which neither subsection (b)(3)(A) nor subsection (b)(3)(B) of this Section 2904 applies.

(c) The Vacancy Tax shall be payable by: (1) the owner or owners of the Taxable Commercial Space kept Vacant, provided that the Taxable Commercial Space is not leased;

(2) the lessee or lessees, and not the owner, of the Taxable Commercial Space kept Vacant, if that Taxable Commercial Space is leased but not subleased; and (3) the sublessee or sublessees, and not the owner or sublessor, of the Taxable Commercial Space kept Vacant, if that Taxable Commercial Space is subleased. Not more than one tax shall be imposed under this Section 2904 by reason of multiple liable owners, lessees, or sublessees. If there are multiple liable owners, lessees, or sublessees, each such person shall be jointly and severally liable for the Vacancy Tax.

(d) A person shall be liable for the Vacancy Tax only if that person has kept Taxable Commercial Space Vacant in a tax year. A person shall be deemed to have kept Taxable Commercial Space Vacant in a tax year if that person and all Related Persons and Affiliates of that person, individually or collectively, have kept that Taxable Commercial Space Vacant for more than 182 days in that tax year.

(e) The imposition of the Vacancy Tax under this Section 2904 shall be suspended for the 2021 tax year.

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021; amended by Ord. [94-20](#), File No. 200420, App. 6/26/2020, Eff. 7/27/2020)

SEC. 2905. EXEMPTIONS AND EXCLUSIONS.

(a) For only so long as and to the extent that the City is prohibited from imposing the Vacancy Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Vacancy Tax shall be exempt from the Vacancy Tax.

(b) Any organization that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be exempt from the Vacancy Tax.

(c) The City shall not be exempt from the Vacancy Tax.

(d) If a lessee or sublessee has operated a business in Taxable Commercial Space for more than 182 consecutive days during a lease or sublease of at least two years, such lessee or sublessee shall not be liable for the Vacancy Tax for the remainder of that lease or sublease, regardless of whether that lessee or sublessee keeps the Taxable Commercial Space Vacant.

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021)

SEC. 2906. ADMINISTRATION.

Except as otherwise provided under this Article 29, the Vacancy Tax shall be administered pursuant to Article 6 of the Business and Tax Regulations Code.

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021)

SEC. 2907. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.

(a) All monies collected under the Vacancy Tax Ordinance shall be deposited to the credit of the Small Business Assistance Fund (“Fund”), established in Administrative Code Section 10.100-334. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be carried forward and accumulated in the Fund for the purposes described in subsection (b).

(b) Subject to the budgetary and fiscal provisions of the Charter, monies in the Small Business Assistance Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following purposes:

(1) To the Tax Collector and other City Departments, for administration of the Vacancy Tax and administration of the Fund.

(2) Refunds of any overpayments of the Vacancy Tax, including any related penalties, interest, and fees.

(3) All remaining amounts to provide funding to assist the maintenance and operation of small businesses in the City.

(c) Commencing with a report filed no later than February 15, 2023, covering the fiscal year ending on June 30, 2022, the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a report containing the amount of monies collected in and expended from the Small Business Assistance Fund during the prior fiscal year, the status of any project required or authorized to be funded by this Section 2907, and such other information as the Controller, in the Controller’s sole discretion, shall deem relevant to the operation of this Article 29.

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021; amended by Ord. [94-20](#), File No. 200420, App. 6/26/2020, Eff. 7/27/2020)

SEC. 2908. TECHNICAL ASSISTANCE TO THE TAX COLLECTOR.

The Department of Public Works, the Department of Building Inspection, and the Office of Economic Workforce Development shall provide technical assistance to the Tax Collector, upon the Tax Collector’s request, to administer the Vacancy Tax.

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021)

SEC. 2909. AMENDMENT OF ORDINANCE.

The Board of Supervisors may amend or repeal this Article 29 by ordinance by a two-thirds vote and without a vote of the people except as limited by Articles XIII A and XIII C of the California Constitution.

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021)

SEC. 2910. SEVERABILITY.

(a) Except as provided in Section 2910(b), if any section, subsection, sentence, clause, phrase, or word of this Article 29, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Article. The People of the City and County of San Francisco hereby declare that, except as provided in Section 2910(b), they would have adopted this Article 29 and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Article or application thereof would be subsequently declared invalid or unconstitutional.

(b) If the imposition of the Vacancy Tax in Section 2904 is held in its entirety to be facially invalid or unconstitutional in a final court determination, the remainder of this Article 29 shall be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax Regulations Code.

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021)

SEC. 2911. SAVINGS CLAUSE.

No section, clause, part, or provision of this Article 29 shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

(Added by [Proposition D](#), 3/3/2020, Eff. 4/17/2020, Oper. 1/1/2021)

City of Oakland

Chapter 4.56 VACANT PROPERTY TAX

4.56.010 Definitions.

"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.

(Ord. No. 13571 , § 2, 11-19-2019; Res. No. 87319, § 3, 7-24-2018)

Editor's note(s)—Attachment A is not in fact below, but is attached to the ordinance from which this Chapter is derived and can be inspected upon request at the City Clerk's office.

4.56.020 Determination of vacancy.

- A. For the purposes of this Chapter , a parcel of real property shall be deemed "vacant" and subject to the tax imposed by Section 4.56.030 below if the parcel is any of the following:
 - 1. A parcel of land, whether undeveloped, residential (including multifamily residential), or non-residential, that is in use less than fifty (50) days during a calendar year.
 - 2. A condominium, duplex, or townhouse unit under separate ownership that is in use less than fifty (50) days during a calendar year.
 - 3. A 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 and all of the ground floor space that could be lawfully occupied by commercial activities is in use less than fifty (50) days in a calendar year.
- B. The City Council shall establish, by ordinance, a method for determining and identifying the use and vacancy status of each parcel of real property in the City.

(Res. No. 87319, § 3, 7-24-2018)

4.56.030 Imposition of parcel tax on vacant property.

- A. A special tax in the amounts set forth below is hereby imposed on every vacant parcel of real property within the City, other than those exempted, as described below.
- B. The tax constitutes a debt owed by the owner of each parcel to the City.
- C. Unless the City Council selects another method for collection of the tax, the County shall levy and collect the tax on each parcel of real property in the City for which the owner receives a separate ad valorem property tax bill, at the same time and manner, and subject to the same penalties and procedures as ad valorem property taxes collected by the County except as otherwise set forth in this Chapter.
- D. If the City Council selects collection of the tax by the County, the tax shall be imposed on the ad valorem property tax bill for the fiscal year that begins July 1 following the end of the calendar year in which the parcel was vacant. The special tax shall first be imposed no sooner than the ad valorem property tax bill for fiscal year 2020-2021 for parcels that were vacant in the previous calendar year.
- E. Tax Rates.
 - 1. The maximum tax rates for each property type shall be as set forth in the table below. The City Council may lower, but not increase, the rates, and may by ordinance adopt further categories of exemption. The City shall be responsible for assigning a tax rate for each parcel.

Property Type	Annual Tax Rate
Residential	\$6,000.00 per parcel

Condominium, duplex, or townhouse unit under separate ownership	\$3,000.00 per vacant residential unit
Nonresidential	\$6,000.00 per parcel
Parcel with ground floor commercial activity allowed but vacant	\$3,000.00 per parcel
Undeveloped	\$6,000.00 per parcel

2. For parcels with multiple units, whether residential or non-residential, the parcel is not vacant if any unit on it is not vacant. A condominium, duplex, or townhouse unit under separate ownership is treated as a separate parcel for the purposes of this Chapter , and if it is vacant, is subject to the tax regardless of the status of any other unit on the same lot or that is part of the same development.
 3. For parcels where ground floor commercial activities are allowed by the applicable zoning (with or without a use permit) or are a legal nonconforming use, if all of the ground floor space that could be lawfully occupied by commercial activities is vacant, then the parcel shall be subject to the tax regardless of whether any other portion of the structures on the parcel are occupied.
- F. Real property otherwise wholly exempt from ad valorem tax by state law shall also be exempted from the tax imposed by this Chapter.
- G. Adjustment in Tax Rate. The City Council may, by resolution, establish an annual tax rate less than the maximum amount then authorized. Following any such decrease in the annual tax rate, the City Council may, by resolution, increase the annual tax rate to the maximum rate then permitted, or to any other amount less than the maximum rate then permitted, without obtaining voter approval.
- H. For parcels divided by tax rate area lines, the payment for the portion of the parcel within Alameda County shall be calculated at the same rates as set forth above. For properties wholly within Alameda County and divided by tax rate area lines into multiple parcels, the property shall be taxed as a single parcel at the rates set forth above.
- I. Imposition of Tax by Zones. The City Council may, by ordinance, establish zones or areas within the City and may restrict the levy of the tax to properties within the zones or areas established.
- 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.

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- 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.
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.

(Res. No. 87319, § 3, 7-24-2018)

4.56.040 Vacant property tax fund.

The "vacant property tax fund" ("fund") is hereby created as a special revenue fund. Proceeds from the Oakland Vacant Property Tax Act, including penalties and interest earned on such proceeds, shall be deposited into the fund and used only for the purposes listed in Section 4.56.050.

(Res. No. 87319, § 3, 7-24-2018)

4.56.050 Use of Vacant Property Tax Act revenue.

- A. Monies deposited in the vacant property tax fund shall be used solely for those purposes identified in this Section.

(Supp. No. 91, 9-22)

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- B. Tax funds may be used to provide services and programs to homeless people, to reduce homelessness, and to support the protection of existing and production of new housing affordable to lower income households as defined in California Health and Safety Code Section 50079.5 at an affordable housing cost or affordable rent as defined in Health and Safety Code Sections 50052.5 and 50053. Examples of such uses include, but are not limited to:
1. Job training, apprenticeship, pre-apprenticeship, drug treatment, and job readiness assistance programs for homeless people or those at risk of becoming homeless;
 2. Assistance connecting homeless people or those at risk of becoming homeless with available services and resources, including assistance applying for housing or public benefit programs;
 3. Housing assistance, including the provision of temporary housing or move-in expenses, such as first-month's rent and a security deposit, and emergency rental assistance;
 4. Sanitation, bathroom, and cleaning services related to homeless encampments, and programs to supplement remedying and deterring blight and illegal dumping throughout the City;
 5. Incentive programs to encourage property owners to make space available for low-income housing, including making funds available for physical improvements to enable a unit to be used for a voucher-based housing program;
 6. Relocation assistance funding for low-income households facing displacement;
 7. Financial assistance for the design, development, construction or operation of affordable housing units, including housing alternatives such as, without limitation, shipping container homes, accessory dwelling units and small homes.
 8. Accessibility support to provide or maintain housing, and make needed improvements for accessibility, for seniors and persons with disabilities; and
 9. Displacement prevention, tenant education and assistance, emergency rent assistance; and
 10. Navigation centers to provide space for people to stay, along with on-site support services for the homeless. Funding may be used for both capital and operating costs related to navigation centers; and
 11. Code enforcement and cleanup of blighted vacant properties, other blight elimination, and remedying illegal dumping, including legal action to address any of the foregoing as necessary, no less than twenty-five (25) percent of the revenue deposited into the vacant parcel tax fund in any single year shall be used to pay for the uses listed in this paragraph.
- C. Monies in the vacant property tax fund may be used to pay the costs of audits of the use of monies in the fund.
- D. Monies in the vacant property tax fund may be used to pay for the City's costs of the election required to obtain voter approval of the tax authorized by this Chapter , including City Attorney costs to prepare this Chapter and related documents. City Attorney costs shall be deposited in a revenue account for sole use by the office of the City Attorney.
- E. Monies in the vacant property tax fund may be used to pay for the costs of administering the special tax, regardless of how or by what entity those administrative services are provided. No more than fifteen (15) percent of the revenue deposited into the vacant parcel tax fund in any single year may be used to pay for such administrative costs, except that revenue used to pay for the costs of the Commission on Homelessness established by Section 4.56.060 shall not count toward the fifteen (15) percent. Notwithstanding the foregoing, the City shall be reimbursed for its actual costs of establishing the program for collecting the tax, which costs shall be confirmed by the City Auditor. Administrative costs include, but are not limited to:

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1. The costs to the City of determining and identifying the use and vacancy status of every parcel in the City;
 2. The costs to the City associated with monitoring and enforcing compliance with this Chapter. Authorized costs include, but are not limited to, any expenses, including attorneys' fees, associated with any proceedings needed to enforce the requirements of this Chapter ;
 3. The costs to the City associated with developing ordinances and regulations to implement this Chapter ;
 4. The costs to the City associated with the operations of the Commission on Homelessness established by Section 4.56.060 of this Chapter ; and
 5. Reimbursement to the County for the costs it incurs in collecting the tax.
- F. If this Chapter or the use of tax funds is legally challenged, tax funds may be used to reimburse the City for its costs of legal defense, including attorneys' fees and other expenses.

(Res. No. 87319, § 3, 7-24-2018)

4.56.060 Commission on Homelessness.

- A. The Commission on Homelessness is hereby established for citizen oversight of the Oakland vacant property tax (2018 Measure W) and the 2020 Measure Q homelessness funds received by the City of Oakland for Homeless services, and to make recommendations to the City Council for strategies to remedy homelessness.
- B. The Commission shall meet at least four (4) times per fiscal year.
- C. The Commission shall review relevant financial and operational reports related to the expenditure of the homeless services fund. The Commission shall publish an annual report regarding how and to what extent the City Council and Mayor have implemented this Chapter. Additionally, the Commission shall be requested to publish reports regarding the following:
 - 1) Recommendations from the Commission on how to prioritize the allocation of funds in accordance with the requirements of this Chapter, including for: services and programs for homeless people, reduction of homelessness, and supporting the provision of affordable housing to households qualifying as at least low-income households (those at fifty-five (55) percent AMI or below);
 - 2) Information, if available, concerning the impacts of programs funded by the Vacant Property Tax (2018 Measure W) and 2020 Measure Q homelessness funds subject to Commission oversight on the occurrence of homelessness and illegal dumping in the City;
 - 3) Recommendations to the Mayor and the City Council on the Biennial Fiscal Year Budget, in accordance with the City Council's Consolidated Fiscal Policy at the time, that ensures that the Commission Chair communicates homelessness priorities to the Mayor and Council; and
 - 4) Review and respond annually to the City's Homeless Encampment Policy and the Permanent Access to Housing (Path) Plan which shall be presented to the Commission, as well as hear reports on the housing, programs, and services for persons experiencing homelessness in the City, including, but not limited to, street outreach, homeless shelters, transitional housing, housing exits, and permanent supportive housing as needed.

The City Council may assign other duties to the Commission as provided for by ordinance. Within fifteen (15) days of receipt of a Commission report, the City Administrator or designee shall cause the report to be published on the City's Internet website and to be transmitted to the City Council. Any recommendations from the Commission on prioritization of vacant property tax funds in accordance

with the requirements of this Chapter shall be approved no later than February 1 for incorporation into the City budget for the following fiscal year, and such report shall be transmitted to the Council and public for informational purposes in the budget or as an informational report at the meeting at which the City Council appropriates funds generated by the special supplemental business tax.

- D. The Commission may appoint a member as a liaison to communicate with the City Administrator's Homeless Encampment Team.
- E. The Commission shall consist of nine (9) members who are all residents of the City. No less than half of the members must be residents of heavily impacted neighborhoods. No less than two (2) members must be currently homeless, formerly homeless or low-income, as the term "low income" is defined by the United States Department of Housing and Urban Development. No less than three (3) members must have professional expertise in, or be providers of, homeless services or housing with priority given to individuals with a background in affordable housing, shelter management, or public health. No less than one (1) representative must have financial expertise. Members may fulfill more than one (1) of these criteria for the purposes of meeting these requirements. City Councilmembers shall make recommendations for members to the Mayor. Members of the Commission shall be appointed by the Mayor and confirmed by the City Council in accordance with City Charter Section 601. Members of the Commission shall receive no salary for serving.
- F. Members shall serve three (3) year terms, as provided for in this subsection. No member shall serve more than two (2) consecutive three (3) year terms. Of the initial members of the Commission, three (3) appointments shall be for one-year terms, three (3) appointments shall serve for two-year terms, and three (3) appointments shall be for three-year terms. Thereafter, all terms shall be for three (3) years. All terms of members shall begin as of the date that six (6) members have been appointed, which is when the Commission may begin its work. All future terms shall begin and end on that date. A quorum of the Commission shall be a majority of appointed members shall never be fewer than three (3) members. A member may be removed for cause pursuant to City Charter Section 601. Absence from three (3) consecutive regular meetings, or four (4) non-consecutive regular meetings during a single fiscal year, may constitute cause for removal from the Commission, in accordance with City Charter Section 601. Any cause for removal shall be referred to the City Council.
- G. The City Administrator or designee shall provide clerical assistance and administrative support and technical assistance to the Commission and the City Administrator or designee shall be present at the Commission meetings.
- H. The Commission may hold at least one (1) meeting per year at a location outside of City Hall but within the City of Oakland.
- I. The Commission may convene community meetings to solicit community testimony and other input in discussions regarding homelessness and illegal dumping policy, to build trust between the unhoused community, impacted neighborhoods and the City, and to address other similar and relevant subjects as determined by the Commission within its jurisdiction.
- J. The Commission may invite subject matter experts and individuals to provide informational presentations, including but not limited to representatives from faith-based groups, affordable housing developers, homelessness advocates, youth groups, LGBT, veteran, racial equity experts, and other members of the community.
- K. The Commission may establish by a majority vote, working groups and sub-committees.
- L. Commissioners shall be provided and shall attend training on the following:
 - 1) The City's homelessness policies and procedures;
 - 2) Basic principles of Roberts Rules of Order and meeting procedures;

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- 3) The legal requirements of California's Political Reform Act (Cal. Gov. Code section 81000, et seq.), Oakland's Conflict of Interest Code (Oakland Municipal Code, Ch. 3.16), Oakland's Government Ethics Act (Oakland Municipal Code Section Ch. 2.25), California's Brown Act (Cal. Gov. Code section 54950, et seq.), Oakland's Sunshine Ordinance (Oakland Municipal Code Ch. 2.20), and California's Public Records Act (Cal. Gov. Code section 6250, et seq.); and
 - 4) Bias and equity from the Department of Race and Equity.

(Ord. No. 13584 , § 1, 2-18-2020; Res. No. 87319, § 3, 7-24-2018)

4.56.070 Accountability.

- A. In accordance with the requirements of California Government Code Sections 50075.1 and 50075.3, the following accountability measures, among others, shall apply to the tax:
 1. A separate, special account, referred to as the vacant property tax fund, shall be created, into which the proceeds of the tax must be deposited.
 2. The specific purposes of the tax are for the funding of programs and services for homeless people, to reduce homelessness, and to support the provision of affordable housing and for the other purposes set forth in Section 4.56.050 of this Chapter. The proceeds of the tax shall be applied only to these specific purposes.
 3. The Commission established by Section 4.56.060 shall perform the oversight functions listed in that Section to ensure that the revenue from the tax is spent solely for the purposes listed in Section 4.56.050.
 4. The City Auditor shall perform regular audits to ensure accountability and proper disbursement of all revenue collected by the City from the tax imposed by this Chapter , in accordance with the objectives stated herein and in compliance with provisions of California law.
- B. The City's current general purpose fund expenditures for illegal dumping remediation may not be replaced by this tax. For any year during which this tax is in effect, if the City's general purpose fund expenditures on illegal dumping remediation are less than the amount expended in the 2016-2017 fiscal year, this tax shall not be levied and collected. In the event that a severe and unanticipated financial or other event occurs that so adversely impacts the general purpose fund as to prevent the City from budgeting for and maintaining the level of general purpose fund expenditures on illegal dumping remediation at the fiscal year 2016-2017 level, then the tax may nevertheless be levied and collected, if both of the following two (2) conditions are met:
 - (1) The City's reduction to general purpose fund illegal dumping remediation expenditures is no more than the same proportion of reduction that is imposed on the City's net general purpose fund budget for non-safety departments; and
 - (2) The City Administrator submits a report to the City Council explaining the severe and unanticipated event, the steps that were taken by the City to avoid the need to reduce general purpose fund expenditures on illegal dumping remediation, and the steps that will be taken by the City in the future to restore the fiscal year 2016-2017 level of general purpose fund expenditures on illegal dumping remediation.

Such actions must be taken for each fiscal year in which the City fails to meet the level of general purpose fund illegal dumping remediation spending required by this paragraph. Following any general purpose fund reduction in illegal dumping remediation from the 2016-2017 fiscal year level and for the tax to be levied in any subsequent year, the level of general purpose fund expenditures on illegal dumping remediation must be increased proportional to the increases in the non-safety departments' net general purpose fund budgets up to at least the fiscal year 2016-2017 level of general purpose fund expenditures on illegal dumping.

(Res. No. 87319, § 3, 7-24-2018)

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 forty (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 five hundred (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.

(Ord. No. 13571 , § 2, 11-19-2019)

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.

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- 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.

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- 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.

(Ord. No. 13571 , § 2, 11-19-2019)

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 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.
- C. Decision on Vacancy. Upon receiving a petition of vacancy 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.

(Ord. No. 13571 , § 2, 11-19-2019)

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,

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(Supp. No. 91, 9-22)

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.

(Ord. No. 13571 , § 2, 11-19-2019)

4.56.120 Administrative regulations and 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 the deem reasonably necessary.

(Ord. No. 13571 , § 2, 11-19-2019)

City of Kingston

Chapter 179

BUILDINGS, VACANT

[HISTORY: Adopted by the Common Council of the City of Kingston 10-4-2016 by L.L. No. 6-2016,¹ approved 10-19-2016. Amendments noted where applicable.]

§ 179-1. Legislative findings and intent.

- A. The Common Council of the City of Kingston, Ulster County, New York, recognizes that there is a rising number of properties within the City that have become vacant or abandoned as the result of the mortgage foreclosure process under New York State law or for other reasons. The Common Council recognizes that certain buildings, both residential and commercial, have remained abandoned, vacant or boarded up for long periods of time, some for many years. As such, these buildings and the properties upon which they are constructed can become unsightly and unsafe and have a negative effect on their surroundings and upon the community in general. The purpose of this chapter is to establish a program for identifying and registering abandoned and vacant buildings and properties; to determine the responsibility of the owners or mortgagees of these properties; to set forth the process for securing, maintaining and rehabilitating these properties; and to require the registration of these properties with the Building Official/Code Enforcement Officer of the City of Kingston.
- B. The Common Council of the City of Kingston intends that the provisions of this chapter are to prevent properties that have been abandoned and/or vacant from becoming dangerous, blighted, overgrown, susceptible to vandalism and otherwise nuisances to the public in general and specifically to surrounding property owners. The Common Council recognizes that properties involved in the mortgage foreclosure process in particular are left vacant and/or abandoned and could breed nuisance and criminal activity for months and years after. Accordingly, the Common Council believes that the provisions of this chapter are in the best interests of the public health and safety.

§ 179-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ABANDONED BUILDING OR PROPERTY — A building which is vacant and not properly maintained as set forth in § 179-5A.

BUILDING OFFICIAL/CODE ENFORCEMENT OFFICER/INSPECTOR — A duly authorized representative of the City of Kingston, Ulster County, New York, holding the position of Building Official, Deputy Building Official, Code Enforcement Officer, Building or Fire Inspector, or a duly authorized representative of the City of Kingston Building Department. **[Amended 3-5-2019 by L.L. No. 1-2019, approved 3-19-2019]**

FORECLOSURE — The legal process by which any parcel, tract, lot or other defined area of real property, including the improvements located thereon, placed as security for a real estate loan, is sought to be sold by the lender/mortgagee to satisfy the debt if the

1. Editor's Note: This local law also repealed former Ch. 179, Buildings, Vacant, adopted 3-4-2014, approved 3-5-2014, as amended.

borrower/mortgagor defaults. This definition shall include all processes, activities, and actions by whatever name associated with the described process.

LOCAL AGENT — The agent designated by the owner or mortgagee upon registration as required by this chapter.

MORTGAGE — The creditor, including, but not limited to, service companies, lenders in a mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

NOTICE OF DEFAULT — A recorded notice that a default has occurred under a mortgage and that the mortgagee intends to proceed with a foreclosure sale.

OWNER — Owner or owners of record on the assessment rolls of the Office of the Assessor of the City of Kingston; those identified as the owner or owners on a vacant building registration form; a mortgagee in possession; a mortgagor in possession; a receiver or assignee of rents; an executor, trustee, or other person, firm, entity or corporation in control of the property or premises. Such persons or entities may have joint and several obligations for compliance with the provisions of this chapter.

SECURING — Any measures that assist in making the property inaccessible to unauthorized persons as set forth in § 179-5A below.

VACANT BUILDING OR PROPERTY — A building or property or portion of same which is unoccupied for greater than 90 days.

§ 179-3. Registration.

- A. Within 10 days of the filing of a lis pendens and/or an action to foreclose upon a mortgage or similar security instrument, all mortgagees must register with the Building Official/Code Enforcement Officer of the City of Kingston, on forms provided by said official, all property in foreclosure within the City of Kingston. For properties for which a lis pendens and/or action for foreclosure upon a mortgage or a similar security instrument has been instituted prior to the effective date of this chapter and which has not yet been registered pursuant to this chapter, all mortgagees must register such properties within 60 days of the effective date of this chapter.
- B. Mortgagees must designate and retain a local individual or local agent or property management company as the local agent responsible for the security and maintenance of the property. Owners of property that do not reside in the City of Kingston must provide a name, address and contact information of a local agent with whom the owner has entered into a contract or agreement for property management.
- C. All owners of vacant or abandoned properties shall register with the Building Official/Code Enforcement Officer of the City of Kingston not later than 10 days after any building in the City becomes an abandoned or vacant building and not later than 20 days after being notified by the Building Official/Code Enforcement Officer of the City of Kingston of the requirement to register. The Building Official/Code Enforcement Officer may identify vacant and/or abandoned buildings through his/her routine inspection process as well as through notification by residents,

neighbors, neighborhood groups or other community groups that a building may be vacant and/or abandoned and eligible for inclusion on the required registry. Registration by owners shall be submitted on forms provided by the Building Official/Code Enforcement Officer of the City of Kingston.

- D. All owners and mortgagees must supply the following information to the Building Official/Code Enforcement Officer of the City of Kingston.
- (1) A description of the premises, including the property address, as well as the section, block and lot number of the property as set forth in the tax records of the City of Kingston located in the Office of the Assessor of the City of Kingston.
 - (2) The names and addresses of the owner or owners, or mortgagee or mortgagees.
 - (3) Whether or not the owner or owners, or mortgagee or mortgagees, reside in the City of Kingston, the name and address for the owner, owners, mortgagee, or mortgagees, mailing address, telephone number, local agent's name, mailing address, telephone number and e-mail address for the owner, owners, mortgagee or mortgagees. Mailing addresses may not be a post office box but must be an actual street address where the owner, owners, mortgagee, or mortgagees reside or do business.
 - (4) The name, street address, telephone number and e-mail address of a natural person 21 years of age or older designated by the owner, owners, mortgagee, or mortgagees as the authorized agent for receiving notices of code violations and/or receiving process in any court proceeding or administrative enforcement proceeding on behalf of such owner, owners, mortgagee or mortgagees in connection with the enforcement of any applicable code, ordinance, local law, regulation or statute. The agent for service of process must maintain an office or reside in Ulster County, New York.
 - (5) The name, street address, telephone number and e-mail address of the firm or individual responsible for maintaining the property. The individual or representative of the firm responsible for maintaining the property must maintain an office or reside within Ulster County, New York, and shall be available by telephone or in person on a twenty-four-hour-per-day, seven-days-per-week basis.
 - (6) A statement or plan as to what will be done to secure the structure and property so that it will not become open to the general public.
 - (7) The status of water, sewer, natural gas and electric utilities winterization of pipes at the structure and property.

§ 179-4. Notices.

- A. By designating an authorized agent as set forth above under the provisions of this chapter, the owner and/or mortgagee consents to receive any and all notices of code violations concerning the registered abandoned or vacant property and all process in any court proceeding or administrative enforcement proceeding brought to enforce code provisions concerning the registered building or property by service

of the notice or process on the authorized agent. Any owner who has designated an authorized agent under the provisions of this section shall be deemed to consent to the continuation of the owner's designation for the purpose of this section until the owner notifies the Building Official/Code Enforcement Officer of the City of Kingston in writing of a change of authorization or until the owner files a new annual registration statement.

- B. Any owner who fails to register a vacant or abandoned property under the provisions of this chapter shall further be deemed to consent to receive, by posting at the building and by regular mail at such owner's most recent address of record, any and all notices of code violation and all process of administrative or legal proceedings brought to enforce code provisions or other laws or regulations concerning the structure or property.

§ 179-5. Obligation of owners and/or mortgagees.

The owner or mortgagee of any structures that become vacant or abandoned and any person designated as an agent or responsible for maintaining such structure or vacant property shall, within 30 days of the structure becoming abandoned or vacant or 30 days of the owner or mortgagee taking title to the property, whether or not the deed for said property has been recorded with the Ulster County Clerk, meet the following requirements:

- A. All vacant real property shall at all times be properly maintained. A vacant building or structure shall be considered properly maintained if the following requirements are met:
- (1) It has all doors and windows and other openings weathertight and secured against entry by the general public as well as animals.
 - (2) All roof and roof flashings shall be sound and tight such that no rain will penetrate the structure and must allow for appropriate drainage so as to prevent deterioration of the interior walls or other interior portions of the building. No temporary measures shall be permitted, such as tarps, canvas, plastic, boards, etc. Temporary boarding of windows may be permitted upon application and consent by the Building Official of the City of Kingston. The Building Official shall have the discretion to determine how long boarding may be permitted.
 - (3) The building must be maintained in good repair and be structurally sound and free from rubbish, garbage, and other debris.
 - (4) Structured members of the building shall be capable of bearing both live and dead loads, and the foundation walls likewise shall be capable of supporting an appropriate load.
 - (5) The exterior of the structure shall be free of loose or rotten materials as well as holes. Any exposed metal, wood or other surface shall be protected from the elements by appropriate weather coating materials (paint or similar treatment).
 - (6) Any balconies, canopies, signs, metal awnings, stairways, fire escapes or other overhanging extensions shall be in good repair and appropriately anchored. The exposed metal and wood surface of such overhanging extensions shall

also be protected from the elements and against rust or decay by appropriate application of paint or similar weather coating.

- (7) Any accessories or appurtenant structures, including but not limited to garages, sheds, and other storage facilities, shall meet the same standards.
 - (8) All bushes must be trimmed so as to provide an unobstructed view of the front of the house from the public roadway.
 - (9) Sidewalks and gutters shall be cleaned pursuant to § 355-20 of the Kingston City Code.
 - (10) The property shall be maintained in accordance with Chapter 3 of the Property Maintenance Code of New York State.
 - (11) All combustibles must be removed from the interior of all buildings and the exterior of the property.
 - (12) Smoke and carbon monoxide detectors shall be installed and maintained in operable condition at all times.
 - (13) The Building Official/Code Enforcement Officer of the City of Kingston shall be provided with proof of inspection of the premises by the agent or responsible party at least every 30 days after the abandonment commences.
 - (14) The grounds of the structure, including yards, fences, sidewalks, walks and driveways, shall be well maintained and kept free from trash or debris.
- B. In addition to the requirements set forth in Subsection A above, in the case of an abandoned building:
- (1) The owner and/or mortgagee shall post a sign affixed to the structure with a name, address and telephone number of the owner and/or mortgagee and the owner's and/or mortgagee's authorized agent for the purposes of service of process and the name, address and telephone number of the entity responsible for the maintenance of the property. The sign shall be at least 18 inches by 24 inches in dimension and shall include the words "To Report Problems with this Building/Property Call and/or e-mail" and shall be placed in a location where it is clearly legible from the nearest public street or sidewalk, whichever is nearer.
 - (2) The building shall be maintained in a secured and closed condition, keeping the grounds in a clean and well-maintained condition and ensuring that the sign is visible and intact until the building is again occupied or demolished or until repair or rehabilitation of the building is complete.

§ 179-6. Inspections.

The Building Official/Code Enforcement Officer, Fire Inspector and/or Police Department shall have the authority to inspect properties subject to this statute for compliance with same and to issue citations for any violations.

§ 179-7. Certification of abandonment.

Upon the Building Official/Code Enforcement Officer or his/her designee determining a property has been abandoned, he/she shall cause a certification of abandonment to be filed with the Building Department's records, and such certification shall be served upon the owner of the premises either personally or by posting a copy of the certification in a conspicuous place on the property and by mailing a copy by certified mail to the owner's (owners') last known address.

- A. Upon the Building Official/Code Enforcement Officer filing a certification of abandonment, the Building Official/Code Enforcement Officer, Police Department and/or Fire Inspector may, without further notice to the owner, take necessary steps to ensure the property and/or dwelling is properly maintained pursuant to this chapter. Costs incurred under this section shall be paid out of the municipal treasury on certificate of the Building Official/Code Enforcement Officer. Such costs shall be charged against the land on which the building existed, as a municipal lien, or shall be added to the tax roll as an assessment or shall be levied as a special tax against the land upon which the building stands or stood or shall be recovered in a suit at law against the owner.
- B. The owner of a property declared abandoned may petition the Building Department to remove the certification of abandonment by providing proof to the Building Official/Code Enforcement Officer that the basis for the certificate of abandonment no longer exists and the owner is in compliance with this chapter.

§ 179-8. Insurance.

The owner or mortgagee of any abandoned or vacant property shall acquire or otherwise maintain liability insurance in the amount of not less than \$300,000 for buildings designated primarily for a one-to-two-unit residential use and not less than \$1,000,000 for any other building, including but not limited to buildings designated for multifamily, manufacturing, storage or commercial uses covering any damage to any person or any property caused by any physical condition of or in the building. The City of Kingston shall be named as an additional insured and shall be entitled to notification of any renewal or lapse of coverage in writing of said policy. The owner and/or mortgagee shall attach evidence of insurance to the registration statement required by this chapter. Failure to attach the insurance statement to the registration form submitted to the City shall cause the registration form to be invalid. The alternative to insurance is that the owner and/or mortgagee must supply a cash bond acceptable in form to the Building Official/Code Enforcement Officer of the City of Kingston in a sum of \$10,000 to secure the continued maintenance of the property throughout its abandoned or vacant state and to remunerate the City of Kingston for any expenses incurred in inspecting, securing, marketing or making such building safe.

§ 179-9. Registry.

- A. The City of Kingston shall establish an online registry of all properties registered with the City under this chapter and shall include a procedure by which citizens can provide the Building Official/Code Enforcement Officer through electronic means with information on unregistered properties that may be subject to this chapter.

- B. New owners shall register or reregister the abandoned or vacant building or properties with the Building Official/Code Enforcement Officer within 30 days of any transfer of ownership interest in the abandoned or vacant building or property, whether or not the deed to said property has been recorded with the Ulster County Clerk.
- C. Failure or refusal of the owner to register a property does not preclude the property from the registry. The certificate of abandonment shall be used as the means to add the said property to the registry, making all requirements set forth in this Chapter 179 enforceable.

§ 179-10. Fees.

A. First year.

- (1) The owner/mortgagee of an abandoned building or property shall pay an annual fee of \$1,200 for the first year the building remains vacant or abandoned or any portion of said year. The fee shall cover the administrative costs for registering and processing the abandoned building or property and the cost for the City in monitoring the abandoned property or building. The fee shall be paid upon filing of the registration form as required by this chapter.
- (2) Failure to pay the fee shall result in said fee to be charged against the land on which the building existed, as a municipal lien, or shall be added to the tax roll as an assessment or shall be levied as a special tax against the land upon which the building stands or stood or shall be recovered in a suit at law against the owner.

B. Second year.

- (1) The owner/mortgagee of a vacant and/or abandoned building or property shall pay an annual fee of \$1,200 for the second year the building remains abandoned and/or vacant. The fee shall cover the administrative costs for registering and processing the vacant or abandoned building or property and the cost for the City in monitoring the abandoned or vacant property or building. The fee shall be paid upon filing of the registration form as required by this chapter.
- (2) Failure to pay the fee shall result in said fee to be charged against the land on which the building existed, as a municipal lien, or shall be added to the tax roll as an assessment or shall be levied as a special tax against the land upon which the building stands or stood or shall be recovered in a suit at law against the owner.

C. Subsequent annual fees shall be:

- (1) For the third year the building remains vacant or abandoned: \$1,200.
- (2) For the fourth year the building remains vacant or abandoned: \$1,200.
- (3) For the fifth year the building remains vacant or abandoned: \$5,200.
- (4) For the sixth year the building remains vacant or abandoned: \$6,200.

- (5) For the seventh year the building remains vacant or abandoned: \$7,200.
 - (6) For the eighth year the building remains vacant or abandoned: \$8,200.
 - (7) For the ninth year the building remains vacant or abandoned: \$9,200.
 - (8) For the 10th year the building remains vacant or abandoned: \$10,200.
- D. For ownership interest in any vacant or abandoned property, whether or not the deed has been recorded with the Ulster County Clerk, the owners shall be responsible for any unpaid fees.

§ 179-11. Exceptions.

- A. Any building exempted from registration pursuant to the provisions of the New York State Real Property Actions and Proceedings Law or other controlling federal or New York State law.
- B. A building which has been vacant for longer than one year, but less than two years, may request waiver of the fees set forth above upon submission of satisfactory proof of reasonable attempts to secure appropriate occupants or tenants for the building. The decision regarding said waiver shall rest in the discretion of the Deputy Chief of the Building Department and may be appealed in writing within 30 days to the Mayor of the City of Kingston. **[Amended 3-5-2019 by L.L. No. 1-2019, approved 3-19-2019]**
- C. A building or property which has suffered fire damage or damage caused by extreme weather conditions shall be exempt from the registration requirement for a period of 180 days after the date of the fire or extreme weather event if the property owner/mortgagee submits a request for exemption in writing to the Deputy Chief of the Building Department. This request shall include a description of the property; the names and addresses of the owner and/or mortgagee; and a statement of intent to repair and re-occupy the building in an expedient manner or intent to demolish the building. **[Amended 3-5-2019 by L.L. No. 1-2019, approved 3-19-2019]**
- D. Additional exceptions to this chapter shall be if in the sole and reasonable discretion of the Deputy Chief of the Building Department the property is subject to any one or more of the following: **[Amended 3-5-2019 by L.L. No. 1-2019, approved 3-19-2019]**
 - (1) A valid open building permit being pursued with diligence, not to exceed 12 months from the time the property became vacant or abandoned;
 - (2) A pending land use application, including site plan, subdivision or special permit application, being pursued with diligence, not to exceed 12 months from the time the property became vacant or abandoned;
 - (3) A pending application to a governmental body being pursued with diligence for an approval pertaining to the physical improvement of the property, not to exceed 12 months from the time the property became vacant or abandoned;
 - (4) Utilization of the building by the City of Kingston, on a temporary basis not to exceed 12 months, for City purposes, including but not limited to fire training;

- (5) The current owner/occupier is absent from the property while receiving health-related care as an inpatient of a residential health-care facility, not to exceed 12 months.
- E. The discretionary decision of the Building Official/Code Enforcement Officer as provided in Subsection A, B and C above may be appealed by the property owner/mortgagee in writing, within 30 days, to the Mayor of the City of Kingston.

§ 179-12. Penalties for offenses.

If an owner and/or mortgagee shall violate any portion of this chapter, such person shall be subject to a fine of not more than \$500 or 30 days in jail, or both, with the understanding that each day a violation continues shall be deemed a separate offense.

City of Vancouver

CITY OF VANCOUVER BRITISH COLUMBIA



VACANCY TAX BY-LAW NO. 11674

**This By-law is printed under and
by authority of the Council of
the City of Vancouver**

**(Consolidated for convenience only
to June 7, 2022)**

VACANCY TAX BY-LAW

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BY-LAW NO. 11674

A By-law to impose and collect a vacancy tax

**[Consolidated for convenience only,
amended to include By-law No. 13341
effective June 7, 2022]**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

**SECTION 1
INTERPRETATION**

Name of By-law

1.1 The name of this By-law, for citation, is the “Vacancy Tax By-law”.

Definitions

1.2 In this by-law:

“allowable property transfer tax exemption” means an exemption from the payment of property transfer tax under the following sections of the British Columbia Property Transfer Tax Act:

- (a) section 5 [first time home buyers' exemption];
- (b) section 12.02 [new housing exemption];
- (c) section 14(3)(k) [reversion, escheat or forfeit of land];
- (d) section 14(3)(o) [transfer of land by trustee in bankruptcy];
- (e) section 14(3)(p) [transfer of principal residence by trustee in bankruptcy];
- (f) section 14(4)(p.3) [transfer of land by Public Guardian and Trustee]; or
- (g) section 14(4)(r) [transfer to a veteran or veteran's spouse];

“arm’s length” means a tenant or subtenant who is not related to the registered owner by blood, marriage, adoption or common-law partnership, is not a corporation of which an individual registered owner is a director, officer or shareholder, is not a director, officer or shareholder of an incorporated registered owner, and is not a corporation with the same corporate interest holder or holders as the incorporated registered owner, except that if it is determined that non-arms’ length parties are treating the tenancy or subtenancy as if it was arm’s length, then it will be deemed to be at arm’s length;”

“business day” means any day other than a Saturday, Sunday or a holiday;

“corporate interest holder” means an individual who is a director, officer, or shareholder of a corporation;

“Greater Vancouver” means the Village of Anmore, Village of Belcarra, City of Burnaby, City of Coquitlam, City of Delta, City of Langley, Township of Langley, Village of Lion’s Bay, City of Maple Ridge, City of New Westminster, City of North Vancouver, District of North Vancouver, City of Pitt Meadows, City of Port Coquitlam, City of Port Moody, City of Richmond, City of Surrey, Tsawwassen First Nation, City of Vancouver, District of West Vancouver, City of White Rock, University Endowment Lands, and University of British Columbia;

“heritage property” means property that:

- (a) in the opinion of a person or body authorized to exercise a power under the *Vancouver Charter* in relation to the property, has sufficient heritage value or heritage character to justify its conservation; or
- (b) is protected heritage property;

“occupier” means a registered owner or a person who occupies residential property with the permission of the registered owner but is not a tenant or subtenant;

“notice of complaint” means a notice submitted by a registered owner pursuant to section 6.4;

“phased development” means the development of one or more parcels of residential property where the Director of Planning has agreed that the development will be undertaken in phases over time under more than one development permit;

“principal residence” means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence;

“registered owner” means the person or persons registered in the land title office as entitled to the fee simple or, in the case of a leasehold strata unit created by a leasehold strata plan, means the leasehold tenant as defined in the *Strata Property Act*, S.B.C 1998, c.43, provided that such leasehold tenant is recorded as taxable on the real property tax roll;

“residential property”, subject to any applicable regulations, means real property classified only as class 1 property (residential) on an assessment roll for the vacancy reference period under the *British Columbia Assessment Act* and its regulations, but does not include land or improvements or both used solely for nursing homes, rest homes, cookhouses, strata accommodation property or child daycare purposes (including group daycares, preschools, special needs daycares, family daycares, out of school care, residential care, emergency care and child minding), as may be further described in the *British Columbia Assessment Act* and its regulations;

“sublease agreement” means a tenancy agreement:

- (a) under which:
 - (i) the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and
 - (ii) the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and
- (b) that specifies the date on which the tenancy under the sublease agreement ends;

“supplementary vacancy tax notice” means a notice issued to a registered owner of residential property where the Collector of Taxes has determined after the 10th business day of March of the current tax year, that a vacancy tax notice should have been issued for a parcel of residential property for either the current tax year or one or both of the two most recent tax years;

“taxable assessed value” means the assessment value used in setting the City's real property tax rates under sections 373 and 374 of the Vancouver Charter;

“taxable property”, in relation to a vacancy tax, means residential property that is all of the following:

- (a) vacant property;
- (b) not exempt from taxation under either section 373 or 396 of the Vancouver Charter; and
- (c) not exempt from the vacancy tax under this by-law;

“tax year” means the calendar year in which the vacancy tax is imposed;

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

“vacancy reference period” means the calendar year prior to the then applicable tax year;

“vacancy tax notice” means a notice issued to a registered owner of taxable property setting out the vacancy tax that is imposed on that taxable property in accordance with this by-law;

“vacancy tax review officer” means the person appointed by Council to administer complaints made in accordance with the vacancy tax review provisions of this by-law and his or her delegates; and

“vacancy tax review panel” means the panel appointed by Council to administer reviews in accordance with the vacancy tax review provisions of this by-law.

Table of contents

1.3 The table of contents for this By-law is for convenient reference only, and is not for use in interpreting or enforcing this By-law.

Severability

1.4 A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

SECTION 2 VACANCY TAX

Vacancy tax

2.1 A vacancy tax shall be imposed on every parcel of taxable property in accordance with this By-law.

Unoccupied property

2.2 Residential property is considered to be unoccupied in the following circumstances:

- (a) the residential property is not the principal residence of an occupier; and
- (b) the residential property is not occupied for residential purposes by an arm's length tenant under a tenancy agreement, or by an arm's length subtenant under a sublease agreement, for a term of at least 30 consecutive days.

Vacant property

2.3 Residential property is considered to be vacant property if:

- (a) it has been unoccupied for more than six months during the vacancy reference period; or
- (b) it is deemed to be vacant property in accordance with this by-law.

Vacancy tax rate

2.4 The rate of the vacancy tax is:

- (a) 1% of the taxable assessed value of a parcel of taxable property for the 2017, 2018 and 2019 vacancy reference periods;
- (b) 1.25% of the taxable assessed value of a parcel of taxable property for the 2020 vacancy reference period;

- (c) 3% of the taxable assessed value of a parcel of taxable property for the 2021 and 2022 vacancy reference periods; and
- (d) 5% of the taxable assessed value of a parcel of taxable property for the 2023 vacancy reference period and any subsequent vacancy reference periods.

Date for payment of vacancy tax

2.5 The amount stated as due and payable on a vacancy tax notice issued pursuant to this by-law is due and payable by the registered owner of taxable property on or before the 10th business day of April of the year that the vacancy tax notice is issued.

Date for payment pursuant to supplementary vacancy tax notice

2.6 The amount stated as due and payable on a supplementary vacancy tax notice issued pursuant to this by-law is due and payable by the registered owner of taxable property on the due date set out in the supplementary vacancy tax notice.

Penalty for failure to pay vacancy tax

2.7 A vacancy tax which is due and payable and remains unpaid as of the 10th business day of April of the year in which it is due and payable is to incur and bear a penalty of 5%.

Penalty for failure to pay pursuant to supplementary vacancy tax notice

2.8 A vacancy tax which is due and payable and remains unpaid as of the due date set out in the supplementary vacancy tax notice is to incur and bear a penalty of 5%.

Vacancy tax is levy

2.9 A vacancy tax, together with any penalties levied for failure to pay the tax in accordance with this by-law, is a levy that may be lawfully inserted in the real property tax roll in the calendar year after the levy is due, unless authority has otherwise been provided by the Collector of Taxes, and may be collected as real property taxes, pursuant to Sections 409(2) and (3) of the Vancouver Charter.

SECTION 3 EXEMPTIONS

Death of registered owner

3.1 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period because of the death of the registered owner of the residential property in the applicable vacancy reference period, and this exemption also applies for the following vacancy reference period.

Property undergoing redevelopment or major renovations

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) redevelop or safely carry out major renovations to the property:
 - i. for which permits have been issued by the City by July 1st of the vacancy reference period, and
 - ii. which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay, or;
- (b) carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property:
 - i. for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City by July 1st of the vacancy reference period, and
 - ii. which, in the opinion of the General Manager of Development, Buildings and Licensing or the General Manager's delegates, is being diligently pursued and without unnecessary delay, or;
- (c) carry out either redevelopment or initial development of a parcel of residential property which is unimproved with any dwelling units and is part of a phased development which either:
 - i. has not been rezoned, where a complete rezoning enquiry or rezoning application for at least one of the parcels of residential property which comprise the phased development has been submitted by or on behalf of the registered owner and is under review by the City by July 1st of the vacancy reference period, or
 - ii. has been rezoned, where either:
 - (A) a complete development permit application has been submitted for at least one parcel of residential property which is part of the phased development and is under review by the City by July 1st of the vacancy reference period; or
 - (B) a development permit has been issued by the City for at least one parcel of residential property which is part of the phased development and work under the development permit is, in the opinion of the General Manager of Development, Buildings and Licensing or the General Manager's delegates, being diligently pursued and without unnecessary delay.

Property of owner in care

3.3 A vacancy tax is not payable under this By-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference

period because all occupiers who were previously occupying the residential property as a principal residence or all tenants or subtenants who were previously occupying the residential property for residential purposes are residing in a hospital, long term or supportive care facility, except that this exemption shall not be allowed for more than two consecutive vacancy reference periods unless there is a reasonable expectation that the occupiers, or tenants or subtenants, may be able to return to the residential property, in which case this exemption may be allowed for up to an additional two consecutive vacancy reference periods.

Rental restriction or prohibition

3.4 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period because:

- (a) the residential property is a strata unit in a strata development;
- (b) prior to November 16, 2016, the by-laws of the strata either:
 - (i) prohibited rentals altogether, or
 - (ii) restricted the number of strata units that could be rented and the maximum number of permitted strata rentals for the strata development has already been reached, provided that:
 - (A) the number of permitted strata rentals has not been decreased on or after November 16, 2016, and
 - (B) the registered owner is able to submit evidence that they were unable to rent the residential property during the vacancy reference period due to this restriction; and
- (c) provided that a registered owner may only claim this exemption for one strata unit.

Transfer of property

3.5 A vacancy tax is not payable under this by-law for a parcel of residential property if, during the vacancy tax period, the transfer of 100 percent of the legal interest in the property was registered in the Land Title Office and either the property transfer tax was paid or the registered owner qualified for an allowable property transfer tax exemption.

Occupancy for full-time employment

3.6 A vacancy tax is not payable under this by-law for a parcel of residential property if the principal residence of the registered owner during the vacancy reference period was outside of Greater Vancouver, but the residential property was occupied by the registered owner for residential purposes for a minimum aggregate of six months during the vacancy reference

period because the registered owner was employed full-time and the nature of that employment required their physical presence in Greater Vancouver.

Court order

3.7 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period solely because a court order, court proceedings or order of a governmental authority prohibits its occupancy, provided that the court proceedings or any conditions or requirements set out in any court order or order of a governmental authority are being diligently pursued without unnecessary delay by the registered owner and within any stated timelines.

Limited use residential property

3.8 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period because:

- (a) the lawful use of the property is limited to vehicle parking; or
- (b) as a result of the size, shape or other inherent limitation of the parcel, a residential building cannot be constructed on the parcel.

Combined period of redevelopment or renovation and occupation by tenant

3.9 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was, for a combined period of at least six months during the vacancy reference period:

- (a) unoccupied in order to redevelop or safely carry out major renovations to the property:
 - (i) for which permits have been issued by the City by July 1st of the vacancy reference period, and
 - (ii) which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay; and
- (b) occupied for residential purposes by an arm's length tenant under a tenancy agreement, or by an arm's length subtenant under a sublease agreement, for a term of at least 30 consecutive days either:
 - (i) prior to the issuance of such permits by the City, where the tenant or subtenant gave notice to end their tenancy, or
 - (ii) after the redevelopment or renovation work has been completed.

SECTION 4 ADMINISTRATION

Administrator

4.1 The Collector of Taxes is authorized to administer this by-law.

Property status declaration form

4.2 On or before the 31st day of December of each year, the Collector of Taxes must cause to be mailed to each registered owner of residential property whose name appears on the real property tax roll, to the address appearing on the real property tax roll, either a property status declaration form or instructions to make a property status declaration.

Record of mailing

4.3 The Collector of Taxes must keep a record of the date of mailing of the property status declaration form or the instructions to make the property status declaration.

Deemed receipt

4.4 A property status declaration form or instructions to make the property status declaration mailed in accordance with this by-law is deemed to have been received by the registered owner four days after mailing.

Completion and return of property status declaration

4.5 For each real property tax folio, a registered owner or his or her agent or authorized representative must complete and return only one property status declaration to the City in the form and manner required by the City on or before the 2nd business day of the February following the receipt of the property status declaration form or instructions to make the property status declaration.

Review of completed property status declaration

4.6 The Collector of Taxes must review each completed property status declaration and determine whether the information provided by a registered owner is sufficient, in the opinion of the Collector of Taxes, to establish the status of a residential property during the vacancy reference period.

Requirement for further information

4.7 The Collector of Taxes may require a registered owner to provide information at any time and for a period of up to two years after the applicable vacancy reference period respecting:

- (a) the property;
- (b) the identity and address of the registered owner;

- (c) the identity and address of any person occupying the property;
- (d) the status of the property; and
- (e) the nature of the occupancy of the property during the vacancy reference period.

Requirement to submit evidence

4.8 The Collector of Taxes may require a registered owner to submit evidence to verify a property status declaration and the status of the property.

Type and form of information and evidence

4.9 The information or evidence required by the Collector of Taxes pursuant to this by-law may include but is not limited to:

- (a) copies or certified copies of:
 - i. ICBC vehicle insurance and registration,
 - ii. government-issued personal identification, including, without limitation, driver's license, BCID card, British Columbia Services Card,
 - iii. utility bills,
 - iv. income tax returns and notices of assessment,
 - v. tenancy agreements,
 - vi. wills, grants of probate, or grants of administration,
 - vii. employment contracts, pay statements or records of employment,
 - viii. verification of residence in long term or supportive care,
 - ix. verification of educational enrolment form,
 - x. separation agreements,
 - xi. court orders,
 - xii. insurance certificates for homeowners or tenants insurance,
 - xiii. strata by-laws, minutes of strata meetings or records prepared or maintained by the strata; and
- (b) statutory declarations or affidavits regarding the status of the property.

Power to request particulars from registered owner

4.10 The Collector of Taxes may require a registered owner who has not submitted a completed property status declaration, to provide information or submit evidence in accordance with 4.7, 4.8 or 4.9 of this by-law.

Power of entry

4.11 The Collector of Taxes, and anyone authorized to act on behalf of the Collector of Taxes, is authorized to enter onto residential property for the purpose of determining the status of the property and whether the property is subject to the vacancy tax, except that the Collector of Taxes must first:

- (a) send a registered letter to the registered owner at the address appearing on the real property tax roll, advising of the time and date of the inspection; and
- (b) post a copy of the registered letter on the residential property.

Determination of taxable property

4.12 The Collector of Taxes must review the property status declaration, and all information and evidence collected in regards to a parcel of residential property and must determine whether or not the parcel is taxable property that is subject to the vacancy tax, except that, in the case of a parcel of residential property deemed to be vacant under this by-law, the Collector of Taxes must consider the parcel to be vacant property and subject to the vacancy tax.

Vacancy tax notice

4.13 Subject to Section 4.14, the Collector of Taxes must cause a vacancy tax notice to be mailed to each registered owner of taxable property on or before the 10th business day of March of each year.

Supplementary vacancy tax notice

4.14 If the Collector of Taxes determines at any time after the 10th business day of March that a vacancy tax notice should have been issued for a parcel of residential property for either the current tax year or one or both of the two most recent tax years to which this by-law applies, the Collector of Taxes must cause a supplementary vacancy tax notice to be mailed to the registered owner of the taxable property for the applicable tax year or years.

Record of mailing

4.15 The Collector of Taxes must keep a record of the date of mailing of vacancy tax notices and supplementary vacancy tax notices.

Deemed receipt

4.16 A vacancy tax notice or a supplementary vacancy tax notice mailed in accordance with this by-law is deemed to have been received by the registered owner four days after mailing.

Record of taxable properties

4.17 The Collector of Taxes must prepare a record of all taxable properties listing all of the parcels of residential properties in respect of which a vacancy tax notice has been issued, on or before the 10th business day of March each year.

Corrections to taxable property record

4.18 If a parcel of residential property that has been listed on the record of taxable properties is subsequently determined not to be taxable property or if a supplementary vacancy tax notice has been issued for a residential property in accordance with this by-law, the Collector of Taxes must correct and update the record of taxable properties.

Refunds for overpayment

4.19 The Collector of Taxes must refund to a registered owner any excess amount of vacancy tax paid by the registered owner and any amount of penalty and interest paid pursuant to this by-law on the excess amount.

No payment of interest

4.20 No interest is payable on any refund authorized by this by-law.

SECTION 5 RESPONSIBILITIES OF THE OWNER

Requirement for declaration

5.1 A registered owner of residential property must not fail to make a property status declaration in accordance with this by-law.

Due date for submission

5.2 A registered owner of residential property must submit a completed annual property status declaration to the City on or before the 2nd business day in February of each year.

False declaration

5.3 A registered owner must not:

- (a) make a false property status declaration; or
- (b) fail to correct a false property status declaration.

Providing information or evidence

5.4 A registered owner:

- (a) must provide any information or submit any evidence that is required by the Collector of Taxes or vacancy tax review officer in accordance with this by-law;
- (b) must provide the information or submit the evidence in the form and within the time stipulated by the Collector of Taxes or vacancy tax review officer; and

- (c) must not provide false information or submit false evidence to the Collector of Taxes or vacancy tax review officer.

SECTION 6 COMPLAINTS AND REVIEW PROCESS

Vacancy tax review officer

6.1 The vacancy tax review officer is authorized to administer the applicable provisions of this by-law.

Complaint to vacancy tax review officer

6.2 A registered owner who has received a vacancy tax notice or supplementary vacancy tax notice may submit a complaint regarding the decision to impose the vacancy tax, to the vacancy tax review officer, on one or more of the following grounds:

- (a) an error or omission on the part of the City resulted in the imposition of the vacancy tax; or
- (b) an error or omission on the part of the registered owner in completing the property status declaration resulted in the imposition of the vacancy tax.

Complaint process

6.3 A registered owner may submit a complaint to the vacancy tax review officer by submitting a notice of complaint:

- (a) in the case of a vacancy tax notice, on or before the 10th business day of April of the year in which it is due and payable, unless such time period is extended by the vacancy tax review officer, except that no such extension will be granted beyond the second business day of July of the year after the year in which the tax is due and payable, except for the 2017 and 2018 vacancy reference periods where an extension may be granted until December 31st, 2020; and
- (b) in the case of a supplementary vacancy tax notice, within 90 days of the date of issue of the supplementary vacancy tax notice, unless such time period is extended by the vacancy tax review officer, except that no such extension will be granted beyond one year from the date of issue noted on the supplementary vacancy tax notice.

Notice of complaint

6.4 The notice of complaint must:

- (a) identify the residential property in respect of which the complaint is made;
- (b) include the full name of the complainant and a telephone number or email address at which the complainant may be contacted during regular business hours;

- (c) indicate whether the complainant is the registered owner of the property to which the complaint relates;
- (d) if the complainant is an agent acting on behalf of the registered owner, include information regarding the nature of their terms of agency and authority to act on behalf of the registered owner;
- (e) state the grounds on which the complaint is based under Section 6.2;
- (f) state why the parcel should not be subject to the vacancy tax based on the grounds of complaint; and
- (g) provide supplementary information and evidence to substantiate the reasons for the complaint.

Request for further information or evidence

6.5 Upon receiving a notice of complaint, the vacancy tax review officer may require the registered owner to provide any of the information or evidence that is set out in Sections 4.7, 4.8 and 4.9.

Refusal for failure to comply with section 6.3, 6.4 or 6.5

6.6 The vacancy tax review officer may refuse a complaint if the registered owner or complainant fails to comply with the provisions of section 6.3, 6.4 or 6.5 of this by-law.

Consideration of complaint

6.7 Subject to the provisions of this by-law, the vacancy tax review officer must, within a reasonable time, consider the notice of complaint and any supplementary information and evidence, make a determination on the complaint, advise the registered owner in writing of the determination and, if the complaint is successful, rescind the vacancy tax notice.

Determination to be mailed

6.8 The vacancy tax review officer must advise the registered owner of the determination by mailing a copy of the determination to the registered owner at the address appearing on the real property tax roll.

Deemed receipt of determination

6.9 A determination of the vacancy tax review officer that has been mailed in accordance with this by-law is deemed to have been received by the registered owner four days after mailing.

Review by vacancy tax review panel

6.10 A registered owner who has received a determination of the vacancy tax review officer may request a review of that determination by the vacancy tax review panel.

Review process

6.11 A registered owner who wishes a review by the vacancy tax review panel must submit a review request to the vacancy tax review panel within 90 days of the date of deemed receipt of the determination of the vacancy tax review officer.

Review request

6.12 The review request must:

- (a) identify the residential property in respect of which the request is made;
- (b) include the full name of the requestor and a telephone number or email address at which the requestor may be contacted during regular business hours;
- (c) indicate whether the requestor is the registered owner of the property to which the request relates;
- (d) if the requestor is an agent acting on behalf of the registered owner, include information regarding the nature of their terms of agency and authority to act on behalf of the registered owner; and
- (e) state the grounds on which the review request is based.

Refusal for failure to comply with section 6.12

6.13 The vacancy tax review panel may refuse a review request if the registered owner or requestor fails to comply with the provisions of section 6.12 of this by-law.

Consideration of review request

6.14 Subject to the provisions of this by-law, the vacancy tax review panel must, within a reasonable time, consider the review request based on the materials provided pursuant to Section 6.12 and, without a hearing, make a determination on the review, advise the registered owner in writing of its determination and, if the review request is successful, rescind the vacancy tax notice.

Review is final

6.15 The determination of the vacancy tax review panel is final and no appeal lies from the determination of the vacancy tax review panel.

SECTION 7 DEEMED VACANCY

Property considered to be taxable

7.1 A parcel of residential property in respect of which a registered owner:

- (a) fails to make a property status declaration as required by this by-law;
- (b) makes a false property status declaration;

- (c) fails to provide information or to submit required evidence to the Collector of Taxes in accordance with this by-law, including, without limitation, the information or evidence that may be required pursuant to Sections 4.7, 4.8 or 4.9 of this by-law; or
- (d) provides false information or submits false evidence to the Collector of Taxes;

is considered to be vacant property and is subject to the vacancy tax.

SECTION 8 OFFENCES AND PENALTIES

Offences

8.1 A person who:

- (a) violates any provision of this by-law, or does any act or thing which violates any provision of this by-law, or permits, suffers or allows any other person to do any act or thing which violates any provision of this by-law;
- (b) neglects to do or refrains from doing anything required to be done by any provision of this by-law; or
- (c) fails to comply with an order, direction, or notice given under any provision of this by-law, or permits, suffers or allows any other person to fail to comply with an order, direction, or notice given under any provision of this by-law,

is guilty of an offence against this by-law, and liable to the penalties imposed under this section and under the Vancouver Charter.

Fine for offence

8.2 Except as otherwise provided in this By-law, every person who commits an offence against this by-law is punishable on conviction by a fine of not less than \$250.00, and not more than \$10,000.00 for each offence.

Fine for continuing offence

8.3 Every person who commits an offence of a continuing nature against this by-law is punishable upon conviction by a fine of not less than \$250.00, and not more than \$10,000.00 for each day such offence continues.

SECTION 9 ANNUAL REPORT

Preparation of annual report

9.1 On or before November 1st of each year, the Collector of Taxes must prepare a report regarding the vacancy tax from the previous vacancy reference period, which must include:

- (a) the amount of monies raised by the vacancy tax; and
- (b) how the monies raised by the vacancy tax were or are intended to be used.

Publication of annual report

9.2 The annual report regarding the vacancy tax must be posted on the City of Vancouver website by December 1st of each year.

**SECTION 10
ENACTMENT**

Force and effect

10.1 This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this 16th day of November, 2016

Signed _____ "Gregor Robertson"
Mayor

Signed _____ "Janice MacKenzie"
City Clerk