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MEMORANDUM

DATE: October 17, 2023

TO: City Council

CC: Steve Burns, City Manager; Steve Wilcox, Development Services Director

FROM: Scott Missall, City Attorney; Drew Pollom

RE: Introduction to Short Term Rentals, Ghost Homes and Regulatory Options

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Introduction

In Medina, as in many other cities, long-vacant homes have become increasingly noticeable for the lack of community presence and neighborhood participation, and oftentimes for unattended yards and shrubbery. Medina Staff and Council have seen and received comments and complaints from Medina residents about such empty houses and the negative affects that can accompany them. Sometimes referred to as ghost homes or zombie homes, such properties are generally defined as unoccupied residential properties where the owner (for whatever reason) does not live in or rent out the property.

For similar but also different reasons, Staff and Council have received comments and complaints about the use of residential properties in Medina (whether occupied or not) for short-term rental purposes. Short term rentals, also called vacation rentals, are a relatively recent but growing phenomena. They are defined as rental property whether in the form of a single-family home, apartment, attached or detached accessory dwelling unit (ADU and DADU, respectively), or even one or more single rooms within a residence (colloquially a bed and breakfast), where the rental stay is generally between 1-30 days in duration. Short term rentals can be personally managed by the property owner or an agent, or through commercial entities such as Airbnb and Vrbo.

The purpose of this memorandum is to provide the Council with a legal overview of such properties and uses, pertinent Washington State requirements, and a few limited examples of regulations adopted in other jurisdictions. The intent of the memorandum is to provide an information platform for Council and Staff to begin discussing these topics, possible regulatory options and directions, and ultimately a determination as to whether (or not) formal regulatory actions are appropriate or warranted.

Short-Term Rentals

Municipal concerns or interests about short-term rentals (hereinafter STR) fall generally into four categories:

* Collection of lodging and sales tax revenues on STR stays.
* Mitigation of traffic, parking, noise, and other impacts on surrounding neighborhoods.

* Compliance with life/safety standards, liability and insurance commonly applied to other types of lodging rental establishments (e.g., hotels, motels, bed-and-breakfasts).
* And recently in Washington, efforts and requirements to address temporary housing and long-term affordable housing needs on both institutional and noninstitutional bases.

As to the first three bullet points above, RCW Chapter 64.37 (Short-Term Rentals)[1] was adopted in 2019 to provide detailed definitions and rules for the purpose of enabling collection of local and state taxes, ensuring user safety, and ensuring liability coverage. The Final Bill Report[2] for that statute efficiently summarizes the intent, scope and application of the law. The key points identified in the Final Bill Report are these:

* STR means a lodging use in a residential dwelling in which a dwelling unit is provided to a guest by an STR operator for a fee and a duration of fewer than thirty consecutive nights.
* STR excludes the following: (i) hotels, motels and bed and breakfast facilities; (ii) a dwelling unit occupied by the owner thereof for at least six months during a calendar year and in which less than three rooms are rented at any time; (iii) a dwelling unit used by the same person for thirty or more consecutive nights; and (iv) dwelling units that are operated by charities or governments to provide temporary housing to people being treated for trauma, injury or disease.
* Applicable local, state and federal taxes must be paid, collected and remitted for STR use. Such taxes include occupancy, sales, lodging, and other taxes, fees, and assessments adopted by the local jurisdiction.
* STR users must receive a (lengthy) list of user/consumer safety information; local jurisdictions must enforce that requirement as a civil infraction.
* STR operators must maintain not less than $1,000,000 of primary liability coverage for the rental use.

The City should consider and adopt local regulations implementing the foregoing statutory requirements and guidance, which can take the form of local licensing and operational rules, tax payment and collection procedures, and other appropriate local regulations.

In doing so, the City is required to abide the State Growth Management Act (GMA) and certain other laws. The following RCW statutes specifically cite to STR uses and provide guidance regarding the scope and application of local STR regulations:

* RCW 36.70A.680 (Accessory Dwelling Units—Local Regulations). This statute provides in Section 5(a) that "Nothing in this section or in RCW 36.70A.681 prohibits a city … from (a) Restricting the use of accessory dwelling units for short-term rentals."
* RCW 36.70A.681 (Accessory Dwelling Units—Limitations on Local Regulations). This statute provides in subsection 1(b) that "The city … may not require the owner of a lot on which there is an accessory dwelling unit to reside in or occupy the accessory dwelling unit or another housing unit on the same lot; …." Subsection 1(c) provides that "The city … must allow at least two accessory dwelling units on all lots that are located in zoning

[1] See Appendix for text of RCW Chapter 64.37 (Short-Term Rentals).
[2] See Appendix for 2019 Final Bill Report (SHB 1798) on adoption of RCW Ch. 64.37.

districts within an urban growth area that allow for single-family homes [in certain defined configurations]."

* RCW 35A.21.314 (Code City May Not limit Number of Unrelated Persons Occupying a Household or Dwelling Unit—Exceptions). This statute provides as follows: "Except for occupant limits on group living arrangements regulated under state law or on short-term rentals as defined in RCW 64.37.010 and any lawful limits on occupant load per square foot or generally applicable health and safety provisions as established by applicable building code or city ordinance, a code city may not regulate or limit the number of unrelated persons that may occupy a household or dwelling unit."[3]

A nearby example of a formal STR regulatory program is the City of Clyde Hill, which adopted STR regulations in 2016 (three years before the State adopted RCW Ch. 64.37).[4] Those regulations require STR operators to obtain an administrative business license from Clyde Hill, maintain a certificate of insurance, certificate of inspection, and abide by other conditions, including land use requirements.

A more restrictive approach appears to have been taken by the City of Leavenworth, which appears to limit STR to "bed and breakfast" rentals as described in Leavenworth's conditional use permit chapter.[5] In Leavenworth's lengthy set of conditional use permit restrictions and requirements, a residential dwelling operating a bed and breakfast is limited to a maximum of 3 rentable bedrooms; the owner must live in-residence; maximum occupants are limited; external impacts on neighborhood quietude and parking are not allowed; all applicable health, fire safety, and building codes must be met; applicable taxes and fees must be paid and up to date; and site inspections are required. The hearing examiner is authorized to append other conditions as deemed appropriate.

A final STR example comes from San Francisco, which limits the number of nights a property owner 'hosts' in any given year, depending on whether the homeowner occupies the residence.[6] San Francisco then allows a homeowner to rent a portion of their residence for an unlimited number of nights if the owner is present in the home, but sets a maximum of 90 'unhosted' nights per calendar year. This enables a homeowner to continue to rent transient rooms in a property where they live while limiting the number of 'permanent full time' STR properties that could reduce the affordable housing supply.

Ghost Homes

The subject of ghost homes—properties where the owner or other habitants are not often present—is less well developed and, in Washington, not regulated so far as we can determine.[7]

[3] There are other statutes that will apply to STR through their linkage to GMA, building codes, etc., but are beyond the introductory scope of this memorandum.
[4] See Appendix for Clyde Hill Municipal Code Chapter 5.20 (Short-Term Rentals).
[5] See Appendix for Leavenworth Municipal Code Chapter 18.52, specifically §18.52.120 (last amended 2023). Note we have not at this point performed any exhaustive preemption or facilitation analysis of RCW Ch. 64.37, other applicable state laws, nor individual city regulations.
[6] See Appendix for San Francisco Administrative Code §41A.5(g). California presumptively has state laws regarding STR; we have not examined that question at this point.
[7] There are, however, so-called 'zombie homes' that have been the subject of litigation. See Appendix for an article by Oskar Rey, 'What Can Be Done About "Zombie" Properties?' (MRSC; January 1, 2017).

In reviewing regulations nationwide, municipalities generally attempt to address ghost homes through use of a 'vacancy tax', levied generally if a home is left vacant for a set duration in the course of a calendar year. The tax may be assessed as a flat fee or based on the assessed value of the property. Several cities in California, including San Francisco, have or will implement a vacancy tax soon.

In San Francisco's case, a residential vacancy tax will start on January 1, 2024.[8] At that time, property owners with at least three units that have been vacant for more than 182 days (six months) will be taxed between $2,500 and $5,000 per empty unit. In subsequent years, that penalty will increase to as much as $20,000 per empty unit. The penalty money collected from the tax will go to a housing activation fund which will subsidize affordable housing, including housing for individuals in the city over the age of 60. Single-family homes and duplexes are exempt from the vacancy tax. Out of roughly 40,000 empty housing units in San Francisco, the San Francisco Controller's Office estimates that 4,000 units are likely to qualify for the vacancy tax.

Across from San Francisco in Oakland, voters adopted the Oakland Vacant Property Tax (VPT) Act. [9] The VPT Act establishes an annual tax of $3,000 to $6,000 on vacant residential properties. A property is considered vacant if it is "in use less than fifty (50) days in a calendar year" and is not subject to any of the following wide-ranging statutory exemptions[10]:

* 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

Development Services has already had some experiences with ghost homes. In very general terms, these were described to us as follows:

> Regarding vacant homes, this is something that the Development Services Department occasionally becomes involved with as code enforcement actions. A tax on these types of vacant homes may be incentive for them to be turned into rentals, which could present another set of problems. Vacant homes can create code enforcement issues even when the property is well maintained. The biggest problems in code enforcement relative to vacant homes is the fact that the owners are often not local, difficult to locate, and if found

[8] See Appendix for an article by Alex Schultz, "San Francisco voters back Prop. M, a vacancy tax on landlords." SFGate (November 15, 2022). Also available via https://www.sfgate.com/politics/article/san-francisco-voters-vacancy-tax-17584082.php.
[9] See Appendix for Oakland Municipal Code § 4.56.030; City of Oakland "Vacant Property Tax" *available at* https://www.oaklandca.gov/topics/vacantpropertytax.
[10] Oakland Municipal Code § 4.56.020 and §4.56.030 (J).

can be difficult to work with in correcting problems with their property. The City does have some adopted codes to help with poorly maintained properties.

Conclusion

This memorandum is the first step to beginning the discussion of these subjects and issues with Council and Staff. We expect it will be an iterative process to identify issues and options, reach interim understandings and proposals, produce final decisions, all followed up with implementation. At a very obvious level, any STR regulations the City wishes to put in place will minimally need to comply with State law. For ghost homes, vacancy taxes appear to have been used to disincentivize property owners from maintaining vacant homes. As there are no State laws and no Washington city has so far implemented a vacancy tax like those adopted in California, further research and analysis will be part of the upcoming legislative process.

Appendix

RCW Chapter 64.37

Chapter 64.37 RCW
SHORT-TERM RENTALS

Sections

RCW 64.37.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Contact" means the operator or the operator's representative who is the point of contact for any short-term rental guest for the duration of the guest's stay in the short-term rental.

(2) "Department" means the department of revenue.

(3) "Dwelling unit" means a residential dwelling of any type, including a single-family residence, apartment, condominium, cooperative unit, or room, in which a person may obtain living accommodations for less than thirty days, but not including duly licensed bed and breakfast, inn, hotel, motel, or timeshare property.

(4) "Fee" means remuneration or anything of economic value that is provided, promised, or donated primarily in exchange for services rendered.

(5) "Guest" means any person or persons renting a short-term rental unit.

(6) "Operator" or "short-term rental operator" means any person who receives payment for owning or operating a dwelling unit, or portion thereof, as a short-term rental unit.

(7) "Owner" means any person who, alone or with others, has title or interest in any building, property, dwelling unit, or portion thereof, with or without accompanying actual possession thereof, and including any person who as agent, executor, administrator, trustee, or guardian of an estate has charge, care, or control of any building, dwelling unit, or portion thereof. A person whose sole interest in any building, dwelling unit, or portion thereof is solely that of a lessee under a lease agreement is not considered an owner.

(8) "Person" has the same meaning as provided in RCW 82.04.030.

(9)(a) "Short-term rental" means a lodging use, that is not a hotel or motel or bed and breakfast, in which a dwelling unit, or portion thereof, that is offered or provided to a guest by a short-term rental operator for a fee for fewer than thirty consecutive nights.

(b) "Short-term rental" does not include any of the following:

(i) A dwelling unit that is occupied by the owner for at least six months during the calendar year and in which fewer than three rooms are rented at any time;

(ii) A dwelling unit, or portion thereof, that is used by the same person for thirty or more consecutive nights; or

(iii) A dwelling unit, or portion thereof, that is operated by an organization or government entity that is registered as a charitable organization with the secretary of state, state of Washington, or is classified by the federal internal revenue service as a public charity or a private foundation, and provides temporary housing to individuals

who are being treated for trauma, injury, or disease, or their family members.

(10) "Short-term rental advertisement" means any method of soliciting use of a dwelling unit for short-term rental purposes.

(11) "Short-term rental platform" or "platform" means a person that provides a means through which an operator may offer a dwelling unit, or portion thereof, for short-term rental use, and from which the person or entity financially benefits. Merely publishing a short-term rental advertisement for accommodations does not make the publisher a short-term rental platform. [2019 c 346 § 1.]

RCW 64.37.020 Taxes. Short-term rental operators must remit all applicable local, state, and federal taxes unless the platform does this on the operator's behalf. This includes occupancy, sales, lodging, and other taxes, fees, and assessments to which an owner or operator of a hotel or bed and breakfast is subject in the jurisdiction in which the short-term rental is located. If the short-term rental platform collects and remits an occupancy, sales, lodging, and other tax, fee, or assessment to which a short-term rental operator is subject on behalf of such operator, the platform must collect and remit such tax to the appropriate authorities. [2019 c 346 § 2.]

RCW 64.37.030 Consumer safety. (1) All short-term rental operators who offer dwelling units, or portions thereof, for short-term rental use in the state of Washington must:

(a) Provide contact information to all short-term rental guests during a guest's stay. The contact must be available to respond to inquiries at the short-term rental during the length of stay;

(b) Provide that their short-term rental is in compliance with RCW 19.27.530 and any rules adopted by the state building code council regarding the installation of carbon monoxide alarms; and

(c) Post the following information in a conspicuous place within each dwelling unit used as a short-term rental:

(i) The short-term rental street address;

(ii) The emergency contact information for summoning police, fire, or emergency medical services;

(iii) The floor plan indicating fire exits and escape routes;

(iv) The maximum occupancy limits; and

(v) The contact information for the operator or designated contact.

(2) Short-term rental platforms must provide short-term rental operators with a summary of the consumer safety requirements in subsection (1) of this section.

(3) For a first violation of this section, the city or county attorney must issue a warning letter to the owner or operator. An owner that violates this section after receiving a warning letter is guilty of a class 2 civil infraction under chapter 7.80 RCW. [2019 c 346 § 3.]

RCW 64.37.040 Short-term rental platforms. (1) No short-term rental platform may engage in the business in the state of Washington unless the short-term rental platform is in compliance with the requirements of this chapter.

(2) A short-term rental platform must register with the department.

(3) Short-term rental platforms must inform all operators who use the platform of the operator's responsibilities to collect and remit all applicable local, state, and federal taxes unless the platform does this on the operator's behalf.

(4) Short-term rental platforms must inform all operators who use the platform of short-term rental safety requirements required in this chapter.

(5) Short-term rental platforms must provide all operators who use the platform with written notice, delivered by mail or electronically, that the operator's personal insurance policy that covers their dwelling unit might not provide liability protection, defense costs, or first party coverage when their property is used for short-term rental stays. [2019 c 346 § 4.]

RCW 64.37.050 Liability insurance. A short-term rental operator must maintain primary liability insurance to cover the short-term rental dwelling unit in the aggregate of not less than one million dollars or conduct each short-term rental transaction through a platform that provides equal or greater primary liability insurance coverage. Nothing in this section prevents an operator or a platform from seeking contributions from any other insurer also providing primary liability insurance coverage for the short-term rental transaction to the extent of that insurer's primary liability coverage limits. [2019 c 346 § 5.]

Final Bill Report (SHB 1798) on adoption of RCW Ch. 64.37

FINAL BILL REPORT
SHB 1798

C 346 L 19
Synopsis as Enacted

Brief Description: Concerning short-term rentals.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Ryu, Mosbrucker, Stanford and Pollet).

House Committee on Consumer Protection & Business
Senate Committee on Financial Institutions, Economic Development & Trade

Background:

Transient accommodations are facilities such as a hotels, motels, condominiums, resorts, or any other facilities or places offering three or more lodging units to travelers and transient guests.

A traveler or transient guest is a person that rents a lodging unit for less than 30 days. The guest, resident, or other occupant who purchases the lodging is a nontransient on day 30, regardless of the lodging unit they occupy throughout the continuous 30-day period.

A guest who contracts in advance and remains in continuous occupancy for the initial 30 days is considered a nontransient from the time they start occupying the unit. A business does not need to charge tax on charges for nontransient lodging.

Property owners who rent out homes, rooms, condominiums, timeshares, cabins, and campsites on a short-term basis (less than 30 consecutive days) for overnight accommodations must register with the Department of Revenue (DOR) and collect and remit retail sales tax and applicable lodging taxes on the rental charges. Property owners also owe business and occupation tax, but may qualify for the small business and occupation tax credit. Property owners may choose to use the services of a property manager or an online marketplace for booking and tax collection purposes. The property owners may still be required to register with the DOR and are required to report their rental income on an excise tax return.

Summary:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A short-term rental platform (platform) is required to register with the DOR. A short-term rental operator (operator) must remit all local, state, and federal taxes on their own accord, or through collection by a platform.

Operators are required to comply with the following consumer safety requirements:

- provide contact information of someone available to respond to guest inquiries during the length of stay;
- comply with all laws and regulations related to carbon monoxide alarms; and
- conspicuously post the rental unit's address, emergency services contact information, floor plan with fire exits and escape routes, maximum occupancy limits, and operator contact information.

Platforms must provide an operator with a summary of these safety requirements. A city or county prosecutor must issue a warning letter to owners or operators that do not comply with the safety requirements. An owner who does not comply after receiving a warning letter is guilty of a class 2 civil infraction.

An operator must maintain primary liability insurance to cover the short-term rental unit or conduct the rental transaction through a platform that provides equal or greater primary liability insurance coverage. The insurance policy may not be less than $1 million and nothing prevents an operator or platform from seeking contributions from any other insurer also providing primary liability insurance coverage for the short-term rental to the extent of that insurer's primary liability coverage limits.

Votes on Final Passage:

House	65	32	
Senate	39	6	(Senate amended)
House	70	24	(House concurred)

Effective: July 28, 2019

Clyde Hill Municipal Code Chapter 5.20

CLYDE HILL

Chapter 5.20
SHORT-TERM RENTALS

Sections:

5.20.010 Administrative permit required.

A. Purpose. It is the intent of this chapter to recognize the desire of some property owners to rent their dwelling on a short-term basis and establish appropriate regulations to mitigate the disruption that short-term and vacation rental dwellings may have on a neighborhood. This purpose and intent shall govern the interpretation of the entire chapter.

B. Permit Required. Any person desiring to rent their home on a short-term or vacation rental basis shall make application for a business license pursuant to Chapter 5.18 CHMC, and pay the administrative fee established by city resolution for this purpose as well as the master license service's applicable handling fee. For purposes of this chapter, a "short-term or vacation rental" means the rental of a dwelling or portion thereof used for the purpose of providing lodging for periods of less than 30 days. A short-term or vacation rental shall not include a house-swap or home-exchange arrangement. (Ord. 946 § 2, 2016)

5.20.020 Conditions of approval of a business license for short-term rentals.

A. The following conditions of approval shall apply to business license applications for short-term or vacation rentals:

1. Local Property Representative. The property owner must designate a local property representative who shall be available 24 hours per day, seven days per week, for the purpose of: (a) responding within one hour to complaints regarding the condition, operation, or conduct of occupants of the short-term rental; and (b) taking remedial action to resolve any such complaints. The name, address, and telephone contact number of the property owner and the local property representative shall be kept on file at the city. The failure to provide the contact information,

failure to keep the contact information current, failure to respond in a timely manner to complaints, or the occurrence of repeated complaints may result in the suspension or revocation of approval and/or civil or criminal penalties.

2. Occupancy. Maximum occupancy of the rental shall be based on the International Building Code standards. The property owner shall be responsible for ensuring that the dwelling unit is in conformance with its maximum occupancy.

3. Restrictions on Use. A renter may not use a short-term rental for a purpose not incidental to its use for lodging or sleeping purposes. This restriction includes using the rental for a wedding, banquet, reception, bachelor or bachelorette party, concert, fundraiser, sponsored event, or any similar group activity.

4. Parking. There will be no demand for parking beyond that which is normal to a residential area and no unusual or excessive traffic to and from the premises.

5. Signage. No outdoor advertising signs related to the rental dwelling shall be allowed on the site.

6. Informational Packet. A packet of information shall be provided to renters and posted conspicuously in the common area of the short-term rental summarizing guidelines and restrictions applicable to the short-term rental use, including:

a. Information on maximum occupancy;

b. Applicable noise and use restrictions;

c. Location of off-street parking;

d. Direction that trash shall not be stored within public view, except within proper containers for the purpose of collection, and provision of the trash collection schedule;

e. Contact information for the local property representative;

f. Evacuation routes;

g. The renter's responsibility not to trespass on private property or to create disturbances; and

h. Notification that the renter is responsible for complying with this chapter and that the renter may be cited or fined by the city for violating any provisions of this chapter.

7. Insurance. The property owner shall maintain on file at the city an up-to-date certificate of insurance documenting that the dwelling is insured as a short-term or vacation rental.

8. Inspection. The property owner or his/her designee shall maintain on file at the city an up-to-date certificate of inspection documenting that the dwelling complies with the provisions for transient accommodations in the International Building Code as adopted by the city and shall obtain an appropriate certificate of occupancy. It shall be the responsibility of the property owner to schedule and pass an annual safety inspection.

9. Compliance with City Ordinances. All short-term or vacation rentals must comply with all city codes and ordinances, including but not limited to Chapter 8.10 CHMC, Noise Regulations, and Chapter 8.05 CHMC, Nuisances.

B. Effective Date and Expiration. A business license obtained under Chapter 5.18 CHMC shall be effective for one year, and shall expire on the date established by the master license service. Should an applicant apply for a license after the beginning of the license year, the license fee as established by periodic resolution of the city council shall be paid in full and shall not be prorated. The business license renewal procedures established in CHMC 5.18.090 shall apply. (Ord. 946 § 2, 2016)

5.20.030 Notice, approval, and/or denial of short-term rental business licenses.

The procedures for the approval and denial of a business license, and for the appeal of a business license decision, shall apply as established in CHMC 5.18.100. Applicants that do not comply with the conditions of approval as established in CHMC 5.20.020 shall be denied a business license or renewal of a business license. (Ord. 946 § 2, 2016)

5.20.040 Suspension or revocation procedure.

If the administrator has reasonable cause to believe that any of the conditions imposed upon a short-term rental business under this chapter have been violated, the administrator shall follow the procedures established in CHMC 5.18.110 to revoke or suspend the business license. (Ord. 946 § 2, 2016)

5.20.050 Penalties.

Any person violating any provision of this chapter shall be subject to the enforcement procedures, remedies, and the civil and criminal penalties provided in Chapter 1.08 CHMC. (Ord. 946 § 2, 2016)

Leavenworth Municipal Code Chapter 18.52

LEVEANWORTH MC

Chapter 18.52
CONDITIONAL USES

Sections:

18.52.010 Application – Requirements.

A request for a conditional use may be initiated by a property owner or his authorized agent by filing an application with the hearing examiner on forms prescribed by the examiner, at least 15 days prior to

the commission meeting at which the proposal is to be considered. The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development and its relationship to the surrounding property. Each application shall be accompanied by a receipt indicating payment of a fee, charged according to a schedule of fees set forth in Chapter 18.64 LMC or modifications or changes thereto duly adopted by the city council. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984; Ord. 551 § 36.110(10), 1976; Ord. 531 § 1, 1973.]

18.52.030 Hearing – Recess – Decision – Final action notice.

The hearing examiner may recess a hearing on a request for a conditional use in order to obtain additional information. Upon recessing for this purpose, the examiner shall announce the time and date when the hearing will be resumed. The examiner shall make his or her decision on a conditional use within 75 days after the first public hearing on the conditional use. The examiner shall cause written notification of his or her action to be mailed to the applicant for a conditional use within five days after the decision has been rendered. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984; Ord. 551 § 36.110(20), 1976; Ord. 531 § 1, 1973.]

18.52.040 Application – Postponement or withdrawal.

Any applicant, or his agent, may at any time request withdrawal or postponement of consideration of his application. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984; Ord. 551 § 36.110(25), 1976; Ord. 531 § 1, 1973.]

18.52.050 Approval or denial – Authority.

Uses designated in this title as conditional uses shall be permitted only upon approval of the Leavenworth hearing examiner, after a public hearing, in accordance with this chapter. Conditional uses are those which may be appropriate, desirable, convenient or necessary in the district in which they are allowed, but which by reason of their height or bulk or creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public health, safety, welfare, comfort and convenience unless appropriate conditions are imposed. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 1203 § 4, 2003; Ord. 1029 § 1, 1996; Ord. 929 § 1, 1993; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984; Ord. 551 § 36.100(10), 1976; Ord. 531 § 1, 1973.]

18.52.060 Additional requirements and conditions.

In permitting a conditional use, the hearing examiner may impose, in addition to the regulations and standards expressly specified by this title, other conditions found necessary to protect the best interests of the surrounding property, the neighborhood, or the county as a whole. These conditions may include but are not limited to the following:

A. Increasing the required lot size or yard dimensions;

B. Limiting the coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property;

C. Controlling the location and number of vehicular access points to the property;

D. Increasing the street width;

E. Increasing the number of off-street parking or loading spaces required;

F. Limiting the number, location and size of signs;

G. Requiring suitable landscaping where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area;

H. Specifying a specific time limit for construction, alteration or enlargement to begin for a structure to house a conditional use;

I. Requiring that any future enlargement or alteration of the use be reviewed by the hearing examiner in view of specifying new conditions. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 929 § 2, 1993; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984; Ord. 551 § 36.100(15), 1976; Ord. 531 § 1, 1973.]

18.52.070 Use change – Conformance required.

A change in use, expansion or contraction of a site area, or alteration of structures or uses which are classified as conditional and are existing prior to the effective date of the ordinance codified in this title, shall conform to all regulations pertaining to conditional uses. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984; Ord. 551 § 36.100(20), 1976; Ord. 531 § 1, 1973.]

18.52.080 Bond – Authority to require.

The hearing examiner may require that the applicant for a conditional use furnish the city with a performance bond of up to the value of the cost of the improvement to be guaranteed by such bond, in order to assure the proper development of the conditional use according to the restrictions and conditions specified by the examiner. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984; Ord. 551 § 36.100(25), 1976; Ord. 531 § 1, 1973.]

18.52.090 Approval – Term – Permanent.

Any approval of any application for a conditional use shall:

A. Automatically be for a period of one year from the date of approval;

B. At the expiration of its first year of approval, and after review by the community development director and assurance by the director that all conditions of approval have been or are being met, any such approved conditional use may be continued. At any time, the city may at its discretion require that the conditional use permit be reviewed by the hearing examiner, who will have the authority to revise the initial conditions of approval if need for mitigation is determined. All conditions of the permit shall continue to apply throughout the life of the use. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 1285 § 1 (Exh. A § 1(c)), 2007; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984; Ord. 551 § 36.100(30), 1976; Ord. 531 § 1, 1973.]

18.52.100 Notice of violation – Hearing.

The administrative official shall give the holder of a valid conditional use permit written notification of any observed or reported violation of the terms of the permit or of any terms of the zoning district which are not expressly modified by the conditional use permit. Such notification shall include the violation and the terms of the ordinance which apply thereto, and shall give the permit holder 10 days to correct the violation. In the event that a violation is continued beyond the 10-day notification period, the hearing examiner shall review the matter at a public hearing and, on its finding that the violation does exist and that the notification of correction did not produce a correction of the violation, may declare any such conditional use permit null and void and refer the matter to the city attorney for legal action. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984; Ord. 551 § 36.100(35), 1976; Ord. 531 § 1, 1973.]

18.52.110 Conditional use permit – Mini-day care or day care center.

In granting a conditional use permit for a mini-day care center or a day care center, the hearing examiner shall impose the following minimum conditions:

A. Forty feet of frontage on a public street;

B. One off-street parking space per employee, and, for day care centers, one off-street loading space (10 feet by 20 feet) for every five children beyond the first 12 children;

C. One hundred fifty square feet of fenced outdoor play space per child, exclusive of garage area, located in the rear yard;

D. Fifty square feet of interior floor space per child;

E. Hours of operation shall be between 6:00 a.m. and 9:00 p.m.;

F. Licensing shall be in accordance with Department of Social and Health Services regulations;

G. Confirmation by the building official that the facility meets the requirements of Chapters 8 and 33 of the International Building Code;

H. Confirmation by the fire marshal that the facility meets the requirements of Chapter 212-12 WAC. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984.]

18.52.120 Conditional use permit – Bed and breakfast.

In granting a conditional use permit for a bed and breakfast in addition to the criteria in LMC 18.52.050 and 18.52.060 where applicable, the hearing examiner shall impose the following minimum conditions to allow a bed and breakfast as a conditional use:

A. The bed and breakfast facility shall be the principal residence of the property owner. A property owner must live on site throughout the visitor's stay.

B. A bed and breakfast shall be for no more than three bedrooms. Detached units with rooms are allowed. Accessory dwelling units may be allowed to be a part of the bed and breakfast.

C. A bed and breakfast may only be offered in a space intended for human habitation. For example, a property owner may not rent a space in an accessory structure that is a storage shed or garage.

D. The maximum number of occupants permitted to stay overnight shall be two people for each bedroom, excluding children under the age of six.

E. Bed and breakfast facilities shall meet all applicable health, fire safety, and building codes. New, converted, or annexed bed and breakfast facilities shall be inspected by the city of Leavenworth prior to operations. Thereafter with renewal of annual permits, inspections shall be conducted by the property owner via the "Annual Building, Fire and Life Safety Occupancy Permit Application" provided by the city with the annual permit renewal process. All bed and breakfasts shall receive an annual permit from January 1st to December 31st, under limited administrative review, documenting conformance with city code and agreement to conform to all licenses and permits. The International Fire, Residential, and Building Codes shall be applied at the time of permit for use.

F. Bed and breakfasts shall be residential in appearance.

G. Bed and breakfast facilities in or adjacent to residential districts shall not infringe upon the right of neighboring residents to reasonable peaceful occupancy of their homes. Bed and breakfasts shall obtain a city business license and separate annual permits provided by the city. In any advertisement of the bed and breakfast, the property owner must include the business license number issued by the city.

H. A written management plan shall be submitted for approval as a part of the conditional use permit process. It shall include, at a minimum, the proposed management structure, providing guests with information related to emergency exit routes, 24 hours a day seven days a week contact information, required guest rules and regulations, including for litter control, quiet hours, parking and proposed methods to enforce occupancy limitations and other requirements. In addition to providing the plan to the city of Leavenworth, contact information shall be provided to the adjacent properties, District 3 fire chief, and Chelan County sheriff. A legible sign shall be placed adjacent to the front door (outside), clearly visible to the general public listing the maximum number of occupants permitted to stay overnight, the maximum number of vehicles allowed to be parked on site, and the name and contact information of the contact person. Quiet hours shall, at a minimum, be from 10:00 p.m. to 7:00 a.m., or as otherwise provided by city or state regulations, whichever is more stringent. The management plan may be modified with amendment to the conditional use permit.

I. One nonilluminated sign, not to exceed four square feet, on the exterior of the bed and breakfast shall be permitted subject to the review process appropriate to the zoning district.

J. The property owner must clearly advertise the bed and breakfast as property owner occupied. This applies even in cases in which the bed and breakfast takes place in an accessory dwelling unit.

K. Driveways accessing a bed and breakfast which are more than 100 feet in length shall have an improved width of at least 12 feet with appropriately spaced cutouts to facilitate the passage of two vehicles traveling in opposite directions.

L. One off-street patron/visitor parking space, meeting the requirements of LMC 14.12.160, shall be provided for each room rented, except all parking must be accommodated on site and accessed from a city street.

M. The hearing examiner may impose other conditions, such as additional parking, improved access, landscaping, or screening, if found necessary to protect the best interests of the surrounding properties of the neighborhood due to the nature of the site or the facility.

N. An affidavit certifying that the property owner will comply with all of the provisions of the bed and breakfast regulations, conditional use permit, business license conditions for operating a bed and

breakfast, and all relevant laws shall be required.

O. Violation of the conditions of approval, as determined by the city, shall result in revocation of the bed and breakfast and a potential monetary penalty of $2,000 enforced in accordance with Chapter 21.13 LMC. Reestablishment shall be allowed administratively with compliance and remittance of the monetary penalty, and any other fees necessary for permit issuance.

P. Within the annual permits provided by the city, the property owner shall report to the city the following minimum information:

1. The address of the bed and breakfast and the contact name(s) of the property owner.

2. The total number of nights that the bed and breakfast was occupied for transient accommodation or lodging.

3. The property owner shall both have legal responsibility for the collection of all applicable taxes and remittance of the collected tax.

4. The property owner must provide its clients or potential clients the following disclosure:

> On January 24, 2017, the Leavenworth City Council adopted the new Bed and Breakfast Ordinance reiterating its existing prohibition on the rental of entire dwellings as vacation rentals. The new Bed and Breakfast Ordinance also legalized the short-term rental of a portion of a person's home when the property owner lives on-site throughout the visitor's stay and when the property owner obtains appropriate permits, including a business license. The property owner is also required to collect and remit necessary taxes.

Q. The city of Leavenworth hereby adopts a fire and life safety self-inspection program for bed and breakfast facilities operating within the city limits of Leavenworth. After the initial inspections with permitting, the property owner, from that time forward, shall conduct a self-inspection of their property annually and submit a self-inspection form to the city no later than 30 days after receipt from the city. The inspection is to be conducted by the property owner, or their designee.

R. A standard letter from the city will be mailed to the property owner requiring the self-inspection. A partial list of fire and building inspection review elements will be included with the inspection form. The city-supplied self-inspection form shall be completed and signed by the property owner and returned to the city. A copy of the certificate of occupancy or change of use permit application must accompany the self-inspection form together with the applicable application fee as established by resolution of the city of Leavenworth.

S. In the event a property owner fails to timely file the self-inspection form with the city of Leavenworth, the city may order an on-site inspection by the city building and/or fire official or

designee and the property owner shall be billed the applicable fee for said on-site inspection. Random inspections may be conducted by the city at the city's discretion. Within a three-year cycle, all properties shall be inspected by the city. The inspection fee shall be established by resolution of the city council.

T. Any person, partnership, association, firm or corporation who violates or fails to comply with this chapter is guilty of a civil infraction and is subject to the civil penalties and remedies and corrective actions as set forth in Chapter 21.13 LMC. [Ord. 1673 § 1 (Att. A), 2023; Ord. 1542 § 1 (Att. A), 2017; Ord. 1467 § 1 (Att. A), 2014; Ord. 1431 § 1 (Att. A), 2012; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 762 § 1, 1985; Ord. 754 § 8, 1984.]

18.52.125 Reserved.

Repealed by Ord. 1467. [Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 1285 § 1 (Exh. A § 1(b)), 2007.]

18.52.130 Conditional use permit – Two-family dwelling units (duplexes).

Repealed by Ord. 1640. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1431 § 1 (Att. A), 2012; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010; Ord. 979 § 4, 1995.]

18.52.135 Conditional use permit – Underground parking facility in the multifamily zone district to provide parking for a commercial zone district.

A. In granting a conditional use permit for an underground parking facility on property(ies) in the multifamily zone district to provide parking for the use of property(ies) located in a commercial zone district, the hearing examiner shall impose the following minimum conditions:

1. Parking facilities which provide parking for the use of a property in a commercial zone district shall only be allowed if on an adjacent land parcel which is zoned multifamily and which is contiguous to or separated only by an alley from the commercially zoned property.

2. All parking facilities shall be underground with the following exception:

a. The entryway to the facility may be located aboveground to accommodate slope requirements for the access driveway but shall be minimized to only the extent necessary to provide access to the facility.

3. All components of underground parking facilities shall be set back a minimum of five feet from adjacent properties and shall comply with aboveground yard requirements of the zone district in which they are located with the following exceptions:

a. The entryway to the facility may be located within setback and yard areas but shall be minimized in height and width to only the extent necessary to provide access to the facility; and

b. Those underground components of the garage that abut public rights-of-way shall be exempt from setback requirements.

4. The city may require those protective measures and financial securities it deems necessary for protection when excavating adjacent to or in close proximity to the right-of-way.

5. Aboveground improvements (vents, ducts, piping or emergency egress stairs, and/or other similar items) are not allowed in aboveground setback and yard areas and shall be shielded with landscaping or similar natural barriers.

6. Machinery to serve the underground parking facility shall not be located aboveground unless enclosed by a structure which shall be required to meet all setback and yard standards.

7. Underground parking facilities shall not be subject to aboveground lot coverage restrictions except where parking facility elements are visible or exist aboveground.

8. Aboveground parking facility elements shall not exceed the lot coverage requirements of the zone district in which they are located.

9. A perpetual parking easement or analogous document, as approved by the city, shall be required for the utilization of the property(ies) located in the multifamily zone district by a property or properties in the commercial zone district. The properties may be allowed to have different owners; however, a covenant or declaration shall be recorded to title on both properties which describes all properties and identifies the dominant and subordinate tenant(s) and that the easement is perpetual.

10. No at-grade alley or street crossings by vehicles to access the parking facility and/or components of the parking facility shall be allowed so that circulation within and/or between parking facility components shall have a reduced impact to on-street and/or alley traffic patterns.

11. Applicants shall be required to obtain an easement from the city in order to create a passage under a public right-of-way. The city can choose to approve, approve with conditions, or deny this request.

12. Visual impacts created by the parking facility shall be minimized by:

a. All visible portions of the parking facility shall have a five-foot landscape buffer and shall incorporate some vertical landscape elements at least every 20 feet; and

b. All visible portions of the facility, including, but not limited to, windows, ventilation openings, and ingress/egress points shall be subject to the design standards outlined in the Old World Bavarian design theme, with particular attention to LMC 14.08.040, Design elements.

B. In granting a conditional use permit, the hearing examiner shall evaluate the use for impacts and may impose conditions as he/she determines necessary to mitigate the impacts. At a minimum, the hearing examiner shall evaluate the following in this process:

1. Impacts from size, location, noise, light, pollution, and/or vibration to neighboring properties. For example: If a proposed facility is located next to a property with a pre-existing structure with nonconforming yard requirements, the hearing examiner could require that the garage be set back an additional distance and/or relocated. Another example: If there is the potential for venting of fumes in close proximity to an adjacent structure, the hearing examiner could require the relocation or reorientation of the vent and exhaust system;

2. Impacts to adjacent properties from damages and disturbances during construction. For example: The hearing examiner could require bonding to correct any damages;

3. Impacts to residentially and commercially zoned neighborhoods from altered traffic patterns. For example: To avoid impacts to the residential neighborhood from higher levels of commercial traffic, access to the commercial component of the parking garage could be required to be through the commercially zoned property only and access to the multifamily residential component of the parking facility could be required to be through multifamily zoned property only. In other words, the hearing examiner could require that underground parking facilities be designed such that flow patterns between separate uses are physically and/or functionally separated; and

4. Impacts to alleys from heightened traffic levels. For example: To avoid impacts of higher traffic and potential crossflow of traffic in alleys, the hearing examiner could require that access to the facility be required to be taken from a public street and alley access would not be permitted unless no other viable access point exists. Another example is requiring improvements such as widening, resurfacing, and traffic controls if the alley is allowed to be used. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012; Ord. 1373 § 1 (Exh. A), 2010.]

18.52.140 Conditional use permit – Coffee roasting.

In granting a conditional use permit for coffee roasting, the hearing examiner shall impose the following minimum conditions:

A. The coffee roasting operation shall be in combination with a restaurant, drive-in restaurant or retail food store;

B. An effective afterburner shall be used;

C. An inspection report shall be obtained from Chelan County fire district No. 3 stating that fire code inspection is complete and satisfactory, and shall be given to the department of community development for the file;

D. The building size shall be no larger than 3,500 square feet;

E. No more than 20 percent of the floor area of the building shall be used for coffee roasting, assembling and packing. The 20 percent shall include fire code setbacks;

F. Only one production roaster shall be allowed. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012.]

18.52.150 Conditional use permit – Pet care centers.

A. In granting a conditional use permit for a pet care center located in a commercial zone district, the hearing examiner shall impose the following minimum conditions:

1. The receiver of the CUP is required to provide an annual report to the city which confirms continued compliance with any and all requirements of the CUP.

2. In the event of notice of violation and enforcement of violation, the CUP shall be revoked immediately, and the operations shall be immediately ceased and desist.

3. Any and all pet areas shall be climate controlled and sheltered.

4. Waste disposal shall be approved by the city of Leavenworth.

5. Health and disease control inspections shall be conducted by the Chelan County Humane Society at the permittee's expense. A kennel license must be obtained.

6. The facilities shall be constructed to include sound reduction and barrier improvements to reduce or remove exterior noise.

7. A 24-hour attendant is required.

8. A minimum of 50 square feet for every five animals of secure private walk and play area (use of public parks for operations is prohibited) shall be required for each pet. A minimum of 50 square feet of secure private walk and play area shall be required.

9. A minimum of six-foot-by-four-foot kennel area is required for each pet.

B. In granting a conditional use permit, the hearing examiner shall evaluate the use for impacts and may impose conditions as he/she determines necessary to mitigate the impacts. At a minimum, the hearing examiner shall evaluate the following in this process:

1. Impacts from size, location, odor, and/or noise to neighboring properties. [Ord. 1467 § 1 (Att. A), 2014; Ord. 1421 § 1 (Att. A), 2012.]

San Francisco Administrative Code

SF ADMIN CODE

SEC. 41A.5. UNLAWFUL CONVERSION; REMEDIES.

(a) **Unlawful Actions.** Except as set forth in subsection 41A.5(g), it shall be unlawful for

(1) any Owner to offer a Residential Unit for rent for Tourist or Transient Use;

(2) any Owner to offer a Residential Unit for rent to a Business Entity that will allow the use of a Residential Unit for Tourist or Transient Use; or

(3) any Business Entity to allow the use of a Residential Unit for Tourist or Transient Use.

(b) **Records Required.** The Owner and Business Entity, if any, shall retain and make available to the Department records to demonstrate compliance with this Chapter 41A upon written request as provided herein.

(c) **Determination of Violation.** Upon the filing of a written Complaint that an Owner or Business Entity has engaged in an alleged unlawful Conversion or that a Hosting Platform is not complying with the requirements of subsection (g)(4)(A), the Director shall take reasonable steps necessary to determine the validity of the Complaint. The Director may independently determine whether an Owner or Business Entity may be renting a Residential Unit for Tourist or Transient Use in violation of this Chapter 41A or whether a Hosting Platform has failed to comply with the requirements of subsection (g)(4)(A). To determine if there is a violation of this Chapter 41A, the Director may initiate an investigation of the subject property or Hosting Platform's allegedly unlawful activities. This investigation may include, but is not limited to, an inspection of the subject property and/or a request for any pertinent information from the Owner, Business Entity, or Hosting Platform, such as leases, business records, or other documents. The Director shall have discretion to determine whether there is a potential violation of this Chapter 41A. Notwithstanding any other provision of this Chapter 41A, any alleged violation related to failure to comply with the requirements of the Business and Tax Regulations Code shall be enforced by the Treasurer/Tax Collector under the provisions of that Code.

(d) **Civil Action.**

(1) The City may institute civil proceedings for injunctive and monetary relief, including civil penalties, against an Owner, Business Entity, or Hosting Platform for violations of this Chapter 41A under any circumstances, without regard to whether a Complaint has been filed or the Director has made a determination of a violation.

(2) **Private Rights of Action.**

(A) Following the filing of a Complaint and the final determination of a violation by the Director, any Interested Party may institute civil proceedings for injunctive and monetary relief against an Owner or Business Entity.

(B) An Interested Party who is a Permanent Resident of the building in which the Tourist or Transient Use is alleged to occur, is a Permanent Resident of a property within 100 feet of the property containing the Residential Unit in which the Tourist or Transient Use is alleged to occur, or is a homeowner association associated with the Residential Unit in which the Tourist or Transient Use is alleged to occur may institute a civil action for injunctive and monetary relief against an Owner or Business Entity if

(i) The Interested Party has filed a Complaint with the Department;

(ii) The Director has not made a written determination pursuant to subsection 41A.6(a) that there is no violation of this Chapter 41A or basis for an investigation for an unlawful activity;

(iii) An administrative hearing officer has not issued a final determination pursuant to subsection 41A.6(c) regarding the Complaint within 135 days of the filing of the Complaint with the Department;

(iv) After such 135-day period has passed, the Interested Party has provided 30 days' written notice to the Department and the City Attorney's Office of its intent to initiate civil proceedings; and

(v) The City has not initiated civil proceedings by the end of that 30-day notice period.

Under this subsection 41A.5(d)(2)(B), the prevailing party shall be entitled to the costs of suit, including reasonable attorneys' fees, pursuant to an order of the Court.

(3) **Civil Penalties.** If the City is the prevailing party in any civil action under this subsection (d): an Owner, Hosting Platform, or Business Entity in violation of this Chapter 41A may be liable for civil penalties of not more than $1,000 per day for the period of the unlawful activity. Interested Parties other than the City may not seek or obtain civil penalties.

(4) **Attorneys' Fees and Costs.** If the City or any other Interested Party is the prevailing party, the City or the Interested Party shall be entitled to the costs of enforcing this Chapter 41A, including reasonable attorneys' fees, pursuant to an order of the Court.

(5) Any monetary award obtained by the City and County of San Francisco in such a civil action shall be deposited in the Department to be used for enforcement of Chapter 41A. The Department, through the use of these funds, shall reimburse City departments and agencies, including the City Attorney's Office, for all costs and fees incurred in the enforcement of this Chapter 41A.

(e) **Criminal Penalties.** Any Owner or Business Entity who rents a Residential Unit for Tourist or Transient Use in violation of this Chapter 41A, or any Hosting Platform that provides a Booking Service for a Residential Unit to be used for Tourist or Transient Use in violation of the Hosting Platform's obligations under this Chapter 41A, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor hereunder shall be punishable by a fine of not more than $1,000 or by imprisonment in the County Jail for a period of not more than six months, or by both. Each Residential Unit rented for Tourist or Transient Use shall constitute a separate offense.

(f) **Method of Enforcement, Director.** The Director shall have the authority to enforce this Chapter against violations thereof by any or all of the means provided for in this Chapter 41A.

(g) **Exception for Short-Term Residential Rental.**

(1) Notwithstanding the restrictions set forth in this Section 41A.5, a Permanent Resident may offer his or her Primary Residence as a Short-Term Residential Rental if:

(A) The Permanent Resident occupies the Residential Unit for no less than 275 days out of the calendar year in which the Residential Unit is rented as a Short-Term Residential Rental or, if the Permanent Resident has not rented or owned the Residential Unit for the full preceding calendar year, for no less than 75% of the days he or she has owned or rented the Residential Unit;

(B) The Permanent Resident maintains records for two years demonstrating compliance with this Chapter 41A, including but not limited to information demonstrating Primary Residency, the number of days per calendar year he or she has occupied the Residential Unit, the number of days per calendar year the Residential Unit has been rented as a Short-Term Residential Rental, and compliance with the insurance requirement in Subsection (D). These records shall be made available to the Department upon request;

(C) The Permanent Resident complies with any and all applicable provisions of state and federal law and the San Francisco Municipal Code, including but not limited to the requirements of the Business and Tax Regulations Code by, among any other applicable requirements, collecting and remitting all required transient occupancy taxes, and the occupancy requirements of the Housing Code;

(D) The Permanent Resident maintains liability insurance appropriate to cover the Short-Term Residential Rental Use in the aggregate of not less than $500,000 or conducts each Short-Term Residential Rental transaction through a Hosting Platform that provides equal or greater coverage. Such coverage shall defend and indemnify the Owner(s), as named additional insured, and any tenant(s) in the building for their bodily injury and property damage arising from the Short-Term Residential Use;

(E) The Residential Unit is registered on the Short-Term Residential Rental Registry;

(F) The Permanent Resident includes the Department-issued registration number on any Hosting Platform listing or other listing offering the Residential Unit for use as a Short-Term Residential Rental;

(G) For units subject to the rent control provisions of Section 37.3, the Permanent Resident complies with the initial rent limitation for subtenants and charges no more rent than the rent the Permanent Resident is paying to any landlord per month; and

(H) The Permanent Resident can demonstrate to the satisfaction of the Department that the Residential Unit and the property on which it is located is not subject to any outstanding Building, Electrical, Plumbing, Mechanical, Fire, Health, Housing, Police, or Planning Code enforcement, including any notices of violation, notices to cure, orders of abatement, cease and desist orders, or correction notices. The Department shall not include a property that is subject to any such outstanding violations in the Registry. If such a violation occurs once a Residential Unit has been included in the Registry, the Department shall suspend the Residential Unit's registration and registration number until the violation has been cured.

(2) **Additional Requirements.**

(A) Offering a Residential Unit for Short-Term Residential Rental, including but not limited to advertising the Residential Unit's availability, while not maintaining good standing on the Registry shall constitute an unlawful conversion in violation of this Chapter 41A and shall subject the person or entity offering the unit in such a manner to the administrative penalties and enforcement procedures, including civil penalties, of this Chapter.

(B) Only one Permanent Resident may be associated with a Residential Unit on the Registry, and it shall be unlawful for any other person, even if that person meets the qualifications of a "Permanent Resident," to offer a Residential Unit for Short-Term Residential Rental.

(C) A Permanent Resident offering a Residential Unit for Short-Term Residential Rental shall maintain a valid business registration certificate.

(D) A Permanent Resident offering a Residential Unit for Short-Term Residential Rental shall post a clearly printed sign inside his or her Residential Unit on the inside of the front door that provides information regarding the location of all fire extinguishers in the unit and building, gas shut off valves, fire exits, and pull fire alarms.

(3) **Short-Term Residential Rental Registry Applications, Fee, and Reporting Requirement.**

(A) **Application.** Registration shall be for a two-year term, which may be renewed by the Permanent Resident by filing a completed renewal application. Initial and renewal applications shall be in a form prescribed by the Department. The Department shall determine, in its sole discretion, the completeness of an application. Upon receipt of a complete initial application, the Department shall send mailed notice to the owner of record of the Residential Unit, informing the owner that an application to the Registry for the unit has been received. If the Residential Unit is in a RH-1(D) zoning district, the following additional requirements shall apply: the Department shall also send mailed notice to any directly associated homeowner association that has previously requested such notice and to any owners and occupants within 300 feet of the property; the Department shall hold the application for 45 days after sending such notice; and the Department shall review and consider any information submitted by any such homeowner association, neighboring owner or occupant, or member of the public regarding the eligibility of the permanent resident and/or the residential unit for listing on the Registry received during the 45-day hold period.

Both the initial application and any renewal application shall contain information sufficient to show that the Residential Unit is the Primary Residence of the applicant, that the applicant is the unit's Permanent Resident, and that the applicant has the required insurance coverage and business registration certificate. In addition to the information set forth here, the Department may require any

other additional information necessary to show the Permanent Resident's compliance with this Chapter 41A. Primary Residency shall be established by showing the Residential Unit is listed as the applicant's residence on at least two of the following: motor vehicle registration; driver's license; voter registration; tax documents showing the Residential Unit as the Permanent Resident's Primary Residence for home owner's tax exemption purposes; or utility bill. A renewal application shall contain sufficient information to show that the applicant is the Permanent Resident and has occupied the unit for at least 275 days of each of the two preceding calendar years. Upon the Department's determination that an application is complete, the unit shall be entered into the Short-Term Residential Rental Registry and assigned an individual registration number.

(B) **Fee.** The fee for the initial application and for each renewal shall be $50, payable to the Director. The application fee shall be due at the time of application. Beginning with fiscal year 2014-2015, fees set forth in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section. Within six months of the operative date of this ordinance* and after holding a duly noticed informational hearing at the Planning Commission, the Director shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of establishing and maintaining the registry and enforcing the requirements of this Chapter 41A, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Chapter. After the hearing by the Planning Commission, but not later than August 1, 2015, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of establishing and maintaining the registry, enforcing the requirements of this Chapter 41A and any other services set forth in this Chapter and that the fees will not produce revenue that is significantly more than the costs of providing such services. The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue that is significantly more than such costs. The adjusted rates shall become operative on July 1.

(C) **Reporting Requirement.** To maintain good standing on the Registry, the Permanent Resident shall submit a quarterly report to the Department beginning on January 1, 2016, and on January 1, April 1, July 1, and October 1 of each year thereafter, regarding the number of days the Residential Unit or any portion thereof has been rented as a Short Term Residential Rental since either initial registration or the last report, whichever is more recent, and any additional information the Department may require to demonstrate compliance with this Chapter 41A.

(4) **Requirements for Hosting Platforms.**

(A) All Hosting Platforms shall provide the following information in a notice to any user listing a Residential Unit located within the City and County of San Francisco through the Hosting Platform's service. The notice shall be provided prior to the user listing the Residential Unit and shall include the following information: that Administrative Code Chapters 37 and 41A regulate Short-Term Rental of Residential Units; the requirements for Permanent Residency and registration of the unit with the Department; and the transient occupancy tax obligations to the City.

(B) A Hosting Platform shall comply with the requirements of the Business and Tax Regulations Code by, among any other applicable requirements, collecting and remitting all required Transient Occupancy Taxes, and this provision shall not relieve a Hosting Platform of liability related to an occupant's, resident's, Business Entity's, or Owner's failure to comply with the requirements of the Business and Tax Regulations Code. A Hosting Platform shall maintain a record demonstrating that the taxes have been remitted to the Tax Collector.

(C) A Hosting Platform may provide, and collect a fee for, Booking Services in connection with short-term rentals for Residential Units located in the City and County of San Francisco only when the Hosting Platform exercises reasonable care to confirm that those Residential Units are lawfully registered on the Short-Term Residential Rental Registry at the time the Residential Unit is rented for short-term rental. Whenever a Hosting Platform complies with administrative guidelines issued by the Office of Short-Term Residential Rental Administration and Enforcement to confirm that the Residential Unit is lawfully registered on the Short-Term Rental Registry, the Hosting Platform shall be deemed to have exercised reasonable care for the purpose of this subsection (g)(4)(C).

(D) Commencing November 5, 2016, and on the fifth day of every month thereafter, a Hosting Platform shall provide a signed affidavit to the Office of Short Term Rentals verifying that the Hosting Platform has complied with subsection (g)(4)(C) of this Section 41A.5 in the immediately preceding month.

(E) For not less than three years following the end of the calendar year in which the short-term rental transaction occurred, the Hosting Platform shall maintain and be able, in response to a lawful request, to provide to the Office of Short Term Rentals for each short-term rental transaction for which a Hosting Platform has provided a Booking Service:

(i) The name of the Owner or Business Entity who offered a Residential Unit for Tourist or Transient Use,

(ii) The address of the Residential Unit,

(iii) The dates for which the tourist or transient user procured use of the Residential Unit using the Booking Service provided by the Hosting Platform,

(iv) The registration number for the Residential Unit, and

(v) The affidavit required in subsection (g)(4)(D).

(5) The exception set forth in this subsection (g) provides an exception only to the requirements of this Chapter 41A. It does not confer a right to lease, sublease, or otherwise offer a residential unit for Short-Term Residential Use where such use is not otherwise allowed by law, a homeowners association agreement or requirements, any applicable covenant, condition, and restriction, a rental agreement, or any other restriction, requirement, or enforceable agreement. All Owners and residents are required to comply with the requirements of Administrative Code Chapter 37, the Residential Rent Stabilization and Arbitration Ordinance, including but not limited to the requirements of Section 37.3(c).

(6) The Department shall designate a contact person for members of the public who wish to file Complaints under this Chapter 41A or who otherwise seek information regarding this Chapter or Short-Term Residential Rentals. This contact person shall also provide information to the public upon request regarding quality of life issues, including, for example, noise violations, vandalism, or illegal dumping, and shall direct the member of the public and/or forward any such Complaints to the appropriate City department.

(7) Notwithstanding any other provision of this Chapter 41A, nothing in this Chapter shall relieve an individual, Business Entity, or Hosting Platform of the obligations imposed by any and all applicable provisions of state law and the Municipal Code including but not limited to those obligations imposed by the Business and Tax Regulations Code. Further, nothing in this Chapter shall be construed to limit any remedies available under any and all applicable provisions of state law and the Municipal Code including but not limited to the Business and Tax Regulations Code.

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 74-98, App. 3/6/98; Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; Ord. 218-14, File No. 140381, App. 10/27/2014, Eff. 11/26/2014, Oper. 2/1/2015; Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015; Ord. 104-16, File No. 160423, Eff. 7/24/2016; Ord. 178-16, File No. 160790, Eff. 9/10/2016; Ord. 89-17, File No. 170158, App. 4/14/2017, Eff. 5/14/2017)

*** Editor's Note:**

The reference in Sec. 41A.5(g)(3)(B) to "the operative date of this ordinance" was added to the Code as part of the amendments included in Ord. *218-14*, Oper. 2/1/2015.

'What Can Be Done About "Zombie" Properties?'

What Can Be Done about "Zombie" Properties?

January 17, 2017 by Oskar Rey

Category: Court Decisions and AGO Opinions, Property Nuisances

In March 2011, Laura Jordan returned home from work to find that the lock on her home had been changed. She had defaulted on her loan, which was secured by a deed of trust on the residence. A representative of her lender had changed the lock on the front door. There was a notification which stated that the representative determined the home was "unsecure or vacant" and that it was "secured against entry by unauthorized persons to prev

Back to top

damage." A phone number was provided to call to obtain

reentry. Ms. Jordan called the number and removed her belongings the next day. She later became a member of a class action that challenged the deed of trust provisions that authorize a lender to enter and secure property prior to foreclosure (i.e., "entry provisions").

In July 2016, the Washington Supreme Court issued its decision in the case (*Jordan v. Nationstar Mortgage LLC*) and found that the entry provisions violate state law and are therefore unenforceable. Under RCW 7.28.230(1), a lender may not take possession of a property prior to foreclosure. Citing this statute, the court ruled that changing the locks constituted an exercise of control over the property that amounted to taking unlawful possession prior to foreclosure. Although no local government entity was a party to *Nationstar,* the case significantly impacts the ability of local government to take action with respect to vacant or "zombie" properties.

The Scope of *Nationstar*

The outcome of *Nationstar* is not surprising given the fact the property apparently was occupied. However, the reasoning of *Nationstar* seems to apply in cases where property is vacant or abandoned as well. The Court invalidated the entry provisions in the deed of trust, which were broadly drafted, so there does not appear to be a basis for differentiating between occupied and abandoned residences.

Therefore, it appears the ruling in *Nationstar* applies to zombie properties. The case presents difficulties for cities and counties because it makes it more difficult to work with lenders to secure zombie properties and mitigate their impacts.

The Impact of *Nationstar* on Local Government

Zombie properties are a problem because they are unmaintained, attractive to squatters, and can become a source of illegal activity. Until *Nationstar*, local government had the option of requiring lenders to secure and maintain abandoned properties. For example, the cities of Spokane and Bremerton created abandoned property registries that require lenders to report and take action with respect to zombie properties. Other jurisdictions worked with lenders on a more informal basis to address the impacts of zombie properties.

In light of *Nationstar*, what options remain for addressing zombie properties? There are several:

Back to top

- Redefine what remedies your jurisdiction will seek from lenders. *Nationstar* is about lender actions that amount to taking possession of the property, such as changing the locks. Requesting lenders to take less drastic action, such as mowing the grass and maintaining the exterior of the property, alleviates the visual impacts of a zombie property and would not seem to violate *Nationstar.*
- Determine if the property owner will consent to lender entry to secure the property. In *Nationstar*, the Court noted that a lender may take possession prior to foreclosure if the property owner agrees. If the property is abandoned and the owners can be located, they may agree to entry so that the property can be protected from trespassers and the elements. Consent may be in the best interest of the property owners because it preserves the value of the collateral and maximizes any surplus funds which may be available to the owners after foreclosure.
- In cases where squatters have moved in and are creating problems for neighbors, consider criminal or administrative enforcement options against them. Again, the owners can be of assistance if they are willing to file a trespass report and indicate that any current occupants are unauthorized. In addition, squatters can be prosecuted under chapter 9A.61 RCW if they divert or make unauthorized connections to obtain utility service. If the structure becomes dangerous or does not have water service, it may be possible to post a "do not occupy" notice on the property so that subsequent entry becomes a criminal violation of the building code.
- For the absolute worst cases, jurisdictions can (1) seek appointment of a custodial receiver under chapter 7.60 RCW to secure and manage zombie houses; or (2) have them declared a nuisance and abated under chapter 7.48 RCW. Both of these options can be costly and time consuming and require a superior court order.

Close coordination with your jurisdiction's legal counsel is important in these types of cases. If your jurisdiction has other effective methods of dealing with zombie properties, I would love to hear about them in the comments below or by email at orey@mrsc.org!

MRSC is a private nonprofit organization serving local governments in Washington State. Eligible government agencies in Washington State may

Back to top

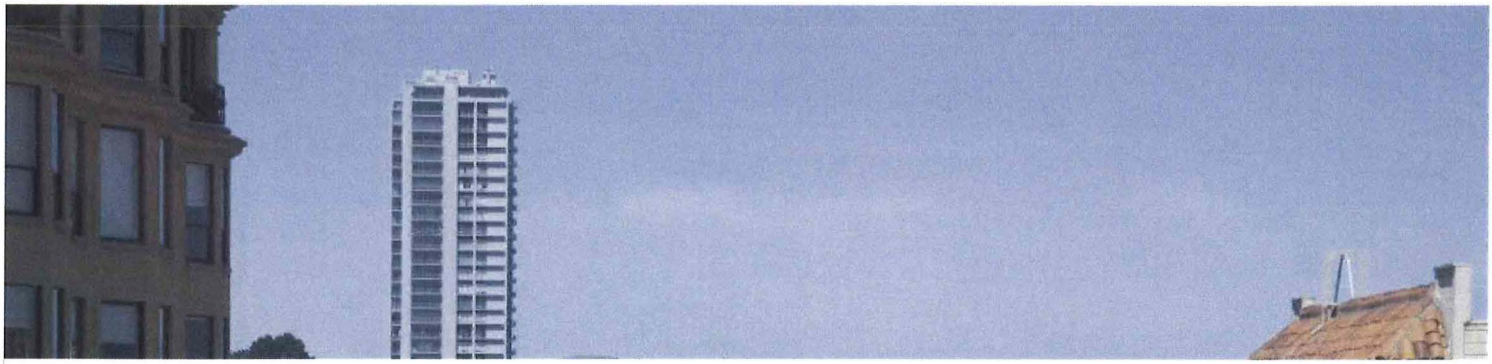
"San Francisco voters back Prop. M, a vacancy tax on landlords."

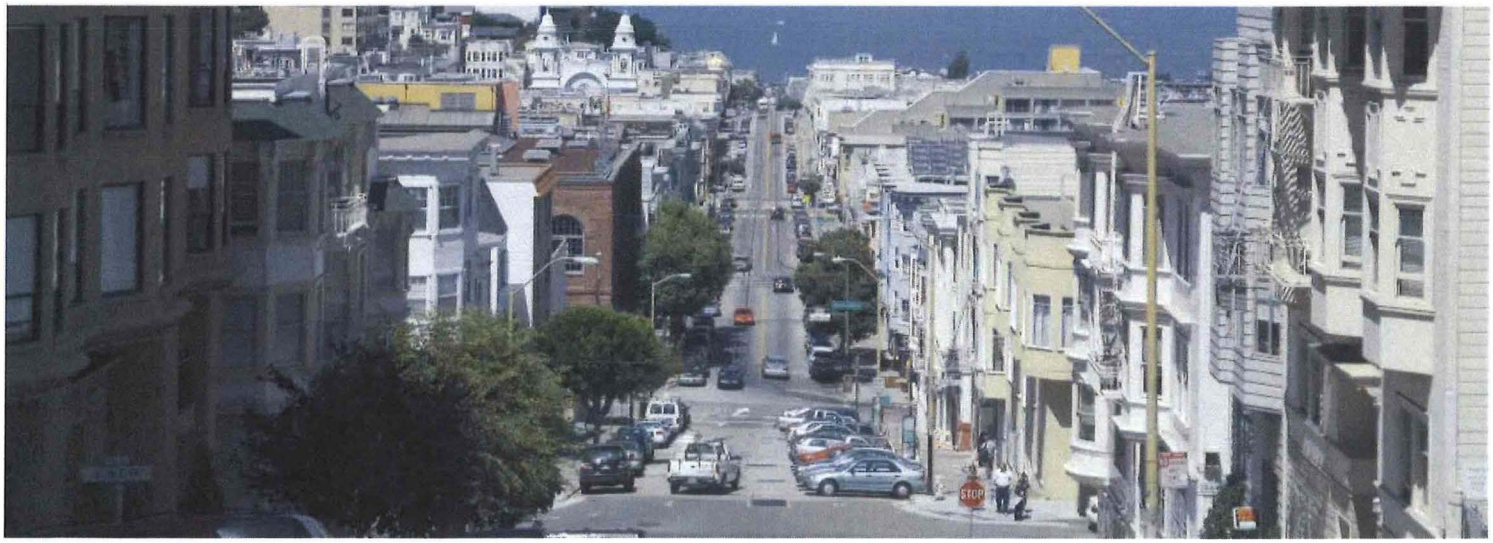
SF VACANCY TAX

NEWS | POLITICS

San Francisco voters back Prop. M, a vacancy tax on landlords

By **Alex Shultz**
Updated Nov 15, 2022 9:31 a.m.





A glimpse of San Francisco from a busy city street in 2018.
Gianni Oliva/De Agostini via Getty Images

Almost a week after the midterm elections, San Francisco's Proposition M, a vacancy tax on landlords, is projected to pass. The San Francisco Chronicle called the race Monday afternoon. (SFGATE and the San Francisco Chronicle are owned by Hearst but operate independently of one another.)

The ballot measure is a warning shot at landlords who are sitting on multiple vacant units, but it includes some notable carve-outs that critics say will blunt its impact. Starting on Jan. 1, 2024, property owners with at least three units that have been vacant for more than 182 days (six months) will be taxed between $2,500 and $5,000 per empty unit. In ensuing years, that penalty will increase to as much as $20,000 per empty unit. The penalty money collected will go to a housing activation fund, which will subsidize affordable housing, including for individuals over the age of 60 in the city.

Single-family homes are exempt from the vacancy tax, as are duplexes. Out of roughly 40,000 empty units in the city, the San Francisco Controller's Office estimates that 4,000 units are likely to qualify for the vacancy tax. One of the leading proponents of Prop. M, District 5 Supervisor Dean Preston, lauded its passage.

"With most of the ballots now counted, the Empty Homes Tax has passed with a decisive mandate from San Francisco voters, despite being outspent by a margin of 3 to 1," Preston wrote in a statement. "It's clear that people are fed up with tens of thousands of homes sitting vacant while thousands of people are sleeping on the streets. I'm proud that San Francisco will soon become the third city in the nation to seriously address vacant units through this progressive tax measure, and that the millions of dollars of revenue will go to rental subsidies for low-income seniors and more affordable housing."

It's quite possible Prop. M is just a first step in pressuring landlords to fill their empty units; the ballot measure contains a lesser-known, potentially important caveat that could lead to further restrictions in the future: "The Board of Supervisors may later amend this tax, by a two-thirds vote and without further voter approval, unless prohibited by the State Constitution from doing so."

Oakland Municipal Code

OAKLAND MC

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— 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.

   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.

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:

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;

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.

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.

(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)

4.56.120 - 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)