

**SPUR**

San Francisco | San Jose | Oakland

April 20th, 2018

Finance and Management Committee
Community and Economic Development Committee
Oakland City Council
1 Frank Ogawa Plaza
Oakland, CA 94612

Re: Proposed Ordinance to Authorize the City of Oakland to Collect a Tax on Vacant Properties.

Dear Members of the Finance and Management Committee and the Community and Economic Development Committee,

Thank you for the opportunity to comment on the proposed ordinance to collect a tax on vacant properties in the City of Oakland. This proposed measure would enable the city to impose a tax on vacant properties ranging from \$3,000 a year for multifamily units to \$6,000 a year for single family residential, non-residential and undeveloped land. \$6,000 is the maximum annual tax for a residential parcel, regardless of the number of vacant units, so our understanding is that sites zoned for multifamily that are currently vacant and have no underlying condominium map would also be taxed at a maximum of \$6,000 annually.

The ordinance establishes a series of exemptions from the tax, including exemptions for very low-income owners, low-income senior owners, and those experiencing financial hardship would be exempt from this tax.

The ordinance defines a vacant parcel as one that “is not occupied by an active use for at least 50 days in a calendar year.”

SPUR supports the concept of a vacant parcel tax. Vacant parcel taxes are a tool that have been used in cities both nationally (Washington D.C., Harrisburg, Pennsylvania¹) and internationally (Seoul, Korea, Marikina City, Phillipines²) to help move vacant land into active use and to eliminate blight. Vacant parcel taxes, particularly in hot market cities, can help propel land owners to develop their properties. Some cities, such as Hartford, Connecticut³, have experimented with raising taxes on vacant land, while lowering them for new development. It

¹ “Progressive Taxation of Urban Land” <https://urban-regeneration.worldbank.org/node/38>; accessed on April 18th, 2018

² Ibid. This report notes that taxation of vacant land has also been used to deter land speculation.

³ “Can Extra Taxes on Vacant Land Cure City Blight? <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/03/07/can-extra-taxes-on-vacant-land-cure-city-blight>; accessed on April 18th, 2018

makes sense to tax the behavior we want to discourage (allowing parcels to remain vacant), while rewarding behavior we want to promote (building new housing, adding businesses).

While we support the concept of a vacant parcel tax, there are a number of aspects of the current proposal that we find concerning and believe require further refinement. Please find our recommendations below.

Clarify the purpose of the ordinance.

Currently, the purpose of the measure is unclear. Is this measure seeking to reduce vacant and blighted properties? The number of vacant storefronts? Or is it instead trying to reduce the number of residential units currently being held off the market as pied-a-terres or temporary rentals (as Vancouver's ordinance does)? Is the purpose of the measure to raise revenue (for housing and services for homeless people) or to change behavior (moving vacant parcels into active use)? Depending on the answers to these questions, the Council may wish to modify the ordinance to ensure the measure will provide the intended benefit and/or solve the intended problem.

Create clear definitions of “vacant parcel” and “active use”.

It is imperative that this ordinance clearly define constitutes a “vacant parcel” and an “active use” for two reasons. The first is that property owners are incentivized to do the minimum allowable on their sites in order to not be considered vacant and therefore the city is likely to see many projects move forward that meet the minimum definition. The second is that if the definitions are not clear and easily enforceable, the City (and the County, which will be levying the tax) can end up spending significant extra time and public funding trying to enforce the ordinance. While we understand that this measure calls for a future ordinance to determine and identify the use and vacancy status for each parcel in the city, the *definition* of vacancy in this ordinance should be clarified.

Currently, the definition of “vacant parcel” in the ordinance is one that “is not occupied by an active use for at least 50 days in a calendar year.” This wording is somewhat confusing (at minimum we recommend that the wording be changed to instead read “a parcel is determined to be vacant if in a calendar year there are less than 50 days of active use on the parcel.”). The purpose of the ordinance will help guide the definition of vacancy. If the measure is seeking to push existing vacant parcels into active use, the definition of vacancy should focus on parcels that have limited or no economic activity on them, or which meet some definition of blight or which contain some marginal use such as a surface parking lot. If the concern is more to prevent existing habitable residential units being held off the market, then vacant parcels should be defined as those residential units that are both not the owner's primary residence and also not utilized as long term rentals⁴.

⁴ It should be noted secondary units appear to be exempted from the proposed ordinance so long as the primary residence is occupied (Section 4.56.020)

We are concerned about the lack of a definition of what constitutes an “active use.” An occupied housing unit or a thriving business in a ground floor commercial space clearly should meet the definition of an “active use.” But what about a surface parking lot? Or a debris storage facility? We believe that surface parking and debris storage should not constitute an “active use” but it is unclear under this ordinance whether such uses would in fact qualify as active.

We understand that the sponsor of this ordinance would like to make sure that temporary uses such as farmer’s markets would meet the definition of “active use”. One potential solution is to create a clear definition of “vacancy” and then add a “creative use” or “temporary community use” exemption for uses such as pop-up shops and farmer’s markets. This idea is explored in the “Informational Report on Vacant Property Registry” from the City Administrator to the Council in 2015.⁵

An additional issue that requires clarification is whether this tax applies to parcels or lots. Some lots are comprised of multiple parcels. There could be a lot that includes multiple parcels with an active use (such as a community garden) that only utilizes a portion of the lot. The tax would be assessed on the portions of the lot that might technically be separate parcels even though the lot itself is supporting an active use.

Lastly, it is important that the exemptions for the tax are clearly defined and do not unduly penalize property owners who are trying to keep their properties in active use but due to circumstances outside of their control (such as a downturn in the market) are unable to rent or sell their homes or commercial spaces within a certain time period. In these instances, so long as the property owners are maintaining their property, they should be able to qualify for an exemption.

Consider limiting the geography of the tax.

Properties may be vacant for a variety of different reasons – including that a new economic use may not be viable in a particular location. The City Administrator’s Informational Report on Vacant Property Registry identified several challenges to encouraging the productive use of a vacant parcel, including “(t)he real estate market pay not wish to support a traditional commercial storefront tenant or traditional development of a vacant lot.”⁶ For this reason, the city may wish to modify this ordinance to create a registry for all properties, but to only tax those vacant properties located in certain geographic areas, such as Downtown. All properties, regardless of location, would need to meet safety and maintenance standards. If the tax is implemented as proposed on all vacant parcels, the City Administrator’s office could end up spending a substantial amount of time evaluating requests from property owners for exemptions.

⁵ “Informational Report on Vacant Property Registry”, from Sabrina B. Landreth, Oakland City Administrator to the Community and Economic Development Committee of the Oakland City Council. June 22nd, 2015.

⁶ Ibid, pg 3.

Ensure that the tax is implementable.

The success of this program hinges on the capacity of the city to implement this tax. In addition to developing a clear definition of vacancy and active use (as described above) the ability of the city to monitor whether active uses are actually occurring on a parcel 50 days a year should also be considered. Is it feasible for the city to independently verify whether activity is occurring? As the City Administrator's Informational Report on Vacant Property Registry noted, creating a manageable scope for a vacant property registry can be critical to its success⁷. Since the proposed tax would impact all vacant properties (i.e. a very wide scope) the cost of staffing and administering this program should be determined as soon as possible.

We recommend working with the County to ensure that whatever definition ultimately is included into the ordinance be one that the City and County can clearly and easily verify and which can be added to the current data that the County collects. The current vacancy "use code" used by the County Assessor's to track vacancies on their tax rolls are those sites that include no major residences, warehouses, offices or other structures.

Consider establishing a reauthorization date for the tax.

Currently this measure does not include a sunset date or a reauthorization requirement for the tax. Given that circumstances change over time, both in the real estate market and in the needs of cities, it would make sense to require the reauthorization of the tax at some future date, such as twenty years from the passage of the measure.

Develop an understanding of how much funding will be available for homelessness services over time, ensure accountability for the use of funds and involve the County of Alameda in developing programs to address the homeless crisis.

Our comments have thus far focused on the source of funding proposed in this ordinance. We do have a few comments on the use of the funding - i.e. housing and services for homeless people. These include: planning for the potential decline in funding over time, the oversight of funds, and the role of the County in providing resources to solve the homeless crisis.

One concern that we have is that if this measure is successful and properties move from vacancy to active use, then they will no longer be subject to this tax and the amount of dedicated funding for homelessness will go down over time. Likewise, the amount of funds available will be impacted by the number of property that are granted exemptions from the tax. Any programs that are developed will need to be sized with that potential future decrease in mind, or other resources will need to be identified and dedicated for these purposes.

We also believe that it would be beneficial to develop metrics for the expenditure of future funds. Such metrics could include the number of units of new housing available to homeless individuals and families, the number of job training opportunities created, etc. Members of the future

⁷ Ibid, pgs 3-4

Commission should have specific expertise in either the provision of services or housing for homeless people and/or in fiduciary oversight of tax funds. The more clarity that is provided in the use and oversight of funds, the more transparent and successful the implementation of these programs will be.

Our third comment has to do with the role of the County in providing funding and services to address homelessness. It is imperative that the County work with the city in order to address the burgeoning homelessness crisis in Oakland. For this reason, we recommend that the city reach out to the County as new programs are in the process of being developed.

Thank you for the opportunity to provide our comments on this proposed ordinance. Should you have any questions, please do not hesitate to contact us. We look forward to working with you on this important proposal.

Sincerely,

A handwritten signature in black ink, appearing to be 'SK' or similar initials, written in a cursive style.

Sarah Karlinsky
Senior Policy Advisor

A handwritten signature in black ink, appearing to be 'RO' or similar initials, written in a cursive style.

Robert Ogilvie
Oakland Director

Cc: SPUR Oakland Board of Directors