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12 ERIC DEBBANE; ANDREW DEBBANE;  
13 ROBERT FRIEDLAND; NATASA ZEC; SAN  
14 FRANCISCO APARTMENT ASSOCIATION;  
15 SMALL PROPERTY OWNERS OF SAN  
16 FRANCISCO INSTITUTE; SAN FRANCISCO  
17 ASSOCIATION OF REALTORS

18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 IN AND FOR THE COUNTY OF SAN FRANCISCO

20 ERIC DEBBANE; ANDREW DEBBANE;  
21 ROBERT FRIEDLAND; NATASA ZEC; SAN  
22 FRANCISCO APARTMENT ASSOCIATION;  
23 SMALL PROPERTY OWNERS OF SAN  
24 FRANCISCO INSTITUTE; SAN  
25 FRANCISCO ASSOCIATION OF  
26 REALTORS,

27 *Plaintiffs,*

28 vs.

CITY & COUNTY OF SAN FRANCISCO;  
JOSÉ CISNEROS, in his official capacity as  
the Tax Collector or the City & County of  
San Francisco; ALL PERSONS  
INTERESTED IN THE MATTER OF  
Proposition M on the November 8, 2022  
ballot, imposing a “vacancy tax” on  
residential properties, and other matters  
related thereto; and DOES 1-100, inclusive,

*Defendants.*

ELECTRONICALLY

**FILED**

Superior Court of California,  
County of San Francisco

**02/09/2023**

**Clerk of the Court**

BY: JEFFREY FLORES

Deputy Clerk

**CGC-23-604600**

Case No.

**VERIFIED COMPLAINT TO  
INVALIDATE ILLEGAL  
SPECIAL TAX (CODE CIV.  
PROC. § 863; GOVT. CODE §  
50077.5)**

**CALENDAR PREFERENCE  
REQUIRED BY STATUTE  
(CODE CIV. PROC. § 867)**

## INTRODUCTION

1  
2           1.       This lawsuit is brought in the public interest to challenge the City &  
3 County of San Francisco (“City” or “San Francisco”)’s planned enforcement of  
4 Proposition M, a residential “vacancy tax” measure that received a narrow majority of  
5 the votes cast on the Proposition by the City’s voters at the November 2022 election.  
6 True and correct copies of the relevant pages of the November 2022 ballot pamphlet  
7 related to Proposition M, including the text of the measure, are attached hereto as  
8 Exhibit 1.

9           2.       The United States Supreme Court has repeatedly held that property-  
10 owners’ “power to exclude [others from the property] has traditionally been considered  
11 one of the most treasured strands in an owner’s bundle of property rights,” and is  
12 protected by the Takings Clause of the U.S. Constitution. *Loretto v. Teleprompter*  
13 *Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982). As a necessary corollary of that  
14 holding, the Court has also, in *Yee v. City of Escondido*, 503 U.S. 519 (1992), and other  
15 cases, held that the government cannot compel a property-owner to rent his or her  
16 property to third parties without violating that Clause. *Id.* at 528 (state could regulate  
17 the economic relationship between a property-owner and the tenant that the owner  
18 voluntarily agreed to lease property to, but “[a] different case would be presented were  
19 the statute, on its face or as applied, *to compel a landowner over objection to rent his*  
20 *property* or to refrain in perpetuity from terminating a tenancy” (emphasis added)).

21           3.       Relying on *Yee*, California’s First Appellate District has likewise held that  
22 property-owners cannot be compelled to continue renting property that they no longer  
23 wished to rent. *Cwynar v. City & Cty. of S.F.*, 90 Cal. App. 4th 637, 658 (2001) (plaintiffs  
24 stated a physical takings claim against a San Francisco regulation that precluded them  
25 from evicting tenants so that they could use the property). And the New York Court of  
26 Appeals (that State’s highest court) has squarely addressed, and struck down as an  
27 unlawful physical taking, a New York law that was substantively identical to the one  
28 challenged in this case—an “anti-warehousing” law that required landlords to “rent up”

1 vacant apartments or face stiff penalties. *Seawall Associates v. City of New York*, 74  
2 N.Y.2d 92, 104, 542 N.E.2d 1059 (N.Y. 1989), *cert. denied*, 493 U.S. 976 (1989) (“the loss  
3 of possessory interests, including the right to exclude, resulting from tenancies coerced  
4 by the government would constitute a per se physical taking”).

5         4.       The right not to offer residential units for rent is also enshrined in  
6 preemptive state law, specifically the Ellis Act, which provides, “No public entity, as  
7 defined in [Government] Section 811.2,<sup>1</sup> shall, by statute, ordinance, or regulation, or  
8 by administrative action implementing any statute, ordinance or regulation, compel  
9 the owner of any residential real property to offer, or to continue to offer,  
10 accommodations in the property for rent or lease, except for guestrooms or efficiency  
11 units within a residential hotel” if said hotel guest rooms meet certain criteria not at  
12 issue here. *See* Govt. Code § 7060(a).

13         5.       For various reasons, a number of property-owners in San Francisco own  
14 residential units that are vacant. In some cases, this is by choice. For decades, the City  
15 has imposed a series of ever-more restrictive constraints on the owners of residential  
16 rental properties. These include, of course, rent control; increasingly stringent just  
17 cause for eviction laws; registration requirements; elaborate notice requirements;  
18 relocation payment requirements; relocation demands in the tens—or even hundreds—  
19 of thousands of dollars; severe restrictions on an owner being able to live in, or allow  
20 an immediate family member to live in, a unit they own if it is occupied by a tenant;  
21 and innumerable other requirements. And over the past few years, during the COVID-  
22 19 pandemic, property-owners’ ability to even collect rent has been narrowly  
23 constrained at times, while the burdens of being a landlord remained in full effect. In  
24 response to these ever-increasing burdens, a number of property-owners in the City  
25 have understandably determined not to subject themselves to these burdens, declining

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26  
27         <sup>1</sup> Government Code § 811.2 provides, “‘Public entity’ includes the state, the  
28 Regents of the University of California, the Trustees of the California State University  
and the California State University, a county, city, district, public authority, public  
agency, and any other political subdivision or public corporation in the State.”

1 to rent out the units that they own. Some owners choose to keep units vacant for other  
2 reasons—for example, small property-owners who reside on the property and don’t wish  
3 to share the property they live on with a stranger, or those who wish to hold a unit open  
4 and available for a son or daughter or other close relative to move into at a future point,  
5 without the hassle and often-considerable expense of evicting a tenant (if such an  
6 eviction is even possible under San Francisco’s strict rules).

7         6. In other cases, despite the burdens, property-owners may be perfectly  
8 willing to participate in the rental market generally, but they nevertheless have  
9 individual units that remain vacant for an extended period for a variety of reasons. For  
10 some, despite diligent marketing of available units by the property-owner, recent  
11 changes in the real estate market (the COVID-19 pandemic’s effect on jobs in San  
12 Francisco, inflation, etc.) have made it considerably more difficult to rent out units in  
13 some parts of the City, and drastically slashing the rents in an attempt to fill such units  
14 often would mean—given San Francisco’s strict rent control laws—accepting  
15 submarket rents indefinitely. They have no obligation to do so—the Constitution and  
16 the Ellis Act protect their right not to rent the units until they are ready to do so.<sup>2</sup>

17         7. In other cases, the difficulty in renting is due to circumstances beyond the  
18 owners’ control, for example, deteriorating circumstances in the surrounding  
19 neighborhood due to crime, homelessness, and trash; or long delays in making needed  
20

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21  
22         <sup>2</sup> Constitutionally, there is no distinction to be made between property-owners  
23 who wish to keep their units vacant indefinitely, such as those who don’t want to be  
24 landlords at all, and those who may wish to (or have to) keep their units vacant in the  
25 short term with the intention of eventually renting them out again when circumstances  
26 permit. The Supreme Court has held that a government-compelled invasion of the right  
27 to exclude strangers from one’s property is a compensable physical takings even if is  
28 only compelled for a limited time, *see Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063,  
2075 (2021), and it has further held that a property-owner cannot be forced to give up  
the right to rent his or her property in the future as a condition of avoiding a  
government-compelled occupation of the property now. *Yee*, 503 U.S. at 531 (“a  
landlord’s ability to rent his property may not be conditioned on his forfeiting the right  
to compensation for a physical occupation” (quoting *Loretto*, 458 U.S. at 439 n.17)).

1 repairs or renovations to the units they own due to municipal bureaucracy,<sup>3</sup> supply  
2 chain issues, labor shortages, etc.

3       8.       Despite property-owners’ constitutional and statutory rights to keep their  
4 units vacant if they so choose, and despite the legal, administrative, practical and  
5 economic impediments to renting that many property-owners face, beginning January  
6 1, 2024, Proposition M would seek to achieve indirectly the very result that the  
7 Constitution and state law prohibit the City from doing directly. The measure seeks to  
8 coerce owners to rent their units by severely penalizing those who exercise their rights  
9 to keep units vacant (or even those who are trying but are unable to rent a unit for any  
10 reason). It does so by imposing a substantial charge—purportedly a “tax,” but really a  
11 regulatory penalty—on residential units that are “vacant” for more than 182 days,  
12 whether consecutive or nonconsecutive, in a given year. This, the City may not lawfully  
13 do. “[I]f the Constitution forbids the prohibition of [particular activities, like keeping a  
14 property vacant], then that result cannot be achieved indirectly by imposing a  
15 destructive tax upon them.” *Fox Bakersfield Theatre Corp. v. Bakersfield*, 36 Cal. 2d  
16 136, 139-40 (1950).

17       9.       Proposition M violates the Takings Clause of the Fifth Amendment, and  
18 it violates the state Ellis Act, by taxing owners for exercising their rights under those  
19 provisions.

20       10.     Proposition M also violates landlords’ fundamental liberty interests and  
21 equal protection, insofar as it exempts units that are leased to strangers, but not units  
22 that are leased to the property-owners’ family members, from taxation. And it violates  
23

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24       <sup>3</sup> For example, Proposition M exempts units from the vacancy tax for time spent  
25 waiting for a building permit, but it limits that exemption to a single year. Yet getting  
26 building permits often takes far longer than a year in San Francisco. According to a  
27 recent article in the *San Francisco Chronicle*, “San Francisco has the slowest permit  
28 approval time of any large city in the state, according to a database compiled by the  
state Department of Housing and Community Development.” Gardiner & Neilson, “627  
Days, Just for a Permit—Why S.F. Building Is Sluggish,” S.F. CHRON. (Dec. 15, 2022),  
p. A1 (available on Lexis-Nexis).

1 the constitutional right to privacy as applied to property-owners who reside on the  
2 property subject to taxation and do not wish to share their property with others.

3 11. For all these reasons, Proposition M is void and unenforceable.

4 **JURISDICTION AND VENUE**

5 12. This Court has jurisdiction over this action pursuant to Government Code  
6 § 50077.5 and Code of Civil Procedure § 860.

7 13. Venue for this action properly lies within this Court pursuant to Code of  
8 Civil Procedure §§ 393, subd. (b), 394, 860 and 863.

9 **PARTIES**

10 14. **Plaintiffs Eric Debbane and Andrew Debbane** are brothers who co-  
11 own several small residential buildings in various parts of the City, which they rent  
12 out. To the extent that the market and other conditions enable them to keep those units  
13 rented, they will not be subject to the tax. However, one of the buildings that the  
14 Debbanes co-own is a five-unit building in Russian Hill that they live in, along with  
15 Andrew's wife and Eric's girlfriend. They have co-owned this building since 1984, and  
16 they removed it from the market pursuant to the Ellis Act in 1998 so that they could  
17 move their aging mother into the building with them. (The could not avail themselves  
18 of an "owner move-in" eviction.) Their mother has since passed away, and the Debbanes  
19 have kept the building vacant for their own personal use. They have no desire to share  
20 the property that they own with persons other than those already living on the property  
21 with them. However, under Proposition M they will be taxed a minimum of \$7,500 in  
22 2024; \$15,000 in 2025; and \$30,000 per year thereafter. (The three smallest units on  
23 the property are 700, 750, and 800 square feet, respectively.)

24 15. **Plaintiff Robert Friedland** is the owner of a four-unit apartment  
25 building in the Western Addition/NOPA area. Each unit is approximately 850 square  
26 feet. He has owned the building since the early 1980s and has lived in one of the units  
27 himself during that time. For much of that time Mr. Friedland rented out the other  
28 three units, but he is 70 years old and has significant health issues. Thus, when he

1 recently retired he determined that he no longer wishes to bear the physical and mental  
2 burdens of being a landlord for the rest of his life. Accordingly, as each unit has come  
3 vacant over the last 2-3 years, he has declined to re-rent them. He has no wish to leave  
4 his decades-old home, but he would be forced to sell his building and move if the tax  
5 were to be applied to him, because his sole remaining sources of income—Social  
6 Security and some modest savings—would not be sufficient to cover the taxes plus his  
7 other living expenses. He would effectively be evicted from his home. If Proposition M  
8 were enforced against him, he would be forced to pay \$7,500 for 2024 (\$2,500 x three  
9 vacant units of less than 1,000 square feet); \$15,000 for 2025; and \$30,000 annually  
10 thereafter.

11       16. Prior to her retirement three years ago, **Plaintiff Natasa Zec** worked for  
12 approximately 20 years as a “locum tenens” anesthesiologist, *i.e.*, one working on  
13 temporary contracts at various sites across the nation, including in San Francisco. In  
14 connection with the itinerant nature of her career, since 2008 Ms. Zec has owned a  
15 “micro-condominium” of exactly 300 square feet in a multi-unit building on Divisadero,  
16 where, however, she has never claimed the homeowner's exemption. She has also  
17 owned a comparably-sized micro-condominium (350 square feet) in Boston since 2000,  
18 where she has been claiming the homeowner's exemption. Neither of those units have  
19 ever been rented out, and Ms. Zec has never intended to rent them out. She maintains  
20 them for her personal use. Following her retirement, Ms. Zec has continued to maintain  
21 both abodes, splitting time between the two, and she wishes to continue to do so, as she  
22 has for decades. In 2022, she spent 126 days in San Francisco, and more than 183 days  
23 in Boston, an approximate number of days per year that she wishes to spend,  
24 respectively, in each place in the future. Going forward, if she continues to divide her  
25 time between the two small abodes as she historically has, she would be subject to a  
26 tax of \$2,500 in 2024; \$5,000 in 2025; and \$10,000 annually thereafter. The latter figure  
27 is approximately double what she pays in *ad valorem* property taxes on the Divisadero  
28 micro-condo each year. If Proposition M were enforced against her, she could not afford

1 to pay the taxes and would have little choice but to sell her long-time home. In light of  
2 the burdensome restrictions that San Francisco places on landlords, and based on her  
3 negative experiences as a landlord in the past, e.g., in the Bronx (where tenants  
4 severely damaged a studio apartment that she owned to the point that it became  
5 essentially impossible to either rent or sell), Ms. Zec has no interest in renting out her  
6 micro-condominium on Divisadero Street and becoming a landlord in San Francisco.

7       **17. Plaintiff San Francisco Apartment Association (“SFAA”)**, founded  
8 in 1917, is a full-service, non-profit trade association of persons and entities who own  
9 residential rental properties in San Francisco. SFAA currently has more than 2,800  
10 active members who own more than 65,000 residential units in San Francisco; members  
11 include hundreds of “mom and pop” owners who own buildings with as few as three  
12 residential units, which are subject to Proposition M. SFAA is dedicated to educating,  
13 advocating for and supporting the rental housing community and preserving the  
14 property rights of all residential property providers in San Francisco. SFAA fields  
15 hundreds of calls each month from property owners with questions about their rights  
16 and duties under state law and San Francisco’s very complicated and lengthy laws and  
17 regulations governing residential property and owners. Proposition M applies to SFAA  
18 members who own, but choose—for a variety of reasons—not to rent out residential  
19 units in San Francisco, and subjects them to severe taxation. Proposition M also applies  
20 to SFAA members who are attempting to rent out residential units but are unable to  
21 do so for an extended period of time due to adverse market conditions or for other  
22 reasons, as discussed above. The ability of residential property owners to exercise their  
23 rights free from the constraints of Proposition M is germane to SFAA’s organizational  
24 purpose, and this challenge does not require the participation of individual members of  
25 SFAA. SFAA and its members are adversely and directly affected by Proposition M.  
26 The measure harms SFAA and its members by adversely affecting their ability to  
27 manage and otherwise control real property, and to exercise their statutory rights with  
28 respect to residential property they own in San Francisco. SFAA has standing because



1 (i) individual members of SFAA by virtue of their property ownership are subject to  
2 Proposition M and could have challenged it in their own right; (ii) the ability of  
3 residential property owners to exercise their constitutional and statutory rights free  
4 from punitive consequences is germane to SFAA's organizational purpose; and (iii) this  
5 challenge to Proposition M does not require participation of individual members of  
6 SFAA.

7       **18. Plaintiff Small Property Owners of San Francisco Institute**  
8 **("SPOSFI")** is a California nonprofit corporation and organization of small property  
9 owners that advocates for home ownership and the rights of property owners in San  
10 Francisco. SPOSFI's members range from young families to the elderly on fixed  
11 incomes, and its membership cuts across all racial, ethnic, and socio-economic strata.  
12 SPOSFI's members own residential real property subject to Proposition M and are  
13 subject to the tax imposed thereby. SPOSFI is also involved in education, outreach and  
14 research. Through education, it helps owners better understand their rights and learn  
15 how to deal with local government; through outreach to community groups and to the  
16 public, it demonstrates how restrictive San Francisco regulations harm both tenants  
17 and landlords, and through research projects, it aims to separate hyperbole from fact  
18 on the effect of rent control on housing stock. Through legal advocacy, SPOSFI seeks to  
19 protect the rights of small property owners against unfair and burdensome regulations  
20 and taxation. The ability of residential property owners to exercise their rights free  
21 from Proposition M's severe penalties is germane to SPOSFI's organizational purpose,  
22 and this challenge does not require the participation of individual members of SPOSFI.  
23 The Ordinance harms SPOSFI and its members by adversely affecting their ability to  
24 manage and otherwise control their real property and to exercise their constitutional  
25 and statutory rights, and subjecting them to significant financial penalties for  
26 exercising those rights. SPOSFI has standing because (i) individual members of  
27 SPOSFI by virtue of their property ownership are subject to Proposition M and could  
28 have challenged it in their own right; (ii) the ability of residential property owners to

1 exercise their constitutional and statutory rights free from punitive consequences is  
2 germane to SPOSFT's organizational purpose; and (iii) this challenge to Proposition M  
3 does not require participation of individual members of SPOSFI.

4       **19. Plaintiff San Francisco Association of Realtors ("SFAR")** is the  
5 official association of licensed real estate brokers and real estate agents in San  
6 Francisco. SFAR has over 4,300 members who are dependent for their livelihood upon  
7 the sale and management of real property in San Francisco. The great majority of SFAR  
8 member brokers and agents are involved in purchases, sales and/or management of San  
9 Francisco residential properties, including ones that are subject to Proposition M. The  
10 objective and mission of SFAR is to provide programs, products and services to its  
11 member brokers and agents that will assist them in increasing productivity and  
12 realizing success. Through legal advocacy, SFAR seeks to protect the rights of small  
13 property owners against unfair and burdensome regulations. The ability of residential  
14 property owners to exercise their rights, free from the constraints of Proposition M, is  
15 germane to SFAR's organizational purpose, as the Proposition adversely affects the  
16 ability of SFAR's members to market, sell and manage real property. It discourages the  
17 purchase and sale of residential property because existing and prospective owners who  
18 would otherwise exercise their constitutional and statutory rights are discouraged from  
19 doing so. SFAR has standing because (i) individual members of SFAR by virtue of their  
20 property management and/or sales are affected by Proposition M and could have  
21 challenged it in their own right; (ii) the ability of SFAR members to make a living  
22 unfettered by excessive and illegal regulation and punitive consequences is germane to  
23 SFAR's organizational purpose; and (iii) this challenge to Proposition M does not  
24 require participation of individual members of SFAR.

25       **20. Defendant City & County of San Francisco** is a charter city. As such,  
26 it and its officers, employees and agents, are responsible for the anticipated  
27 implementation of Proposition M. The City may sue and be sued under Government  
28 Code § 34501 and is named as a defendant pursuant to Code of Civil Procedure § 863.

1           21.     **Defendant Jose Cisneros** is the Tax Collector for the City and, as such,  
2 is the person primarily tasked with administering the collection of the charges imposed  
3 by Proposition M on behalf of the City. *See* Prop. M (Ex. 1), Proposed Bus. & Tax. Reg.  
4 §§ 2954, 2958(a). Mr. Cisneros is sued in his official capacity only.

5           22.     **Defendants ALL PERSONS INTERESTED** in the matter of  
6 Proposition M on the November 8, 2022 ballot, imposing a “vacancy tax” on residential  
7 properties and other matters related thereto, are named pursuant to Code of Civil  
8 Procedure § 863.

9           23.     The true identities and capacities of **Defendant Does 1-100** are unknown  
10 to Plaintiffs at this time. Plaintiffs are informed and believe, and based upon such  
11 information and belief allege, that each of the fictitiously named Defendants are in  
12 some manner responsible for the actions described in this Complaint. When the true  
13 identities and capacities of these Defendants have been determined, Plaintiffs will seek  
14 leave to amend this Complaint to insert such identities and capacities.

15                           **GENERAL FACTUAL ALLEGATIONS**

16           24.     Proposition M was submitted to the City’s voters at the November 2022  
17 general election, pursuant to the initiative process. It received 54.51% of the vote. The  
18 Board of Supervisors declared the results of the election on December 13, 2022, and  
19 Proposition M became effective ten days later. *See* Cal. Elec. Code § 9217; S.F. Muni.  
20 Elec. Code § 380; Proposition M (Ex. 1) § 6.

21           **A.     Summary of Proposition M’s Main Provisions.**

22           25.     Beginning in tax year 2024, Proposition M charges property owners an  
23 escalating amount for each “Residential Unit” that is “vacant” during a given tax year.  
24 A “Residential Unit” is broadly defined to include a “house, an apartment, a mobile  
25 home, a group of homes, or a single room that is designed as separate living quarters  
26 [*i.e.*, quarters in which the occupants live and eat separately from any other persons in  
27 the building and which have a kitchen and direct access from the outside of the building  
28 or through a common hall], other than units occupied or intended for occupancy

1 primarily by travelers, vacationers, or other transient occupants” but excluding certain  
2 nursing homes and care facilities. Prop. M (Ex. 1), Proposed Bus. & Tax. Reg. § 2952  
3 (“Definitions”).<sup>4</sup> An “owner is deemed to have kept the Residential Unit” “vacant”—and  
4 therefore subject to the Proposition M penalty—if it is “unoccupied, uninhabited, or  
5 unused, for more than 182 days, whether consecutive or nonconsecutive, in a tax year,”  
6 with certain narrow exceptions. *Id.*

7         26. The charge for a unit that is “vacant” in 2024 is between \$2,500 for a  
8 Residential Unit of less than 1,000 square feet;<sup>5</sup> \$3,500 for a Residential Unit from  
9 1,000 to 2,000 square feet; and \$5,000 for a Residential Unit over 2,000 square feet. The  
10 amount escalates each subsequent year that the unit remains vacant, reaching \$10,000  
11 for the smallest units in 2026 and \$20,000 for units exceeding 2,000 square feet. In  
12 subsequent years, the charge is adjusted upwards in accordance with the Consumer  
13 Price Index. The owner of a multi-unit structure is charged the foregoing amounts for  
14 each unit in the building that is “vacant” during the year in question, without  
15 limitation.

16         27. Proposition M provides for certain exemptions from the definition of  
17 “vacancy”—specified periods during which the unit is not treated as “vacant,” despite  
18 being unoccupied, such as, for example, during the period (not to exceed a year) while  
19 an application for a building permit is pending to allow repair, rehabilitation, or  
20 construction with respect to the Unit;<sup>6</sup> the period (not to exceed a year) where such  
21 repair, rehabilitation, or construction is underway; the first year after the Unit is built;  
22 periods during which the owner is in a medical care facility or immediately following  
23

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24         <sup>4</sup> A Residential Unit located in a building with two or fewer Units is exempt from  
25 the tax. Prop. M (Ex. 1), Proposed Bus. & Tax. Reg. § 2955(d).

26         <sup>5</sup> According to the rental website ApartmentList.com, the median rent for a one-  
27 bedroom apartment in San Francisco for February 2023 is \$2,241, so, essentially, San  
28 Francisco is demanding that the owner of a such a unit pay a month’s rent to the City  
initially, and up to four months’ rent eventually, for the “privilege”—which is actually  
a right, protected by the Constitution—of keeping the unit vacant.

<sup>6</sup> See note 3 above.

1 the owner's death; or during the two years after a "catastrophic" disaster damages the  
2 Unit to the point of uninhabitability. Also excluded is any period during which the Unit  
3 is leased to a bona fide tenant, but a lease to a co-owner, spouse, domestic partner,  
4 child, parent, or sibling does not exempt the Unit from the charge. Prop. M (Ex. 1),  
5 Proposed Bus. & Tax. Reg. § 2952 ("Definitions"). Nor, apparently, does it exempt a  
6 Unit whose owner is actively marketing it but is unable to rent it out, despite the fact  
7 that the measure purports to tax those who "kept" the Unit vacant for half a year.

8       28. Any proceeds derived from the Proposition M charge—that are left over  
9 after paying the costs of administering the tax and paying refunds and related penalties  
10 and interest—are to be spent on (1) rent subsidies for individuals 60 and older or low-  
11 income households or (2) acquiring, rehabilitating, and operating multi-unit buildings  
12 for affordable housing.

13       **B. By Its Proponents' Own Admission, the Primary Purpose of**  
14       **Proposition M is to Compel Property-Owners to Rent Their Units.**

15       29. However, the proponents of the measure have made clear that any such  
16 revenues are not the main objective of the Proposition. The real goal of the measure is  
17 to force property-owners to rent their vacant units by imposing charges that are so  
18 burdensome that there is no other choice. The measure's proponents expressly told the  
19 voters, in their rebuttal argument in support of the Proposition, sent to all the City's  
20 voters in advance of the election: "*We hope no one pays this tax. We want every vacant*  
21 *unit filled with people who need homes.*" Exhibit 1, p. 5 (emphasis added). Further  
22 reinforcing this point, the proponents' main argument is headed (in all-bold type), "Prop  
23 M will help fix San Francisco's Hidden Housing Crisis: 40,000 Vacant Homes." *Id.* at 4.  
24 The rest of the proponents' main argument and rebuttal likewise stress the fact that  
25 the goal of the measure is to "reduce vacancies [so that] we will have more housing";  
26 that "[i]n the first year alone, it is expected that 4,500 new units will return on [sic] the  
27 market—more than our annual goals"; and that voters should support Proposition M  
28 to "fix our hidden housing vacancy crisis." *Id.* The "Yes" campaign's website, printed at

1 the end of the main argument in favor, is “fillemptyhomes.com.” *Id.* The collection of  
2 revenue under the measure is essentially an afterthought—a single bullet point in the  
3 main argument in favor, and not even mentioned in the proponents’ rebuttal. *Id.* at 4-  
4 5.

5 30. Also consistent with this understanding of the purpose of the measure, the  
6 official Controller’s Statement on Proposition M, likewise contained in the ballot  
7 pamphlet sent to all voters, advised that the measure could raise as much as \$20 million  
8 in the first year, but that “if the tax achieves *its stated purpose of reducing the number*  
9 *of residential vacancies*, it will result in lower revenue.” Exhibit 1, p. 2 (emphasis  
10 added).

11 31. Even the Proposition’s own “Findings,” codified in Business & Taxation  
12 Regulations § 2951, stress the perceived evils of vacant units and stress that the  
13 measure “is intended to disincentivize prolonged vacancies, thereby increasing the  
14 number of housing units available for occupancy...” Exhibit 1, p. 12. Again, the revenue  
15 raising function of the tax is mentioned largely as an afterthought.

16 32. While the charge imposed by Proposition M is denominated a tax, that  
17 label is not conclusive; in determining whether a charge imposed by an ordinance is  
18 revenue-raising or regulatory—is a tax or a penalty—“the court will look to the  
19 substantive provisions of the ordinance and not merely its title and form.” *United Bus.*  
20 *Comm’n v. City of San Diego*, 91 Cal. App. 3d 156, 165-66 (1979). Proposition M is, in  
21 fact, a penalty with a predominantly regulatory purpose, and that regulatory purpose—  
22 compelling property-owners to rent out their real property—runs afoul of the Takings  
23 Clause and the Ellis Act.

24 **C. Even If Viewed as a Tax, Proposition M Is Still Illegal.**

25 33. Nor could the measure be sustained even if the Court were to conclude  
26 that Proposition M does, in fact, impose a “tax.” That would not save it. For one thing,  
27 a property-owners’ right to keep their property vacant—to exclude others—is an  
28 essential element of the property rights protected by the Takings Clause of the Fifth

1 Amendment, and the government may not “impose a charge for the enjoyment of a right  
2 granted by the federal constitution,” *Murdock v. Comm’n of Penn.*, 319 U.S. 105, 113  
3 (1943). In other words, the government may not single out a constitutional right for  
4 special taxation or condition the exercise of that right on a payment to the government.  
5 *Levin v. City & Cty. of S.F.*, 71 F. Supp. 3d 1072 (N.D. Cal. 2014) (enjoining charge  
6 imposed by San Francisco as condition of evicting tenants to remove rented units from  
7 the market as an unconstitutional taking of private property).

8 34. Likewise, the City may not penalize property-owners, financially or  
9 otherwise, for exercising their right under the Ellis Act to refuse to offer units for rent.  
10 *See Coyne v. City & Cty. of S.F.*, 9 Cal. App. 5th 1215 (2017); *S.F. Apartment Ass’n v.*  
11 *City & Cty. of S.F.*, 3 Cal. App. 5th 463 (2016). But Proposition M does just that.

12 **D. Proposition M Also Unlawfully Burdens Constitutionally**  
13 **Protected Liberty and Privacy Interests.**

14 35. Proposition M threatens property-owners’ fundamental liberty interests  
15 in close familial relationships, protected by the due process clause, and equal protection  
16 by taxing (actually penalizing) units that are rented to close family members of the  
17 owner while exempting units that are leased to strangers from taxation. This illegal  
18 differential treatment is further exemplified by the fact that rent received by an owner  
19 from renting a unit to a family member is still deemed taxable income for state and  
20 federal income tax purposes, but Proposition M nevertheless deems the unit “vacant”  
21 and penalizes it heavily.

22 36. And finally, Proposition M violates the constitutional right to privacy, Cal.  
23 Const. art. I, § 1, as applied to property-owners who reside on the property in question  
24 and who do not wish to share the property with others.

25 37. Unless this Court grants relief to prohibit Defendants from enforcing  
26 Proposition M, Plaintiffs will suffer irreparable injury and damage in that they will be  
27 subjected to an illegal charge on their real property that violates their constitutional  
28 and statutory rights.

1           38.     Plaintiffs have no speedy or adequate remedy at law if a writ of mandate  
2 and/or injunction does not issue preventing the enforcement of Proposition M.

3           39.     An actual controversy has arisen and now exists between Plaintiffs and  
4 Defendants as to the validity and enforceability of Proposition M. Plaintiffs contend  
5 that the Proposition is void and unenforceable. Some or all of Defendants contend that  
6 it is valid and enforceable.

7           40.     Plaintiffs desire a judicial determination of the invalidity of Proposition  
8 M, and a determination as to whether the Proposition is enforceable.

9           41.     A judicial declaration is necessary and appropriate at this time in order  
10 for Plaintiffs to ascertain their rights and duties under the Proposition.

11                               **FIRST CAUSE OF ACTION**

12           **Violation of the 5th Amendment to the U.S. Constitution (Takings Clause)**

13                               **(Against All Defendants)**

14           42.     Plaintiffs incorporate by reference each and every allegation made in  
15 Paragraphs 1 through 41 of this Complaint as though fully set forth herein.

16           43.     Property-owners in San Francisco, including the individual plaintiffs  
17 herein and the members of the associational plaintiffs, have a constitutional right  
18 under the Takings Clause of the Fifth Amendment to not be coerced by the government  
19 into renting out their property, whether they desire to keep it unoccupied temporarily  
20 or indefinitely. *See Yee*, 503 U.S. at 528; *Loretto*, 458 U.S. at 435-40; *Cwynar*, 90 Cal.  
21 App. 4th at 658; *Seawall Associates*, 74 N.Y.2d at 104, 542 N.E.2d 1059; note 2 above.

22           44.     Through Proposition M, San Francisco nevertheless seeks to compel  
23 property-owners to rent the residential units that they own by imposing a significant  
24 monetary penalty on vacant units. That it does so by imposing substantial monetary  
25 penalties, rather than by direct fiat makes no difference, whether that charge is treated  
26 as a tax or a penalty. *See Levin*, 71 F. Supp. 3d at 1072 (enjoining charge imposed by  
27 San Francisco as condition of evicting tenants to remove rented units from the market  
28 as an unconstitutional taking of private property). Again, “if the Constitution forbids



1 the prohibition of [given activities], then that result cannot be achieved indirectly by  
2 imposing a destructive tax upon them,” *Fox Bakersfield Theatre Corp.*, 36 Cal. 2d at  
3 139-40, and “[a] state may not impose a charge for the enjoyment of a right granted by  
4 the federal constitution.” *Murdock*, 319 U.S. at 113. In other words, while governments  
5 may impose generally-applicable taxes that incidentally affect constitutional rights,  
6 those governments may not single out a constitutionally guaranteed right for  
7 differential taxation, as Proposition M seeks to do. *See also Minneapolis Star & Tribune*  
8 *v. Minn. Comm’r of Revenue*, 460 U.S. 575, 591-93 (1983). And it does not matter  
9 whether the owner’s desire (or need) is to keep the unit vacant on a temporary basis or  
10 an indefinite one. *See* note 2 above.

11 45. Proposition M seeks to compel property-owners to forfeit their  
12 constitutional “power to exclude,” *Loretto*, 458 U.S. at 435, by imposing substantial  
13 charges on the exercise of that right. As such, the Proposition M constitutes a taking  
14 without just compensation, and thus violates Plaintiffs’ rights protected by the United  
15 States Constitution.

16 46. An actual controversy has arisen and now exists between the parties  
17 relating to these legal rights and duties for which Plaintiffs desire a declaration of  
18 rights, therefore making a declaratory judgment necessary. Cal. Code Civ. Proc. § 1060.

19 47. Moreover, unless this Court enjoins the enforcement of Proposition M by  
20 defendants, Plaintiffs and other citizens similarly-situated will suffer irreparable  
21 injury and damage. 42 U.S.C. § 1983; Cal. Code Civ. Proc. § 526.

## 22 **SECOND CAUSE OF ACTION**

### 23 **Violation of Article XI, § 7, of the California Constitution**

#### 24 **(State Law Preemption by the Ellis Act, Cal. Govt. Code § 7060(a))**

#### 25 **(Against All Defendants)**

26 48. Plaintiffs incorporate by reference each and every allegation made in  
27 Paragraphs 1 through 47 of this Complaint as though fully set forth herein.

28 49. Under Article XI, § 7, of the California Constitution, a city or county can

1 only “make and enforce within its limits all local, police, sanitary, and other ordinances  
2 and regulations *not in conflict with general laws*.” (Emphasis added.) In other words,  
3 local governments—including charter cities like San Francisco—remain subject to  
4 superior state law. That includes the Ellis Act. *See, e.g., S.F. Apartment Ass’n*, 3 Cal.  
5 App. 5th at 463 (enjoining San Francisco’s condominium “merger ban” as preempted by  
6 the Ellis Act).

7         50. Section 7060(a) of the Ellis Act (Govt. Code § 7060(a)) provides that, “No  
8 public entity ... shall, by statute, ordinance, or regulation, or by administrative action  
9 implementing any statute, ordinance or regulation, compel the owner of any residential  
10 real property to offer, or to continue to offer, accommodations in the property for rent  
11 or lease, except for guestrooms or efficiency units within a residential hotel” if said hotel  
12 guest rooms meet certain criteria.

13         51. Here again, it makes no difference that the compulsion imposed by  
14 Proposition M comes in the form of a financial penalty rather than a direct order to  
15 make a property-owners’ unit available for rent. *See, e.g., Coyne*, 9 Cal. App. 5th at  
16 1215. “The Ellis Act does not permit the City to condition plaintiff’s departure [from the  
17 rental market] upon the payment of ransom.” *Bullock v. City & Cty. of S.F.*, 221 Cal.  
18 App. 3d 1072, 1101 (1990).

19         52. An actual controversy has arisen and now exists between the parties  
20 relating to these legal rights and duties for which Plaintiffs desire a declaration of  
21 rights, therefore making a declaratory judgment necessary. Cal. Code Civ. Proc. § 1060.

22         53. Moreover, unless this Court enjoins the enforcement of Proposition M by  
23 defendants, Plaintiffs and other citizens similarly-situated will suffer irreparable  
24 injury and damage. Cal. Code Civ. Proc. § 526.

1 **THIRD CAUSE OF ACTION**

2 **Violation of Fourteenth Amendment of the U.S. Constitution**

3 **& Cal. Const. art. I, § 7 (Substantive Due Process)**

4 **(Against All Defendants)**

5 54. Plaintiffs incorporate by reference each and every allegation made in  
6 Paragraphs 1 through 53 of this Complaint as though fully set forth herein.

7 55. As discussed above, Proposition M provides that a Residential Unit is not  
8 deemed to be “vacant” at any time during which the Unit is subject to a bona fide lease  
9 to a tenant—during the so-called “Lease Period.” Prop. M (Ex. 1), Proposed Bus. & Tax.  
10 Regs. § 2952 (“Definitions”). However, the “‘Lease Period’ means the period during  
11 which any owner of a Residential Unit or any person in the Owner’s Group of that owner  
12 leases that Residential Unit to one or more tenants under a bona fide lease intended  
13 for occupancy, *but not including any lease or rental of that Residential Unit to anyone*  
14 *in the Owner’s Group* or to travelers, vacationers, or other transient occupants.” *Id.*  
15 (emphasis added). “‘Owner’s Group’ means for each owner of a Residential Unit, with  
16 respect to each Residential Unit, the owner, any current or former co-owner, and any  
17 *Related Person* or Affiliate of the owner or any current or former co-owner.” *Id.*  
18 (emphasis added). And a “‘Related Person’ means a spouse, domestic partner, child,  
19 parent, or sibling.” *Id.*

20 56. In other words, a lease to these close family members is not treated as an  
21 exemption from the definition of “vacancy.” As the opponents of Proposition M noted in  
22 their main argument against the measure, the consequence of this exception to the  
23 exemption is that “The measure is even written so that intergenerational households  
24 and relatives living under one roof would be fined in a building that isn’t vacant at all.”  
25 Exhibit 1, p. 5. Tellingly, in their rebuttal, the Proposition’s proponents did not deny  
26 that fact. *Id.*

27 57. The Supreme Court has held that the protection of close familial  
28 relationships is a fundamental liberty interest protected by the due process clause. *See,*

1 *e.g., Moore v. E. Cleveland*, 431 U.S. 494, 495 (1977) (striking down local ordinance that  
2 limited the right of extended family members to reside in a single home); *Cwynar*, 90  
3 Cal. App. 4th at 643-44 (upholding claim that ordinance barring landlords from evicting  
4 tenants to use the unit for a close family member violated the Constitution). Proposition  
5 M unlawfully burdens this fundamental liberty interest in violation of due process.

6 58. An actual controversy has arisen and now exists between the parties  
7 relating to these legal rights and duties for which Plaintiffs desire a declaration of  
8 rights, therefore making a declaratory judgment necessary. Cal. Code Civ. Proc. § 1060.

9 59. Moreover, unless this Court enjoins the enforcement of Proposition M by  
10 defendants, Plaintiffs and other citizens similarly-situated will suffer irreparable  
11 injury and damage. 42 U.S.C. § 1983; Cal. Code Civ. Proc. § 526.

12 **FOURTH CAUSE OF ACTION**

13 **Violation of Fourteenth Amendment of the U.S. Constitution**

14 **& Cal. Const. art. I, § 7 (Equal Protection)**

15 **(Against All Defendants)**

16 60. Plaintiffs incorporate by reference each and every allegation made in  
17 Paragraphs 1 through 59 of this Complaint as though fully set forth herein.

18 61. By exempting residential units that are leased to strangers from taxation  
19 but subjecting residential units leased to close family members to taxation, Proposition  
20 M violates equal protection. Because, as discussed above, the familial interests  
21 implicated are a fundamental liberty interests, strict scrutiny applies to laws that  
22 impose thereon. *See In re Santos Y.*, 92 Cal. App. 4th 1274, 1314-17 (2001).

23 62. An actual controversy has arisen and now exists between the parties  
24 relating to these legal rights and duties for which Plaintiffs desire a declaration of  
25 rights, therefore making a declaratory judgment necessary. Cal. Code Civ. Proc. § 1060.

26 63. Moreover, unless this Court enjoins the enforcement of Proposition M by  
27 defendants, Plaintiffs and other citizens similarly-situated will suffer irreparable  
28 injury and damage. 42 U.S.C. § 1983; Cal. Code Civ. Proc. § 526.

1 **FIFTH CAUSE OF ACTION**

2 **Violation of Cal. Const. art. I, § 1 (Right of Privacy)**

3 **(Against All Defendants)**

4 64. Plaintiffs incorporate by reference each and every allegation made in  
5 Paragraphs 1 through 63 of this Complaint as though fully set forth herein.

6 65. Proposition M's efforts to compel property-owners to allow units they own  
7 to be occupied are unconstitutional as applied to owners who reside on the property to  
8 be taxed, such as Plaintiffs Debbane and Friedland, who do not wish to share their  
9 homes with others. This application of the Proposition violates the fundamental  
10 constitutional right of privacy, protected by Article I, § 1, of the California Constitution.  
11 *Cf. Tom v. City & County of San Francisco*, 120 Cal. App. 4th 674 (2004) (City's  
12 ordinance prohibiting tenants-in-common from entering exclusive occupancy  
13 agreements violated right of privacy).

14 66. An actual controversy has arisen and now exists between the parties  
15 relating to these legal rights and duties for which Plaintiffs desire a declaration of  
16 rights, therefore making a declaratory judgment necessary. Cal. Code Civ. Proc. § 1060.

17 67. Moreover, unless this Court enjoins the enforcement of Proposition M by  
18 defendants, Plaintiffs and other citizens similarly-situated will suffer irreparable  
19 injury and damage. Cal. Code Civ. Proc. § 526.

20 **PRAYER**

21 WHEREFORE, Plaintiffs pray for Judgment as follows:

22 1. For a declaration that Proposition M is unenforceable.

23 2. For issuance of a writ of mandate or other appropriate relief directing and  
24 commanding that Defendants and others acting pursuant to their authority or control  
25 refrain from enforcing the Proposition;

26 3. For an injunction, both temporary and permanent, prohibiting Defendants  
27 and others acting pursuant to their authority or control from enforcing the Proposition;

28 4. For the refund to appropriate taxpayers of any amounts collected

1 pursuant to Proposition M;

2 5. For an award to Plaintiffs of their costs of this action;

3 6. For an award to Plaintiffs of their attorneys' fees pursuant to Code of Civil  
4 Procedure § 1021.5 or any other appropriate provision of the law; and

5 7. For such other relief as this Court deems just and proper.

6 Respectfully submitted,

7 Dated: February 9, 2023

NIELSEN MERKSAMER

PARRINELLO GROSS & LEONI LLP

8  
9  
10 By:



Christopher E. Skinnell

11 *Attorneys for Plaintiffs*

12 ERIC DEBBANE; ANDREW  
13 DEBBANE; ROBERT FRIEDLAND;  
14 NATASA ZEC; SAN FRANCISCO  
15 APARTMENT ASSOCIATION;  
16 SMALL PROPERTY OWNERS OF  
17 SAN FRANCISCO INSTITUTE; SAN  
18 FRANCISCO ASSOCIATION OF  
19 REALTORS  
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**VERIFICATION**

I am a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February \_\_, 2023, at San Francisco, California.


 2/17/23.  
ERIC DEBBANE

**VERIFICATION**

I am a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February \_\_, 2023, at San Francisco, California.

 2/7/23  
ANDREW DEBBANE



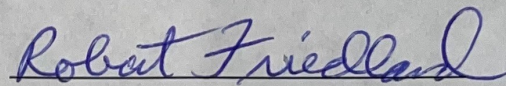
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**VERIFICATION**

I am a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 7, 2023, at San Francisco, California.

  
ROBERT FRIEDLAND

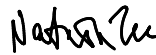
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**VERIFICATION**

I am a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 7, 2023, at San Francisco, California.



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NATASA ZEC



**VERIFICATION**

I am the Executive Director of the San Francisco Apartment Association, a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 1<sup>st</sup>, 2023, at San Francisco, California.

  
JANAN NEW

**VERIFICATION**

I am the President of the Small Property Owners of San Francisco Institute, a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 7, 2023, at San Francisco, California.

  
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**EXHIBIT 1**

**Complaint**

***Debbane, et al. v. City & County of San Francisco***

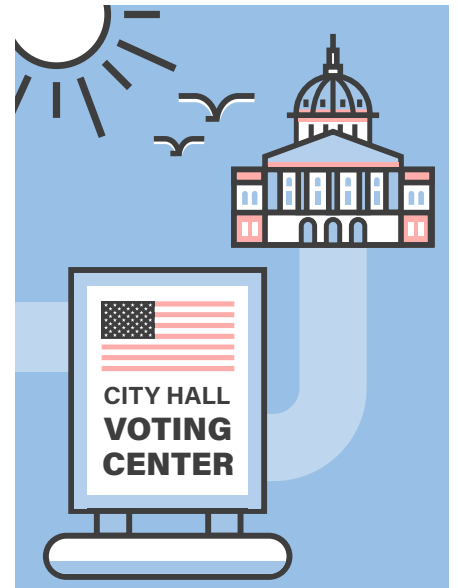
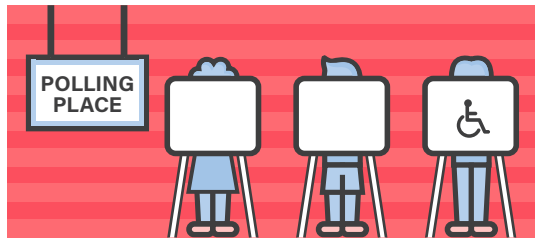
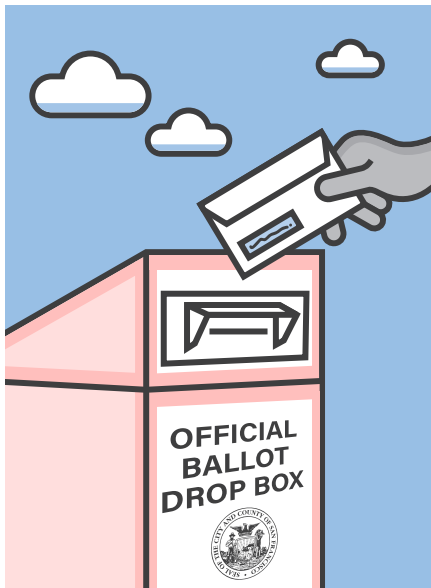


City and County of San Francisco  
Department of Elections

## Voter Information Pamphlet & Sample Ballot

# November 8, 2022

## Consolidated General Election



**With many secure ways to cast a ballot this fall,  
make a plan to VOTE, one and all!**

**Your voting districts and precinct may have changed  
as a result of 2022 redistricting. See inside for details.**

Las boletas oficiales, boletas de muestra y otros materiales electorales están disponibles en español.  
Para más información, visite la página Asistencia en español.

選務處提供中文版正式選票、選票樣本和其他選舉資料。欲知詳情，請查閱「中文選民服務」。

Makakukuha ng opisyal na mga balota, halimbawang mga balota at iba pang mga materyales para sa  
eleksyon sa Filipino. Para sa impormasyon, tingnan ang pahinang Tulong sa Filipino.



# M

## Tax on Keeping Residential Units Vacant

Shall the City tax owners of vacant residential units in buildings with three or more units, if those owners have kept those units vacant for more than 182 days in a calendar year, at a rate between \$2,500–5,000 per vacant unit in 2024 and up to \$20,000 in later years with adjustments for inflation, to generate estimated annual revenue of \$20–37 million, with the tax continuing until December 31, 2053, and use those funds for rent subsidies and affordable housing?

YES

☐

NO

☐

### Digest by the Ballot Simplification Committee

**The Way It Is Now:** The City does not tax owners of apartments, condominiums or other residential properties for keeping these properties vacant.

**The Proposal:** Starting on January 1, 2024, Proposition M would tax owners of vacant residential units in buildings with three or more units if those owners have kept those units vacant for more than 182 days in a calendar year and where no exemption applies. The tax would not apply to units intended for travelers, vacationers and other short-term occupants or units in a nursing home or residential care facility. This tax would also not apply to units owned by nonprofit organizations or government agencies. This proposed tax would expire on December 31, 2053.

Proposition M provides exemptions for a primary residence where the owner has a homeowner property tax exemption and a property with an existing residential lease. Proposition M also allows additional time to fill vacant units before the tax applies in some circumstances, including repair of an existing unit, new construction, a natural disaster or death of the owner.

Under Proposition M, in 2024, the tax would range from \$2,500 to \$5,000 per vacant unit, depending on the unit's size. In later years, the tax would increase to a maximum of \$20,000 if the same owner kept that unit vacant for consecutive years. The tax would also be adjusted for inflation.

The City would deposit these tax revenues into a Housing Activation Fund that would primarily fund two programs. One program would provide rent subsidies for people age 60 or older and for low-income households. The other program would fund acquiring and

rehabilitating unoccupied buildings for affordable housing, and later operating those buildings. The City could also use these tax revenues to repay bonds the City may issue for projects funded under either program.

**A "YES" Vote Means:** If you vote "yes," you want to tax owners of vacant residential units in buildings with three or more units, if those owners have kept those units vacant for more than 182 days in a calendar year, and use those tax funds for rent subsidies and affordable housing.

**A "NO" Vote Means:** If you vote "no," you do not want to make these changes.

### Controller's Statement on "M"

City Controller Ben Rosenfield has issued the following statement on the fiscal impact of Proposition M:

Should the proposed ordinance be approved by the voters, in my opinion, it could result in additional revenue to the City exceeding \$20 million annually.

If the number of residential vacancies were similar to average vacancies from 2011 to 2020, and if this measure did not induce property owners to fill vacant residential units more quickly than they did during this period, we estimate it would result in an annual revenue increase to the City of \$20 million in tax year 2024, \$30 million in tax year 2025, and \$37 million in tax year 2026. However, if the tax achieves its stated purpose of reducing the number of residential vacancies, it will result in lower revenue. The proposed tax is a dedicated tax and proceeds would be deposited into the Housing Activation Fund.

The proposed ordinance would amend the City's Business and Tax Regulations Code and Administrative

**This measure requires 50%+1 affirmative votes to pass.**

The above statement is an impartial analysis of this measure. Arguments for and against this measure immediately follow. The full text begins on page 193. Some of the words used in the ballot digest are explained starting on page 62.



code to impose an excise tax on owners of vacant residential units in buildings with three or more units if those owners have kept those units vacant for more than 182 days in a tax year. Starting in 2024, the tax would be \$2,500 to \$5,000, depending on the size of the unit. In 2025, the tax would increase to \$2,500 to \$10,000, depending on the size of the unit and whether the owner kept the property vacant in the prior year. In 2026, the tax rate would increase to a maximum of \$20,000 if the owner kept that same unit vacant for three consecutive years. The tax rate would be adjusted annually in accordance with the increase in the Consumer Price Index and would expire on December 31, 2053.

The proposed ordinance would establish the Housing Activation Fund. The Fund would provide rental subsidies and fund the acquisition, rehabilitation, and operation of multi-unit buildings for affordable housing.

---

## How "M" Got on the Ballot

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On July 14, 2022, the Department of Elections certified that the initiative petition calling for Proposition M to be placed on the ballot had a sufficient number of valid signatures to qualify the measure for the ballot.

8,979 signatures were required to place an initiative ordinance on the ballot. This number is equal to 5% of the total number of people who voted for Mayor in 2019. A random check of the signatures submitted by the proponents of the initiative petition prior to the July 11, 2022, submission deadline showed that the total number of valid signatures was greater than the number required.

**This measure requires 50%+1 affirmative votes to pass.**

**The above statement is an impartial analysis of this measure. Arguments for and against this measure immediately follow. The full text begins on page 193. Some of the words used in the ballot digest are explained starting on page 62.**





## Proponent's Argument in Favor of Proposition M

### Prop M will help fix San Francisco's Hidden Housing Crisis: 40,000 Vacant Homes

According to a pre-pandemic report by the city's Budget and Legislative Analyst, based on US Census data and other sources, 40,000 units sit vacant in San Francisco. Let that sink in.

From the highrises downtown, to the new construction in SOMA, and the controversial towers in the Mission, 40,000 homes remain empty while our housing and homelessness crisis rages on.

The fact is, if we reduce vacancies we will have more housing. Other cities that have implemented a vacancy tax, such as Vancouver, Canada, have seen up to 10% of their vacant units become occupied after their vacancy tax became operational.

Here's how it works:

- In buildings of 3 units or more, any units that remain vacant more than 6 months will be taxed.
- The tax will increase the longer a unit stays vacant.
- Revenue collected will be dedicated to an affordable housing fund and rental subsidies for low-income families and seniors.

- Single family homes and duplexes are exempt, as are units vacant due to repairs, new construction, disaster or death of the owner.

Prop M isn't about taxing those who call San Francisco home. It's about tackling the large, corporate landlords keeping units vacant, and those wealthy individuals who purchase units but don't use them.

In the first year alone, it is expected that 4,500 new units will return on the market — more than our annual goals — with no increase in taxes, no construction time, no multi-million dollar price tag, and no waiting.

Please join us in supporting Prop M and fix our hidden housing vacancy crisis.

*San Francisco Democratic Party  
Council of Community Housing Organizations  
United Educators of San Francisco  
Faith in Action - Bay Area  
Senior and Disability Action  
Affordable Housing Alliance  
Community Tenants Association*

[fillemptyhomes.com](http://fillemptyhomes.com)

## Rebuttal to Proponent's Argument in Favor of Proposition M

Proponents of Prop M will tell you that there are 40,000 vacant homes in San Francisco.

What they won't tell you is that their residential vacancy tax is a feeble and ineffectual policy that won't meaningfully address our housing crisis or bring many more homes to the market citywide.

They also won't tell you that about 10,000 of those "vacant homes" they claim are already on the market and available for rent, or a tenant has rented the home and is in the process of moving in.

An additional 9,300 are in the process of being sold, or have been sold and a new owner is in the process of moving in.

These homes would not be subject to the residential vacancy tax—**because they're not truly vacant.**

Many of the remaining units in the proponents' trumped-up 40,000 figure aren't even subject to the tax either.

The proponents of this new punitive taxation scheme have purposefully exempted wealthy single-family homeowners with truly unoccupied pied-a-terres in a cynical move to win votes and deceive voters.

**So why misrepresent the total number of vacancies citywide?** Why write a tax measure that picks and chooses which types of homes it taxes?

Our leadership has failed to address the housing crisis and refuses to allow new housing to be built, continuously voting down projects which would create hundreds of affordable housing units.

Voters should reject the vacancy tax and demand real solutions which truly address our housing crisis.

**Vote No on M.**

*San Francisco Apartment Association*



## Opponent's Argument Against Proposition M

Prop M is a feeble, misguided attempt at housing policy from the Board of Supervisors who refuses to take our housing crisis seriously. This anti-housing Board is creating a problem that doesn't exist in order to raise more taxes on San Franciscans.

Proposition M:

- Uses trumped-up, overstated statistics that manipulate the perceived number of vacancies citywide
- Targets small property owners and intergenerational households, not corporate landlords
- Was sponsored by the Democratic Socialists of America and Supervisor Dean Preston, who has blocked the construction of thousands of homes, many of them affordable. His measure is cynically written to exempt some homeowners like himself, while punishing small mom-and-pop property owners and intergenerational households
- Encourages neighbors to report each other's whereabouts to the government
- Is representative of the City's attempt to raise more taxes without increasing city services.

Prop M purports to target large property owners "intentionally" leaving units unrented. But any condo owner in a building with 3+ units will be subject to punitive fines should your home have to be unoccupied for 183+ days a year for any reason — if you are hospitalized, traveling for work, staying with your partner, or caring for family members — you will be fined.

The measure is even written so that intergenerational households and relatives living under one roof would be fined in a building that isn't vacant at all.

Moreover, Prop M is a Trojan Horse, pretending to do one thing and allowing the Board of Supervisors to expand aspects of the law WITHOUT approval by the voters. The proponents have already stated that they plan to extend this measure to duplexes and single-family homes if the law is passed; this measure isn't about going after corporate landlords.

Enough with the Board of Supervisors' power-grab and schemes to penalize everyday San Franciscans.

Vote No on Prop M if you want to maintain control of your own home.

*San Francisco Apartment Association*

## Rebuttal to Opponent's Argument Against Proposition M

Opponents say there's no vacancy problem in San Francisco. Yet they claim that Prop M raises taxes. They can't have it both ways: No vacancies means there will be no taxes. So what are they trying to hide?

The City's Budget and Legislative Analyst conducted an extensive report based on US Census data documenting that there are 40,000 vacant residential units. Opponents offer no research to back up their assertions.

Vancouver's similar measure resulted in a 10% reduction in vacant homes. In San Francisco, that means 4,500 new homes, almost immediately — with no construction costs, or permit delays.

Vacant units are overwhelmingly found in large buildings owned by corporate landlords. They are holding units vacant, waiting to flip them for profit years down the road. It isn't surprising they want to keep the status quo that allows them to do this with no consequence.

We hope no one pays this tax. We want every vacant unit filled with people who need homes. Prop M is a carefully drafted citizens initiative, ensuring units which are being repaired, rehabilitated, or where the owner is in care or has died, are exempted. In an effort to scare voters, the landlord opposition statement ignores these and other exemptions that prevent the tax from applying to any reasonable vacancy.

Prop M is our best weapon against San Francisco's hidden housing crisis: prolonged vacancies. It targets the large corporate landlords hoarding units as investments, not mom and pop owners. Join us, support Prop M.

*San Francisco Democratic Party  
Council of Community Housing Organizations  
United Educators of San Francisco  
Faith in Action Bay Area  
Senior and Disability Action  
Affordable Housing Alliance  
Community Tenants Association*



## Paid Argument IN FAVOR of Proposition M

### ***San Francisco Democratic leaders support Yes on M so we can maximize our existing housing stock.***

*We all know that we need more housing in San Francisco. The rents keep on rising and it's causing massive displacement. While we need to build, we also have to be responsible with the housing stock we already have. We need the estimated 4,500 homes Prop M will provide. Vote Yes on Prop M so we don't waste any more valuable housing.*

*Vice Chair of California Democratic Party David Campos*

*Chair of the San Francisco Democratic Party Honey Mahogany*

*Treasurer for the San Francisco Democratic Party Carolina Morales*

*Vice-Chair for the San Francisco Democratic Party Peter Gallotta*

*Corresponding Secretary for the San Francisco Democratic Party Anabel Ibáñez*

*Recording Secretary for the San Francisco Democratic Party Janice Li*

*Vice Chair for the San Francisco Democratic Party Li Miao Lovett*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

## Paid Argument IN FAVOR of Proposition M

### ***Small property owners Agree: Prop M benefits us all!***

Many homeowners have responded to the housing crisis by creating in-law units. We are not the same as the large corporate landlords who contribute to housing vacancy. In fact, vacancies in San Francisco are concentrated in the neighborhoods with the most new construction and large multi-unit buildings, such as the Downtown/Financial District, Mission Bay, Mission, and South of Market. Because of this, our single family homes and small properties are exempt for this tax. Prop M is a fair tax aimed to reign in the largest companies. Single family homes and duplexes are exempt. Vote Yes on Prop M.

*Carolyn Ji Jong Goossen*

*Christin Evans*

*Jason Prado*

*Jeff May*

*Buck Bagot*

*Jennifer Kroot*

*Marcus Chan*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

## Paid Argument IN FAVOR of Proposition M

### ***Asian-American and Pacific Islander leaders say vote Yes on Prop M***

*San Francisco needs more affordable housing immediately. We have 40,000 vacant homes, and it is driving up the cost to rent and buy in San Francisco. By taxing vacant homes in buildings with 3 or more units, we can deliver more affordable housing and lower the cost of housing, without cost to mom-and-pop landlords, taxpayers, nonprofits and builders.*

*District 1 Supervisor Connie Chan*

*District 4 Supervisor Gordon Mar*

*Community Tenants Association*

*Bart Board of Directors Janice Li*

*Member of the Community College Board of Trustees*

*Alan Wong*

*Rudy Corpuz Jr.*

*San Francisco Public Defender Mano Raju*

*Vice-Chair of San Francisco Democratic Party Li Miao Lovett*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

## Paid Argument IN FAVOR of Proposition M

**Latino Leaders Agree - Let's create new opportunities for our people to live with dignity and stay home in S.F. Vote Yes on Prop M**

Many Latino families live in multigeneration homes, as a result, the average Latino household is 30% more crowded than the citywide average, according to the US Census Bureau. It is unfair to hard-working families that 40,000 homes sit vacant. This measure will bring 4,500 units back on to the market, increasing the housing supply in our city. Plus, the millions in rental subsidies Prop M will provide for low-income families and seniors will help folks stay in their homes and not be displaced. Vote Yes on Prop M so we can provide more housing for families.



*Latinx Democratic Club*  
*Faith In Action Bay Area*  
*Calle 24*  
*La Raza Community Resource Center*  
*Former District 11 Supervisor John Avalos*  
*Vice-Chair of California Democratic Party David Campos*  
*Corresponding Secretary for the San Francisco*  
*Democratic Party Anabel Ibáñez*  
*Treasurer for the San Francisco Democratic Party*  
*Carolina Morales*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

### **Paid Argument IN FAVOR of Proposition M**

Black Leaders Agree, Vote Yes on M. Stop the loss of our Black population.

Since 1970, San Francisco has lost over half of its Black population and this trend shows no sign of stopping unless we take action. The best way to keep San Francisco diverse and hold on to our Black community is by providing more affordable housing. Fixing this problem won't be solved by Prop M alone, but the measure will activate 4,500 empty homes for people to live in while providing millions for affordable housing and rental subsidies. Vote Yes on Prop M.

*President of the Board of Supervisors Shamann Walton*  
*Former District 10 Supervisor Sophie Maxwell*  
*Chair of the San Francisco Democratic Party Honey*  
*Mahogany*  
*Member of the San Francisco Democratic Party*  
*Gloria Berry*  
*Former CCSF Student Trustee William Walker*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

### **Paid Argument IN FAVOR of Proposition M**

#### **Stand with Women Leaders and Vote Yes on M!**

Forced evictions and housing insecurity disproportionately impacts women and reinforces existing gender inequalities. According to a recent report, 25% of California women are "severely rent burdened," spending more than half their income on housing costs,

compared with 20% of men. As a result, women are also at a greater risk of facing homelessness. Prop M will increase the city's housing supply and raise millions of dollars to fund affordable housing and rental subsidies for seniors and low-income families. Adequate housing is a central component of women's right to equality, Vote Yes on M.

*San Francisco Women's Political Committee*  
*District 1 Supervisor Connie Chan*  
*District 9 Supervisor Hillary Ronen*  
*Chair of the San Francisco Democratic Party Honey*  
*Mahogany*  
*Vice-Chair of the San Francisco Democratic Party Li*  
*Miao Lovett*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

### **Paid Argument IN FAVOR of Proposition M**

#### **Help prevent LGBTQ homelessness. Vote Yes on Prop M.**

LGBTQ residents are at higher risk of displacement and homelessness than the general population. Recent statistics indicate that 27% of the homeless population in San Francisco are LGBTQ. Among homeless youths, 50% are LGBTQ. We need to fix this problem now by activating the estimated 4,500 homes Prop M will provide, which will help lower the cost to rent and buy in San Francisco. Help us alleviate LGBTQ homelessness by voting Yes on Prop M.

*Harvey Milk LGBTQ Democratic Club*  
*District 8 Supervisor Rafael Mandelman*  
*Former Assemblymember Tom Ammiano*  
*Former State Senator Mark Leno*  
*BART Board of Directors Bevan Dufty*  
*Vice-Chair of California Democratic Party David*  
*Campos*  
*Chair of the San Francisco Democratic Party Honey*  
*Mahogany*  
*Vice-Chair for the San Francisco Democratic Party Peter*  
*Gallotta*  
*Treasurer for the San Francisco Democratic Party*  
*Carolina Morales*  
*Jackie Fielder, Community Organizer*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation





and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

### **Paid Argument IN FAVOR of Proposition M**

#### **Non-Profit Housing Providers Support Prop M because a vacancy tax worked in Vancouver and it will work in San Francisco.**

San Francisco should follow the lead of Vancouver, British Columbia, which was one of the first cities in North America to implement a vacancy tax. The vacancy tax passed in 2018 has been a resounding success, with the total number of vacant units decreasing from 4.3% to 3.1 % while also adding \$23 million Canadian per year in net revenue. In addition, Vancouver now has 1,896 more units being occupied than before the tax.

Plus, we need the millions that Prop M will provide for the acquisition of affordable housing and rental subsidies. These funds will help keep working-class San Franciscans from being displaced. Vote Yes on Prop M so we can achieve similar results in San Francisco.

*Council of Community Housing Organizations  
TODCO Group Vice President John Elberling  
PODER  
Affordable Housing Alliance*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

### **Paid Argument IN FAVOR of Proposition M**

#### **Protect our tenants. Vote Yes on Prop M.**

With the pandemic moratorium over, evictions are rising fast. According to data from the SF Rent Board, evictions rose 43% during the last calendar year and show no signs of abating. Prop. M will make more homes available, and it will also raise millions of dollars to fund desperately needed affordable housing and rental subsidies for seniors and low-income families.

Plus, the rental subsidies will keep San Franciscans from being evicted. Vote Yes on Prop M.

*San Francisco Tenants Union  
Affordable Housing Alliance  
Community Tenants Association*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

### **Paid Argument IN FAVOR of Proposition M**

#### **Join unions and vote Yes on Prop M to help protect our working-class.**

The never-ending rise of housing costs is hurting our union membership. If we don't do something about the 40,000 empty homes that are driving up the cost of living in San Francisco, it will be increasingly difficult for the working-class to stay here. We need to add 80,000 homes over the next decade and we need Prop M to help meet that goal by activating unused homes.

Union workers are the folks that make this great city run and we need them to be able to live here. Prop. M will activate an estimated 4,500 homes in its first two years. Vote Yes on Prop M.

*United Educators of San Francisco  
San Francisco Labor Council  
Service Employees International Union 1021  
ILWU NCDC*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

### **Paid Argument IN FAVOR of Proposition M**

#### **Vote Yes on Prop M so we can help solve homelessness.**

San Francisco has over 40,000 empty homes while over 8,000 folks sleep on the streets every night. The hoarding of vacant units, many of them in rent controlled buildings, is making this issue worse. If we ever want to stop this crisis, we need to do everything in our power to fill these homes, including the taxation of empty units. Vote Yes on Prop M so we can address this serious problem.

*Coalition on Homelessness*

The true source(s) of funds for the printing fee of this argument: Activate Housing.

The three largest contributors to the true source recipient committee: 1. Tenant and Owner Development Corporation and its affiliated entity Yerba Buena Neighborhood Consortium LLC, 2. Dean Preston, 3. Jeff May.

### **End of Paid Arguments IN FAVOR of Proposition M**



## Paid Argument AGAINST Proposition M

PLEASE VOTE NO ON EMPTY HOMES TAX! This new tax was created by elected officials who also voted against the creation of hundreds of new homes proposed for various vacant lots throughout the city!

Supervisor Preston has proclaimed that there are "40,000 vacant homes" in San Francisco. Less than 10% of that number are actually purposely held off the market by owners who may want to use them in the future for their retirement and who hope to avoid the expensive legal battles associated with reclaiming one's own property from a sitting tenant.

The measure has over-reaching "gotcha's" not mentioned in Preston's lofty speeches. For example, perfectly legitimate renters who happen to be family members of current owners or past owners are not considered as real tenants; units occupied by these renters would be subject to the tax. This tax could be altered in the future by a 2/3 majority of the Board of Supervisors, which means that we really don't know what we're voting for.

This is an early step of Preston and his fellow travelers to create "Social Housing," meaning that instead of private ownership, residential property is owned by Government or by non-profits - Public Housing. The Empty Homes Tax violates state law by telling owners they must rent to certain people and may not withdraw their private property from the rental market, even with legitimate reasons. PLEASE VOTE NO!

*Small Property Owners of San Francisco Institute*

The true source(s) of funds for the printing fee of this argument: Small Property Owners of San Francisco Institute.

## Paid Argument AGAINST Proposition M

### Vote NO on Prop M.

Democratic Socialist Supervisor Dean Preston wants to give unprecedented control of your home to the Board of Supervisors, through a "vacancy tax" that infringes on privacy, punishes people for basic life circumstances and choices (e.g.: chronic illness, staying with a partner), and surreptitiously eliminates key voter rights.

Prop M will do nothing to increase available housing, and it will not generate fines to support affordable homes. **What Prop M WILL do is hurt small property owners, multi-generational households, and renters.**

If Prop M passed, use of your home could be tracked with utility bills and neighbors spying and reporting you. Prop M is a politician-backed power-grab that will

allow the Board of Supervisors to expand the law **without a vote of the people.** If Prop M passes, the same politicians who supported it will make it even more far-reaching, including single-family homes and duplexes (which are currently excluded from Prop M).

### Proponents of Prop M are peddling false information:

LIE: there are 40K vacant units in the city.

TRUTH: That's a 500% exaggeration, it's 8,000.

LIE: 4,500 units would come on the market in the first year.

TRUTH: 4,500 is a completely fabricated number. And 6,400 units are already available.

LIE: Prop M will raise \$45M for housing

TRUTH: Fabricated number and irrelevant as San Franciscans have already allocated an untapped \$1B for affordable housing.

We have funds and resources to ensure San Franciscans have housing, but the Board of Supervisors consistently blocks housing projects. The problem is political will. Prop M won't fix that.

**Prop M is Misleading, based on Misinformation and sneaks in a Material loss of voter rights. It is a Board of Supervisors power-grab against everyday San Franciscans.**

### Vote NO on Prop M.

*Marie Hurabiell, SOAR-D1.com*

*Paulina Fayer, Activ8SF*

*Brian Quan, President, Chinese American Democratic Club*

*Garrett Tom*

The true source(s) of funds for the printing fee of this argument: San Francisco Association of Realtors.

## Paid Argument AGAINST Proposition M

### M STANDS FOR MISGUIDED – VOTE NO!

It's a red herring. Just another city bureaucratic expense.

Attorneys—including our City Attorney—will be in court forever arguing over legalities and constitutionality of this measure should it pass.

What's "vacant" and what's a second home?

Is a remodel a "vacancy"?

What if the remodel takes more than a year? And on and on.

This is the same City government that hasn't been able to put a dent in the homeless situation plaguing our streets for the past 30 years and now City Hall has another false panacea to throw at us in Prop M.



The City's solution to social problems is "throw more money at it".

The trouble is it is YOUR money!

**Vote NO ON M!**

*San Francisco Taxpayers Association*

The true source(s) of funds for the printing fee of this argument: San Francisco Taxpayers Association.

The three largest contributors to the true source recipient committee: 1. Paul Scott, 2. Diane Wilsey, 3. S.F. Board of Realtors.



Sujata Srivastava	Business/Civic: Civic
Wesley Tam	Neighborhood/Community
Kim Tavaglione	Business/Civic: Labor
Joan Van Rijn	Neighborhood/Community
Christopher White	Advocacy: Bike
Cassandra Costello	Alternate: Business/Civic: Tourism/ Visitors
Cathy de Luca	Alternate: Advocacy: Seniors and People with Disabilities
Daniel Herzstein	Alternate: Business/Civic: Large Business
Sasha Hirji	Alternate: Advocacy: Youth
Melvin Parham	Alternate: Equity Priority Community
Maribel Ramirez	Alternate: Equity Priority Community

Section 4. Scope of Ordinance. In connection with the amendments to Article 14 of the Business and Tax Regulations Code contained in Section 2 of this ordinance, the voters intend to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Business and Tax Regulations Code that are explicitly shown therein as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

Section 5. If any section, subsection, sentence, clause, phrase, or word of this ordinance approving the 2022 Transportation Expenditure Plan and amending Article 14 of the Business and Tax Regulations Code, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The voters hereby declare that they would have adopted this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

#### Section 6. Effective and Operative Dates.

(a) As provided in California Public Utilities Code Section 131102, subdivision (b), the amendments to Article 14 of the Business and Tax Regulations Code in Section 2 of this ordinance shall become effective at the close of the polls on November 8, 2022.

(b) When the operative date of the 2022 Transportation Expenditure Plan in Section 3 of this ordinance and the amendments to Business and Tax Regulations Code Article 14 in Section 2 of this ordinance have been determined pursuant to Section 1405 of Article 14 as amended by the voters at the November 8, 2022 election, the City Attorney shall cause all references in Article 14 to “the operative date of the amendments to this Article 14 passed by the voters at the November 8, 2022 election” to be replaced by the actual operative date.

Section 7. Pursuant to California Constitution Articles XIII A and XIII C and California Public Utilities Code Section 131102, the approval of the 2022 Transportation Expenditure Plan and of the ordinance amending Article 14 of the Business and Tax Regulations Code shall be submitted to the qualified electors of the City and County of San Francisco at a special election that is hereby called and ordered to be held in the City on Tuesday, the 8th day of November, 2022, for the purpose of submitting to the electors of the City a proposition to approve the amendments to Article 14 of the Business and Tax Regulations Code set forth in Section 2 of this ordinance and the 2022 Transportation Expenditure Plan set forth in Section 3 of this ordinance. The special election called and ordered shall be referred to in this ordinance as the “Special Election.”

Section 8. The Special Election shall be held and conducted and the votes received and canvassed, and the returns made and the results ascertained, determined and declared as provided in this ordinance and in all particulars not recited in this ordinance such

election shall be held according to the laws of the State of California (“State”) and the Charter of the City (“Charter”) and any regulations adopted under State law or the Charter, providing for and governing elections in the City, and the polls for such election shall be and remain open during the time required by such laws and regulations.

Section 9. The Special Election is consolidated with the General Election scheduled to be held in the City on Tuesday, November 8, 2022. The voting precincts, polling places, and officers of election for the November 8, 2022 General Election are hereby adopted, established, designated and named, respectively, as the voting precincts, polling places, and officers of election for the Special Election called, and reference is made to the notice of election setting forth the voting precincts, polling places, and officers of election for the November 8, 2022 General Election by the Director of Elections to be published in the official newspaper of the City on the date required under the laws of the State of California. The ballots to be used at the Special Election shall be the ballots to be used at the November 8, 2022 General Election.

Section 10. Pursuant to California Public Utilities Code Section 131108, subdivision (h), the Board of Supervisors hereby directs the Department of Elections to do the following: (a) include in the sample ballot mailed to the voters and the voter information pamphlet the full proposition as set forth in Sections 1 through 6 of this ordinance, but inserting the letter for the proposition where designated, and (b) include in the voter information pamphlet the entire adopted 2022 Transportation Expenditure Plan as set forth in Section 3 of this ordinance. In accordance with this Section 10, Sections 1 through 6 of this ordinance shall constitute the ballot measure submitted to the voters at the Special Election. The long title of the ballot measure submitted to the voters shall be the same as the long title of this ordinance, except that the final two clauses, “affirming the Transportation Authority’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1,” shall be omitted, and the word “and” shall be inserted before the clause “authorizing the Transportation Authority to issue limited tax bonds secured by transactions and use tax revenues.”

Section 11. Pursuant to California Public Utilities Code Section 131055, the Board of Supervisors hereby directs that the 2022 Transportation Expenditure Plan shall be published once in the official newspaper of the City and County within 30 days of the Board of Supervisors’ enactment of this ordinance. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign it within 10 days of receiving it, or the Board overrides the Mayor’s veto of the ordinance.

#### Section 12. Environmental and Land Use Findings.

(a) The Authority has determined that the actions contemplated in this ordinance are not a project and not subject to the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*). Said determination is on file with the Clerk of the Board of Supervisors in File No. 220536 and is incorporated herein by reference. The Board affirms this determination.

(b) On March 23, 2022, the Planning Department determined that the actions contemplated in this ordinance are consistent, on balance, with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts this determination as its own. A copy of said determination is on file with the Clerk of the Board of Supervisors in File No. 220536, and is incorporated herein by reference.

## Proposition M

**Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an excise tax on owners keeping certain residential units vacant, to fund rental subsidies and the acquisition, rehabilitation, and operation of affordable housing; increasing the City’s appropriations limit by the amount collected under the tax for four years from November 8, 2022; and affirming the Planning Department’s determination under the California Environmental Quality Act.**



NOTE: **Unchanged Code text and uncodified text** are in plain font.

**Additions to Codes** are in single-underline italics Times New Roman font.

**Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.

Asterisks (\* \* \* \*) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Pursuant to Articles XIII A and XIII C of the Constitution of the State of California, this ordinance shall be submitted to the qualified electors of the City and County of San Francisco at the November 8, 2022, consolidated general election.

Section 2. The Business and Tax Regulations Code is hereby amended by adding Article 29A, consisting of Sections 2950 through 2963, to read as follows:

#### **ARTICLE 29A: EMPTY HOMES TAX ORDINANCE**

##### **SEC. 2950. SHORT TITLE.**

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

##### **SEC. 2951. FINDINGS AND PURPOSE.**

(a) Residential vacancies are an ongoing concern in San Francisco. According to census data, there were tens of thousands of vacant residential units in San Francisco as of 2019. A report published in January 2022 by the Budget and Legislative Analyst found that the total number of vacant units in San Francisco increased by about 20% between 2015 and 2019, to 40,500 units in 2019.

(b) According to the Budget and Legislative Analyst report, vacant units in 2019 were concentrated in the South of Market area, downtown, and in the Mission District; generally the same areas where new, large-scale housing construction has been concentrated. Such units are disproportionately in multiunit buildings.

(c) The Empty Homes Tax is limited to buildings with more than two residential units because such buildings are more likely to include one or more units held vacant by choice and are more likely to include multiple vacancies.

(d) Prolonged vacancy restricts the supply of available housing units and runs counter to the City’s housing objectives. Prolonged vacancies can also decrease economic activity in neighborhoods and lead to blight.

(e) The Empty Homes Tax is intended to disincentivize prolonged vacancies, thereby increasing the number of housing units available for occupancy, while also raising funds for rent subsidies and affordable housing.

##### **SEC. 2952. DEFINITIONS.**

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

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

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

the City by or on behalf of anyone in the Owner’s Group.

“Construction Period” means the one-year period following the date that the City issues a building permit for repair, rehabilitation, or construction with respect to a Residential Unit, provided that if the City issues multiple building permits to or for the benefit of one or more persons in the Owner’s Group for the same Residential Unit, the Construction Period shall mean only the one-year period following the issuance of the first building permit to or for the benefit of anyone in the Owner’s Group.

“Disaster Period” means the two-year period following the date that a Residential Unit was severely damaged and made uninhabitable or unusable due to fire, natural disaster, or other catastrophic event.

“Homeowners’ Exemption Period” means the period during which a Residential Unit is the principal place of residence of any owner of that Residential Unit and for which such owner validly has claimed either the homeowners’ property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans’ exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

“Lease Period” means the period during which any owner of a Residential Unit or any person in the Owner’s Group of that owner leases that Residential Unit to one or more tenants under a bona fide lease intended for occupancy, but not including any lease or rental of that Residential Unit to anyone in the Owner’s Group or to travelers, vacationers, or other transient occupants.

“New Construction Period” means the one-year period following the date that the City issues a certificate of final completion and occupancy with respect to a Residential Unit in a newly erected building or a newly added Residential Unit in an existing building.

“Owner Death Period” means, with respect to a co-owner or decedent’s estate, heirs, or beneficiaries, the period during which a Residential Unit is unoccupied, uninhabited, or unused because of the death of any owner of a Residential Unit who was the sole occupant of that Residential Unit immediately prior to such owner’s death, provided that such period shall not exceed the longer of one year or the period during which the Residential Unit is subject to the authority of a probate court.

“Owner In Care Period” means the period during which a Residential Unit is unoccupied, uninhabited, or unused because all occupants of the Residential Unit who used that Residential Unit as their principal residence are residing in a hospital, long term or supportive care facility, medical care or treatment facility, or other similar facility.

“Owner’s Group” means for each owner of a Residential Unit, with respect to each Residential Unit, the owner, any current or former co-owner, and any Related Person or Affiliate of the owner or any current or former co-owner.

“Related Person” means a spouse, domestic partner, child, parent, or sibling.

“Residential Unit” means a house, an apartment, a mobile home, a group of rooms, or a single room that is designed as separate living quarters, other than units occupied or intended for occupancy primarily by travelers, vacationers, or other transient occupants. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have a kitchen and direct access from the outside of the building or through a common hall. For purposes of this Article 29A, a Residential Unit shall not include a unit in a currently operational nursing home, residential care facility, or other similar facility, or any unit that is fully exempt from property tax under the welfare exemption under Section 214(g) of the California Revenue and Taxation Code, as may be amended from time to time.

“Vacancy Exclusion Period” means the Building Permit Application Period, Construction Period, Disaster Period, Homeowners’ Exemption Period, Lease Period, New Construction Period, Owner



Death Period, or Owner In Care Period.

“Vacant” means unoccupied, uninhabited, or unused, for more than 182 days, whether consecutive or nonconsecutive, in a tax year.

**SEC. 2953. IMPOSITION OF TAX.**

(a) Except as otherwise provided in this Article 29A, for the purposes described in Section 2958, the City imposes an annual Empty Homes Tax on each person that owns a Residential Unit for keeping that Residential Unit Vacant.

(b) The tax on an owner keeping a Residential Unit Vacant for the 2024 tax year shall be as follows:

(1) \$2,500 for each Residential Unit with square footage less than 1,000;

(2) \$3,500 for each Residential Unit with square footage from 1,000 to 2,000; and

(3) \$5,000 for each Residential Unit with square footage greater than 2,000.

(c) The tax on an owner keeping a Residential Unit Vacant for the 2025 tax year, if that owner has not kept that Residential Unit Vacant in the 2024 tax year, shall be as follows:

(1) \$2,500 for each Residential Unit with square footage less than 1,000;

(2) \$3,500 for each Residential Unit with square footage from 1,000 to 2,000; and

(3) \$5,000 for each Residential Unit with square footage greater than 2,000.

(d) The tax on an owner keeping a Residential Unit Vacant for the 2025 tax year, if that owner has kept that Residential Unit Vacant in the 2024 tax year, shall be as follows:

(1) \$5,000 for each Residential Unit with square footage less than 1,000;

(2) \$7,000 for each Residential Unit with square footage from 1,000 to 2,000; and

(3) \$10,000 for each Residential Unit with square footage greater than 2,000.

(e) The tax on an owner keeping a Residential Unit Vacant for the 2026 tax year and subsequent tax years, if that owner has not kept that Residential Unit Vacant in the immediately preceding tax year, shall be as follows:

(1) \$2,500 for each Residential Unit with square footage less than 1,000;

(2) \$3,500 for each Residential Unit with square footage from 1,000 to 2,000; and

(3) \$5,000 for each Residential Unit with square footage greater than 2,000.

(f) The tax on an owner keeping a Residential Unit Vacant for the 2026 tax year and subsequent tax years, if that owner has kept that Residential Unit Vacant in the immediately preceding tax year but has not kept that Residential Unit Vacant in the tax year immediately preceding that tax year, shall be as follows:

(1) \$5,000 for each Residential Unit with square footage less than 1,000;

(2) \$7,000 for each Residential Unit with square footage from 1,000 to 2,000; and

(3) \$10,000 for each Residential Unit with square footage greater than 2,000.

(g) The tax on an owner keeping a Residential Unit Vacant for the 2026 tax year and subsequent tax years, if that owner has kept that Residential Unit Vacant in the immediately preceding tax year and has kept that Residential Unit Vacant in the tax year immediately preceding that tax year, shall be as follows:

(1) \$10,000 for each Residential Unit with square footage less than 1,000;

(2) \$14,000 for each Residential Unit with square footage from 1,000 to 2,000; and

(3) \$20,000 for each Residential Unit with square footage

greater than 2,000.

(h) The rates set forth in subsections (c), (d), (e), (f), and (g) of this Section 2953 shall be adjusted annually in accordance with the increase in the Consumer Price Index: All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31st of the preceding year, beginning with the 2025 tax year.

(i) The Empty Homes Tax shall be payable by the owner or owners of the Residential Unit kept Vacant. Not more than one tax per Residential Unit shall be imposed under this Section 2953 for a tax year by reason of multiple liable owners. If there are multiple liable owners, each owner shall be jointly and severally liable for the tax, which shall be the highest amount of tax payable by any owner for that Residential Unit for that tax year.

(j) A person shall be liable for the Empty Homes Tax only if that person, while owning a Residential Unit, has kept or is deemed to have kept that Residential Unit unoccupied, uninhabited, or unused, for more than 182 days, whether consecutive or nonconsecutive, in a tax year. In determining whether an owner has kept a Residential Unit Vacant during a tax year, days within any Vacancy Exclusion Period shall be disregarded if that Vacancy Exclusion Period applies to that owner for that Residential Unit, as shall days in which the Residential Unit was not owned by the owner, but the owner shall be deemed to have kept the Residential Unit unoccupied, uninhabited, or unused on all other days that such Residential Unit is unoccupied, uninhabited, or unused during the tax year.

(k) The Empty Homes Tax shall take effect on January 1, 2024. The Empty Homes Tax shall expire on December 31, 2053.

**SEC. 2954. RETURNS; PRESUMPTION OF VACANCY.**

(a) Each person that is required to pay the Empty Homes Tax shall file a return in the form and manner prescribed by the Tax Collector.

(b) Each person that owns a Residential Unit at any time during a tax year and that is not exempt from the Empty Homes Tax with respect to that Residential Unit under any one of subsections (a) through (d) of Section 2955 shall file a return for that tax year in the form and manner prescribed by the Tax Collector. A person that fails to file the return required by this subsection (b) for a Residential Unit shall be presumed to have kept that Residential Unit Vacant for the tax year for which such return is required. The person who fails to file the required return may rebut the presumption by producing satisfactory evidence that such person did not keep the Residential Unit Vacant during the tax year for which the return is required.

**SEC. 2955. EXEMPTIONS AND EXCLUSIONS.**

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

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

(c) The City, the State of California, and any county, municipal corporation, district, or other political subdivision of the State shall be exempt from the Empty Homes Tax, except where any constitutional or statutory immunity from taxation is waived or is not applicable.

(d) A person that owns any Residential Unit located in a building with two or fewer Residential Units shall be exempt from the Empty Homes Tax with respect to any Residential Unit located in that building.

(e) For purposes of this Article 29A, the Empty Homes Tax shall not apply with respect to a Residential Unit for any tax year for

which any person is liable for the Vacancy Tax imposed under Article 29 of the Business and Tax Regulations Code with respect to that Residential Unit.

**SEC. 2956. ADMINISTRATION; PENALTIES.**

(a) Except as otherwise provided under this Article 29A, the Empty Homes Tax shall be administered pursuant to Article 6 of the Business and Tax Regulations Code.

(b) Transactions with the principal purpose of avoiding or evading all or a portion of the Empty Homes Tax shall be disregarded for purposes of determining the amount of the Empty Homes Tax and whether the Empty Homes Tax is due. In addition to the Empty Homes Tax due as a result of this subsection (b), any owner liable for any Empty Homes Tax as a result of this subsection (b) shall be liable for a penalty in an amount equal to the Empty Homes Tax due as a result of this subsection (b).

**SEC. 2957. DEPOSIT OF PROCEEDS.**

(a) All monies collected under the Empty Homes Tax Ordinance shall be deposited to the credit of the Housing Activation Fund ("Fund") established in Administrative Code Section 10.100-76. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be carried forward and accumulated in the Fund for the purposes described in Section 2958.

(b) Commencing with a report filed no later than February 15, 2026, covering the fiscal year ending on June 30, 2025, the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a report containing the amount of monies collected in and expended from the Fund during the prior fiscal year, the status of any project required or authorized to be funded by Section 2958, and such other information as the Controller, in the Controller's sole discretion, shall deem relevant to the operation of this Article 29A.

**SEC. 2958. EXPENDITURE OF PROCEEDS.**

Subject to the budgetary and fiscal provisions of the Charter, monies in the Housing Activation Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following purposes:

(a) To the Tax Collector and other City Departments, for administration of the Empty Homes Tax and administration of the Housing Activation Fund.

(b) Refunds of any overpayments of the Empty Homes Tax, including any related penalties, interest, and fees.

(c) All remaining amounts to provide funding, including administrative costs, for Eligible Programs, 50% of which shall be used for the programs described in subsection 2958(c)(1)(A) and 50% of which shall be used for the programs described in subsection 2958(c)(1)(B). The voters intend that these remaining amounts be spent on Eligible Programs at levels in addition to amounts currently spent on such Eligible Programs and that such remaining amounts not be used to supplant existing expenditures.

(1) For purposes of this Section 2958, "Eligible Programs" means:

(A) Rental subsidies for individuals age 60 or older and rental subsidies for households with a household income of not more than 50% of Area Median Income; and

(B) The acquisition and rehabilitation of multi-unit buildings, in which at least one-third of the units are unoccupied, for affordable housing, and the operation of such buildings acquired and/or rehabilitated under this subsection 2958(c)(1)(B). Buildings subject to expenditures under this subsection 2958(c)(1)(B) shall be restricted through a recorded deed restriction or restrictions mandated for the useful life of the building to households with an average household income that does not exceed 80% of Area Median Income.

(2) For purposes of this Section 2958, "Area Median Income" means the median income as published annually by the Mayor's Office of Housing and Community Development for the City and County of San Francisco, derived in part from the income limits and area median income determined by the United States Department of Housing and Urban Development, or its successor agency, for the San Francisco County metro fair market rent area, adjusted solely for household size, but not for high housing cost area. The Board of Supervisors may modify this definition of Area Median Income solely for purposes of subsection 2958(c)(1)(B) to determine area median income by zip code area.

**SEC. 2959. TECHNICAL ASSISTANCE TO THE TAX COLLECTOR.**

The Department of Public Works, the Department of Building Inspection, the Rent Board, and the Assessor-Recorder's Office shall provide technical assistance to the Tax Collector, upon the Tax Collector's request, to administer the Empty Homes Tax.

**SEC. 2960. AUTHORIZATION AND LIMITATION ON ISSUANCE OF BONDS.**

The City is hereby authorized to issue from time to time limited tax bonds or other forms of indebtedness to finance the costs of the projects described in Section 2958. The City shall be authorized to pledge revenues generated by the Empty Homes Tax to the repayment of limited tax bonds or other forms of indebtedness authorized under this Section 2960. The Board of Supervisors shall by ordinance or resolution, as applicable, establish the terms of any limited tax bonds or other forms of indebtedness authorized hereby, including but not limited to, the amount of the issue, date, covenants, denominations, interest rate or rates, maturity or maturities, redemption rights, tax status, manner of sale, and such other particulars as are necessary or desirable.

**SEC. 2961. AMENDMENT OF ORDINANCE.**

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

**SEC. 2962. SEVERABILITY.**

(a) Except as provided in Section 2962(b), if any section, subsection, sentence, clause, phrase, or word of this Article 29A, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Article. The People of the City and County of San Francisco hereby declare that, except as provided in Section 2962(b), they would have adopted this Article 29A and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Article or application thereof would be subsequently declared invalid or unconstitutional.

(b) If the imposition of the Empty Homes Tax in Section 2953 is held in its entirety to be facially invalid or unconstitutional in a final court determination, the remainder of this Article 29A shall be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax Regulations Code.

**SEC. 2963. SAVINGS CLAUSE.**

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

Section 3. Chapter 10 of the Administrative Code is hereby amended by adding Section 10.100-76 to Article XIII, to read as follows:

**SEC. 10.100-76. HOUSING ACTIVATION FUND.**

(a) Establishment of Fund. The Housing Activation Fund ("Fund") is established as a category four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all taxes, penalties, interest, and fees collected from the Empty Homes Tax imposed under





*Article 29A of the Business and Tax Regulations Code.*

*(b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the Fund shall be used exclusively for the purposes described in Section 2958 of Article 29A of the Business and Tax Regulations Code.*

*(c) Administration of Fund. As stated in Section 2957(b) of Article 29A of the Business and Tax Regulations Code, commencing with a report filed no later than February 15, 2026, covering the fiscal year ending June 30, 2025, the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a report containing the amount of monies collected in and expended from the Fund during the prior fiscal year, the status of any project required or authorized to be funded by Section 2958, and such other information as the Controller, in the Controller's sole discretion, deems relevant to the operation of Article 29A.*

Section 4. Appropriations Limit Increase. Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 8, 2022, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the tax imposed under this ordinance.

Section 5. No Conflict with Federal or State Law. Nothing in this measure shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 6. Effective Date. The effective date of this ordinance shall be ten days after the date the official vote count is declared by the Board of Supervisors.

## Proposition N

**Ordinance amending the Golden Gate Park Revitalization Act of 1998 ("Proposition J") to state that the City may use public funds to acquire, operate, or subsidize public parking in the Golden Gate Park Concourse Underground Parking Facility ("Parking Facility"); directing the Golden Gate Park Concourse Authority ("Concourse Authority") to commence dissolution proceedings; and, upon said dissolution, transferring jurisdiction of the Parking Facility and certain other property from the Concourse Authority to the Recreation and Park Department, repealing Proposition J in its entirety, and deleting references to the Concourse Authority from the Municipal Code.**

NOTE: **Unchanged Code text and uncodified text** are in plain font.

**Additions to Codes** are in *single-underline italics Times New Roman font*.

**Deletions to Codes** are in *strikethrough italics Times New Roman font*.

**Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background.

(a) On June 2, 1998, San Francisco voters adopted Proposition J, the Golden Gate Park Revitalization Act of 1998. Proposition J authorized the creation of the Golden Gate Park Concourse Authority (the "Authority"), a non-profit public benefit corporation, that would have the power to (1) construct a parking facility (the "Garage") under the Music Concourse (the "Concourse") at Golden Gate Park using only private funds, and then to operate the Garage, (2) improve the Concourse surface area, and (3) study and recommend traffic and transit infrastructure plans for Golden Gate Park. In addition, Proposition J authorized the Board of Supervisors to set aside property in or near the Concourse for the Garage and to place such property under the jurisdiction of the Authority, provided that upon dissolution of the Authority, jurisdiction would revert to the Recreation and Park Commission.

(b) On September 4, 1998, the City adopted Resolution No. 715-98, which set aside certain property in Golden Gate Park for the Garage and placed it under the Authority's jurisdiction. On November 21, 2003, the City adopted Resolution No. 737-03, which placed additional property under the Authority's jurisdiction and approved a 35-year ground lease (the "Lease") between the Music Concourse Community Partnership ("MCCP"), as tenant, and the City, acting through the Authority and the Recreation and Park Department, as landlord. The Lease authorized MCCP to construct the Garage on the property at its own expense, and subject to certain budgetary approvals of the City, to use Garage revenues to pay off the debt it incurred to construct the Garage and ongoing operating costs. The MCCP continues to operate the Garage under the Lease, and the Recreation and Park Department has been performing the duties of the Authority as landlord.

(c) On May 7, 2022, following multiple hearings and extensive public comment, the City enacted Ordinance No. 74-22, which approved the Golden Gate Park Access and Safety Program ("the Program"). The Program builds on traffic and infrastructure recommendations of the Authority in furtherance of Proposition J, and comprises a series of proposals intended to improve traffic safety and expand public access to the Park. Recognizing the key role of the Garage in these efforts, the Board of Supervisors in Ordinance No. 74-22 urged the Recreation and Park Department to work with the MCCP, as well as with the San Francisco Municipal Transportation Agency, the Mayor's Office on Disability, the Fine Arts Museums, and other stakeholders, to increase usage of the Garage, which has been underutilized in recent years.

(d) As an interim step towards these efforts, it is appropriate to amend Section 7 of Proposition J, to clarify that the prohibition against using public funds to construct the Garage does not restrict the City from using public funds on the Garage now that the Garage is fully constructed, notwithstanding the Lease and MCCP's outstanding construction debt. The purpose of this amendment is to allow the City to consider measures such as acquiring the Garage from MCCP; assisting further with Garage operations; and/or subsidizing public parking at the Garage. But in clarifying the ability of the City to use public funds for such purposes, this measure does not approve any specific action by the City at this time. Any future approvals shall be subject to all applicable laws, including without limitation the California Environmental Quality Act and the City's Charter.

(e) Separate and distinct from allowing the use of City funds on the Garage, it is also appropriate for the Authority to commence dissolution proceedings. The Authority no longer holds regular meetings, and Section 3 of Proposition J contemplated the eventual dissolution of the Authority, and the key purposes of Proposition J have been fully achieved: the Garage was constructed in 2006, the original surface improvements to the Concourse have been completed, and the Authority has issued traffic and transit infrastructure plans for Golden Gate Park. Dissolving the Authority will allow the Garage and real property previously set aside for the Authority to return to the jurisdiction of the Recreation and Park Commission, so that the Recreation and Park Department may assume a greater role in managing the Garage in order to promote safety, accessibility, and mobility in the Park.

(f) Upon dissolution of the Authority, Proposition J and the various references to the Authority that appear in the Municipal Code would be repealed. Nevertheless, this ordinance does not diminish the core principles of Proposition J. Rather, the People of the City and County of San Francisco reaffirm their commitment to those principles, namely, that (1) Golden Gate Park should be safe and accessible for all, scenically beautiful, environmentally sensitive, and culturally diverse; (2) the City should reduce the impact of automobiles in Golden Gate Park while still providing long-term assurance of safe, reliable, and convenient access for visitors to the Park, including visitors to its cultural institutions; (3) net Garage revenues in excess of what is needed for the Garage should be used for the operation, maintenance, improvement, or enhancement of Golden Gate Park; and (4) the City should not grant any free parking, discounts, or other preferences for parking in the Garage to any officials, commissioners, directors, or employees of the City or any of