

*Regular Meeting of the  
Building Inspection Commission*

*July 17, 2024*

*Agenda Item 4*

**Building Inspection Commission**  
**July 17, 2024**

**Agenda Item #4 – File No. 240499**

**Ordinance amending the Building Code to exempt storefronts that are vacant due to public infrastructure construction from vacant storefront registration requirements; and affirming the Planning Department’s determination under the California Environmental Quality Act.**

**Background**

The City has tasked DBI with enforcing the maintenance of vacant or abandoned buildings and storefronts for structural safety, as well as requiring blight and other public health or aesthetic issues be managed. Owners of vacant storefronts must register with the Department and schedule an inspection.

**Existing Law**

DBI currently enforces the Vacant Storefront Ordinance. This program requires commercial storefronts that have been vacant consecutively for 30 days or more to pay an annual fee. That fee is currently set at \$818. Storefronts subjected to the ordinance may be exempt from the annual fee if they have either a valid building permit issued within the last year for repair, rehabilitation, or construction of the storefront, or if the owner or leaseholder has filed an application for a change of occupancy or use of the storefront. Additionally, 50% of the annual fee can be refunded if the storefront becomes occupied within the year that fee was intended to cover.

**Ordinance’s Proposed Changes to Existing Law**

The proposed legislation would add another exemption to the vacant storefront program if, after an owner or leaseholder submits evidence, the Department determines the vacancy is due to public infrastructure construction or maintenance activity impacting access to the nearest public right-of-way or utilities. This exemption would last 180 days from the determination, though it can be extended by the Department.

**Department’s Proposed Amendments**

The current language of the proposed ordinance requires owners or leaseholders seeking to utilize the new exemption to submit evidence of their vacancy being caused by ongoing

construction, and requires the Department to verify this claim. However, the Department is not in a position to validate causal relationships between construction in the right-of-way and commercial vacancies. As such, the Department's recommendation is to remove the verification process and simply require owners or leaseholders to provide evidence demonstrating the ongoing construction.

Additionally, the proposed ordinance does not specify a timeframe for the construction or maintenance. Without a timeline, short-term repairs that are unlikely to impact a storefront could be used as justification for a vacancy. To address this, the Department recommends requiring the construction work be ongoing for 30 days or longer.

Lastly, the legislation does not require an owner or leaseholder to provide additional evidence if an extension beyond the 180 exemption is requested. Rather, the language currently puts the onus solely on the Department to determine if an extension is needed or justified. The Department recommends clarifying that additional evidence demonstrating ongoing work must be submitted upon the request of an extension.

### **Code Advisory Committee Recommendation**

The Administrative & General Design and Disability Access subcommittee met on July 10, 2024 and reviewed this ordinance. After discussion, the subcommittee recommended approval of the ordinance with the suggested changes provided by the Department.

The Code Advisory Committee met on July 10, 2024 and reviewed this ordinance. Committee members raised issues with the existing program, stating that vacant storefronts are rarely a health and safety issue, and as such should not be the responsibility of the Department. Rather, they felt vacant storefronts were a Planning Department issue.

Additionally, while some committee members supported the concept of a fee for a vacant storefront, there was discussion of the current economic state of the City and the impact the COVID-19 pandemic has played on commercial leases. Given the economic downturn and the potential lack of business activity, some expressed concern about imposing a fee on owners who may be unable to find a commercial tenant. Many committee members lamented the failure of the recent attempt to impose a year-long moratorium of the vacant storefront program and recommended pursuing another moratorium, or ending the program indefinitely. After a robust discussion regarding the additional exemption for vacant storefront registration fees, the CAC voted, 10 to 1, to reject the proposed ordinance. The vote included a recommendation to rescind or to place on hold the original ordinance as it exists.



July 12, 2024

Building Inspection Commission  
49 South Van Ness Avenue  
San Francisco, CA 94103

Re: FILE NO. 240499 Proposed ordinance amending the Building Code to exempt storefronts that are vacant due to public infrastructure construction from vacant storefront registration requirements.

Honorable Members of the Commission:

The July 10, 2024 regular meeting of the full Code Advisory Committee (CAC) deliberated on the proposed change to the 2022 San Francisco Building Code Section 103A.5 *Vacant or Abandoned Commercial Storefronts – Annual Registration; Registration Fees; Maintenance and Security Requirements*. The proposed ordinance seeks to add an additional exemption for vacant storefront registration fees if, after an owner or leaseholder submits evidence, the Department determines that the vacancy is due to public infrastructure construction or maintenance activity impacting access to the nearest public right-of-way or utilities. The exemption would last 180 days from the determination and could be extended.

The Department proposed amendments to the ordinance addressing concerns regarding the ability to determine causality between ongoing construction and vacancies, and concerns that the ordinance does not specify a timeframe for construction.

After a robust discussion regarding the additional exemption for vacant storefront registration fees, the CAC voted, 10 to 1, to reject the proposed ordinance. The vote included a recommendation to rescind or to place on hold the original ordinance as it exists.

The CAC reiterated concerns from when the original ordinance proposed, in that the city is still in a dire state of economic recovery, and inspection of vacant storefronts and consequential fee collection should not be the Department's role or responsibility.

Respectfully submitted,

A handwritten signature in cursive script that reads "Janey Chan".

Janey Chan, S.E., Manager  
DBI Technical Services Division  
Secretary to the Code Advisory Committee for Thomas Fessler

**Attachment:** File No. 240499 – DBI Amendments

cc. Patrick O'Riordan, C.B.O., Director  
Christine Gasparac, Assistant Director  
Neville Pereira, P.E., C.B.O., Deputy Director  
Thomas Fessler, Senior Building Inspector  
Tate Hanna, Legislative Affairs Manager  
Ned Finnie, AIA, Chair, Code Advisory Committee

1 [Building Code - Vacant Storefronts and Infrastructure Construction]

2

3 **Ordinance amending the Building Code to exempt storefronts that are vacant due to**  
4 **public infrastructure construction from vacant storefront registration requirements;**  
5 **and affirming the Planning Department's determination under the California**  
6 **Environmental Quality Act.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
10 **Board amendment additions** are in double-underlined Arial font.  
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
12 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
13 subsections or parts of tables.

11

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

13

14 Section 1. Findings.

15 (a) The Planning Department has determined that the actions contemplated in this  
16 ordinance comply with the California Environmental Quality Act (California Public Resources  
17 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
18 Supervisors in File No. 240499 and is incorporated herein by reference. The Board affirms  
19 this determination.

20 (b) On \_\_\_\_\_, at a duly noticed public hearing, the Building Inspection  
21 Commission considered this ordinance in accordance with Charter Section 4.121 and Building  
22 Code Section 104A.2.11.1.1. A copy of a letter from the Secretary of the Building Inspection  
23 Commission regarding the Commission's recommendation is on file with the Clerk of the  
24 Board of Supervisors in File No. \_\_\_\_\_.

25

1 (c) No local findings are required under California Health and Safety Code Section  
2 17958.7 because the amendments to the Building Code contained in this ordinance do not  
3 regulate materials or manner of construction or repair, and instead relate in their entirety to  
4 administrative procedures for implementing the Code, which are expressly excluded from the  
5 definition of a “building standard” by California Health and Safety Code Section 18909(c).

6  
7 Section 2. Chapter 1A of the Building Code is hereby amended by revising Section  
8 103A.5 (specifically, Section 103A.5.1), to read as follows:

9 **103A.5 Vacant or Abandoned Commercial Storefronts – Annual Registration;**  
10 **Registration Fees; Maintenance and Security Requirements.**

11 **103A.5.1 Definitions.** For the purposes of Section 103A.5, including Sections  
12 103A.5.1-103A.5.7:

13 \* \* \* \*

14 **VACANT OR ABANDONED.** A Commercial Storefront shall be Vacant or Abandoned  
15 if it (1) is unoccupied and unsecured; or (2) is unoccupied and secured by boarding or other  
16 similar means; or (3) is unoccupied and unsafe as defined in Section 102A of this Code; or (4)  
17 is unoccupied and has multiple code violations; or (5) has been unoccupied for over 30 days.  
18 Notwithstanding the foregoing sentence, a Commercial Storefront shall not be considered  
19 Vacant or Abandoned if

20 (1) There is a valid building permit for repair, rehabilitation, or construction of the  
21 Commercial Storefront and the owner completes the repair, rehabilitation, or construction  
22 within one year from the date the initial permit was issued, unless the Department, in its sole  
23 discretion, determines that the owner needs additional time to complete the repair,  
24 rehabilitation, or construction of the Commercial Storefront; or

1 (2) The owner or leaseholder has filed an application for, and is actively seeking to  
2 obtain, authorization, permits, or a license required by state or local law permitting the lawful  
3 use and occupancy of the Commercial Storefront; or

4 (3) The owner or leaseholder submits evidence ~~to the Department, and the Department~~  
5 ~~verifies,~~ that vacancy is due to public infrastructure construction or maintenance activity  
6 ~~lasting longer than 30 days~~ impacting the Commercial Storefront's access to the nearest public  
7 ~~right-of-way or essential utilities. Where the Department verifies a~~ Commercial Storefront is  
8 ~~vacant due to infrastructure construction or maintenance activity~~ ~~lasting longer than 30 days,~~  
9 the Commercial Storefront shall not be subject to the requirements in subsections 105A.5.2  
10 through 105A.5.6 for 180 calendar days from the date of the ~~submittal of evidence~~  
11 ~~Department's verification.~~ The initial exemption period may be extended by the Department  
12 ~~where it verifies~~ if additional evidence is submitted by the owner or leaseholder  
13 demonstrating infrastructure construction or maintenance activity continues to impact the  
14 Commercial Storefront. The owner or leaseholder shall alert the Department within 30 days  
15 of the conclusion of infrastructure construction or maintenance activity.

16  
17 Section 3. Effective Date. This ordinance shall become effective 30 days after  
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor  
19 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or  
20 the Board of Supervisors overrides the Mayor's veto of the ordinance.

21 APPROVED AS TO FORM:  
22 DAVID CHIU, City Attorney

23 By: /s/ Robb Kapla  
24 ROBB KAPLA  
25 Deputy City Attorney  
26

# File No. 240499 – Vacant Storefront Exemption

Tate Hanna, Legislative Affairs Manager

July 17, 2024

# Existing Law

- DBI currently enforces the Vacant Storefront Ordinance that requires commercial storefronts that have been vacant for 30 consecutive days or more to pay an annual fee set at \$818.
- Vacant commercial storefronts are exempted from the annual fee if they meet either of the following:
  - A valid building permit has been issued within the last year for repairs, rehabilitation, or construction of the storefront;
  - An application has been filed for a change of occupancy or use of the storefront.

# Proposed Ordinance

- File No. 240499 would add an additional exemption for vacant storefronts if, after an owner or leaseholder submits evidence, the Department determines the vacancy is due to public infrastructure construction or maintenance activity impacting access to the nearest public right-of-way or utilities.
- This exemption would last 180 days from the determination and can be extended.

# Potential Issues

- The current language of the ordinance requires the Department to verify that a storefront is vacant due to ongoing construction
  - The Department is not able to determine causality between ongoing construction and vacancies
- The ordinance does not specify a timeframe for construction and could be applied to short-term projects.

# Suggested Amendments

- The Department recommends approval of the ordinance with the following changes:
  - Remove the determination of causality to approve an exemption
  - Specify that construction or maintenance must be ongoing for longer than 30 days to qualify
  - Require additional evidence to be submitted if an applicant is requesting an extension of the exemption beyond 180 days

# CAC Recommendation

- The Code Advisory Committee met on July 10<sup>th</sup> and reviewed File No. 240499.
- The CAC recommended disapproval of the ordinance, on the grounds that the overall program should not, in their opinion, be the Department's responsibility.



**THANK YOU**