

BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller

FROM: *ll*
bw Linda Wong, Assistant Clerk, Budget and Finance Committee
Board of Supervisors

DATE: May 16, 2019

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
November 5, 2019 Election

The Board of Supervisors' Budget and Finance Committee has received the following Initiative Ordinance for the November 5, 2019, Election, introduced by Supervisor Mar on May 7, 2019. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 190508

Motion ordering submitted to the voters at an election to be held on November 5, 2019, an Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an additional tax on stock-based compensation payroll expense to fund affordable housing, programs for families, education, and youth, support for the low- and moderate-income workforce, and small business stabilization; to create an advisory oversight committee regarding the tax and funding; and to increase the City's appropriations limit by the amount collected under the additional tax for four years from November 5, 2019.

Please review and prepare a financial analysis of the proposed measure prior to the first Budget and Finance Committee hearing.

If you have any questions or concerns, please call me at (415) 554-7719 or email: linda.wong@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Todd Rydstrom, Deputy City Controller
Peg Stevenson, City Performance Director
Natasha Mihal, City Services Auditor

1 [Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Stock-Based
2 Compensation Tax]

3 **Motion ordering submitted to the voters at an election to be held on November 5, 2019,**
4 **an Ordinance amending the Business and Tax Regulations Code and Administrative**
5 **Code to impose an additional tax on stock-based compensation payroll expense to**
6 **fund affordable housing, programs for families, education, and youth, support for the**
7 **low- and moderate-income workforce, and small business stabilization; to create an**
8 **advisory oversight committee regarding the tax and funding; and to increase the City's**
9 **appropriations limit by the amount collected under the additional tax for four years**
10 **from November 5, 2019.**

11
12 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
13 voters of the City and County of San Francisco, at an election to be held on November 5,
14 2019:

15
16 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**
17 **to impose an additional tax on stock-based compensation payroll expense to fund**
18 **affordable housing, programs for families, education, and youth, support for the low-**
19 **and moderate-income workforce, and small business stabilization; to create an**
20 **advisory oversight committee regarding the tax and funding; and to increase the City's**
21 **appropriations limit by the amount collected under the additional tax for four years**
22 **from November 5, 2019.**

23 NOTE: **Unchanged Code text and uncodified text** are in plain font.
24 **Additions to Codes** are in *single-underline italics Times New Roman font*.
25 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
Asterisks (* * * *) indicate the omission of unchanged Code
subsections or parts of tables.

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

2
3 Section 1. Pursuant to Articles XIII A and XIII C of the Constitution of the State of
4 California, this ordinance shall be submitted to the qualified electors of the City and County of
5 San Francisco at the November 5, 2019, municipal election.
6

7 Section 2. The Business and Tax Regulations Code is hereby amended by adding
8 Article 35, consisting of Sections 3501 through 3511, to read as follows:
9

10 **ARTICLE 35: STOCK-BASED COMPENSATION TAX**

11
12 **SEC. 3501. SHORT TITLE.**

13 *This Article 35 shall be known as the "Stock-Based Compensation Tax Ordinance," and the tax*
14 *it imposes shall be known as the "Stock-Based Compensation Tax."*
15

16 **SEC. 3502. DEFINITIONS.**

17 *Unless otherwise defined in this Article 35, the terms used in this Article shall have the*
18 *meanings given to them in Articles 6 and 12-A of the Business and Tax Regulations Code, as amended*
19 *from time to time.*

20 *For purposes of this Article 35, the following definitions apply:*

21 *"Stock-Based Compensation" means any compensation in the form of, or dependent on the*
22 *value of, equity interests, including but not limited to stock, stock options, restricted stock, restricted*
23 *stock units, stock acquired as a result of employee stock purchase plans, stock appreciation rights, and*
24 *phantom stock.*
25

1 “Stock-Based Compensation Payroll Expense” means payroll expense, as that term is defined
2 in Section 902.1 of Article 12-A of the Business and Tax Regulations Code, as amended from time to
3 time, attributable to Stock-Based Compensation. For purposes of this Article 35, the biotechnology
4 exclusion under Section 906.1 of Article 12-A and the clean technology business exclusion under
5 Section 906.2 of Article 12-A shall not apply.

6
7 **SEC. 3503. IMPOSITION OF TAX.**

8 (a) Except as otherwise provided in this Article 35, for the privilege of engaging in business in
9 the City and to raise revenue for the purposes set forth in Section 3507 of this Article, the City imposes
10 an annual Stock-Based Compensation Tax on each person engaged in business in the City that has
11 Stock-Based Compensation Payroll Expense.

12 (b) The Stock-Based Compensation Tax shall be calculated by multiplying the person’s Stock-
13 Based Compensation Payroll Expense during the tax year attributable to the City, as set forth in
14 Section 904 of Article 12-A of the Business and Tax Regulations Code, by 1.12%.

15 (c) The Stock-Based Compensation Tax shall be included in a person’s Stock-Based
16 Compensation Payroll Expense at the same time and in the same amount as in Article 12-A.

17 (d) The Stock-Based Compensation Tax shall be retroactive to May 7, 2019, and shall apply to
18 all Stock-Based Compensation Payroll Expense related to amounts paid, exercised, vested, or
19 otherwise recognized on or after May 7, 2019.

20
21 **SEC. 3504. EXEMPTIONS.**

22 (a) The exemptions under Section 906(a) through Section 906(e) of Article 12-A shall apply to
23 the Stock-Based Compensation Tax.

1 (b) A person that is exempt from the payroll expense tax as a small business enterprise under
2 Section 905-A of Article 12-A of the Business and Tax Regulations Code shall be exempt from the
3 Stock-Based Compensation Tax.

4
5 **SEC. 3505. CONSTRUCTION AND SCOPE OF THE STOCK-BASED COMPENSATION TAX**
6 **ORDINANCE.**

7 (a) This Article 35 is intended to authorize application of the Stock-Based Compensation Tax in
8 the broadest manner consistent with its provisions and with the California Constitution, the United
9 States Constitution, and any other applicable provision of federal or state law.

10 (b) The Stock-Based Compensation Tax imposed by this Article 35 is in addition to all other
11 City taxes, including the payroll expense tax imposed by Article 12-A of the Business and Tax
12 Regulations Code, as amended from time to time. Accordingly, by way of example and not limitation,
13 persons subject to both the Stock-Based Compensation Tax and the payroll expense tax shall pay both
14 taxes. Persons exempt from either the payroll expense tax or the Stock-Based Compensation Tax, but
15 not both, shall pay the tax from which they are not exempt.

16
17 **SEC. 3506. ADMINISTRATION OF THE STOCK-BASED COMPENSATION TAX**
18 **ORDINANCE.**

19 Except as otherwise provided under this Article 35, the Stock-Based Compensation Tax shall be
20 administered pursuant to Article 6 of the Business and Tax Regulations Code, as amended from time to
21 time, including all penalties and other charges imposed by that Article.

22
23 **SEC. 3507. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.**

24 (a) All monies collected under the Stock-Based Compensation Tax Ordinance shall be
25 deposited to the credit of the Shared Prosperity Fund, established in Administrative Code

1 Section 10.100-325. The Fund shall be maintained separate and apart from all other City funds and
2 shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year
3 shall be deemed to have been provided for a special purpose within the meaning of Charter Section
4 9.113(a) and shall be carried forward and accumulated in the Fund for the purposes described in
5 subsection (b).

6 (b) Subject to the budgetary and fiscal provisions of the Charter, monies in the Shared Property
7 Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following
8 purposes:

9 (1) Up to 2% of the proceeds of the Stock-Based Compensation Tax distributed in any
10 proportion to the Tax Collector and other City Departments, for administration of the Stock-Based
11 Compensation Tax and administration of the Shared Prosperity Fund for the following purposes:

12 (A) Payment of the administrative expenses of collecting the Stock-Based
13 Compensation Tax;

14 (B) Payment for City oversight of the expenditures described in this
15 subsection (b); and

16 (C) Payment of City expenses providing support for the Shared Prosperity
17 Oversight Committee, in Chapter 5, Article XLII, of the Administrative Code.

18 (2) Refunds of any overpayments of the Stock-Based Compensation Tax, including any
19 related penalties, interest, and fees.

20 (3) All remaining amounts to provide funding for any or all of the following, in the
21 proportions to be determined by the Board of Supervisors:

22 (A) Affordable housing;

23 (B) Family, education, and youth programs;

24 (C) Support for the low- and moderate-income workforce; and

25 (D) Small business stabilization.

1 (c) Commencing with a report filed no later than February 15, 2021, covering the fiscal year
2 ending on June 30, 2020, the Controller shall file annually with the Board of Supervisors, by
3 February 15 of each year, a report containing the amount of monies collected in and expended from the
4 Shared Prosperity Fund during the prior fiscal year, the status of any project required or authorized to
5 be funded by this Section 3507, and such other information as the Controller, in the Controller's sole
6 discretion, deems relevant to the operation of this Article 35.

7
8 **SEC. 3508. AMENDMENT OF ORDINANCE.**

9 The Board of Supervisors may amend or repeal this Article 35 by ordinance without a vote of
10 the people except as limited by Articles XIII A and XIII C of the California Constitution.

11
12 **SEC. 3509. EFFECT OF STATE AND FEDERAL AUTHORIZATION.**

13 To the extent that the City's authorization to impose or to collect any tax imposed under this
14 Article 35 is expanded or limited as a result of changes in state or federal statutes, regulations, or other
15 laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be
16 required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with
17 those changes, and the Tax Collector shall collect them to the full extent of the City's authorization up
18 to the full amount and rate of the taxes imposed under this Article.

19
20 **SEC. 3510. SEVERABILITY.**

21 (a) Except as provided in Section 3510(b), below, if any section, subsection, sentence, clause,
22 phrase, or word of this Article 35, or any application thereof to any person or circumstance, is held to
23 be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
24 affect the validity of the remaining portions or applications of this Article. The People of the City and
25 County of San Francisco hereby declare that, except as provided in Section 3510(b), they would have

1 adopted this Article 35 and each and every section, subsection, sentence, clause, phrase, and word not
2 declared invalid or unconstitutional without regard to whether any other portion of this Article or
3 application thereof would be subsequently declared invalid or unconstitutional.

4 (b) If the imposition of the Stock-Based Compensation Tax in Section 3503 is held in its entirety
5 to be facially invalid or unconstitutional in a final court determination, the remainder of this Article 35
6 shall be void and of no force and effect, and the City Attorney shall cause it to be removed from the
7 Business and Tax Regulations Code, and likewise cause Article XLII of Chapter 5 of the Administrative
8 Code and Section 10.100-325 in Article XIII, Chapter 10 of the Administrative Code to be removed
9 from that Code.

10 (c) If the retroactive operation of the Stock-Based Compensation Tax is held to be invalid or
11 unconstitutional by a decision of a court of competent jurisdiction, the Stock-Based Compensation Tax
12 shall be operative on the effective date of this Article 35, and references to May 7, 2019 in
13 Section 3503(d) shall instead be to such effective date.

14
15 **SEC. 3511. SAVINGS CLAUSE.**

16 No section, clause, part, or provision of this Article 35 shall be construed as requiring the
17 payment of any tax that would be in violation of the Constitution or laws of the United States or of the
18 Constitution or laws of the State of California.

19
20 Section 3. Chapter 5 of the Administrative Code is hereby amended by adding
21 Article XLII, consisting of Sections 5.42-1 through 5.42-6, to read as follows:
22
23
24
25

1 **ARTICLE XLII: SHARED PROSPERITY OVERSIGHT COMMITTEE**

2
3 **SEC. 5.42-1. CREATION OF OVERSIGHT COMMITTEE.**

4 *There is hereby established the Shared Prosperity Oversight Committee (“Oversight*
5 *Committee”) to make recommendations to the Mayor and the Board of Supervisors to ensure that the*
6 *Shared Prosperity Fund (“Fund”), in Section 10.100-325 of the Administrative Code, is administered*
7 *in a manner consistent with Section 3507 of Article 35 of the Business and Tax Regulations Code.*

8
9 **SEC. 5.42-2. PURPOSES, POWERS, AND DUTIES.**

10 *The Oversight Committee shall monitor and make recommendations regarding the*
11 *administration of the Fund and appropriations from the Fund, in order to help the City ensure that the*
12 *Fund is administered in a manner that is consistent with the law and the purposes of the Fund as*
13 *designated in Section 3507(b) of Article 35 of the Business and Tax Regulations Code.*

14
15 **SEC. 5.42-3. MEMBERSHIP; TERMS OF MEMBERS.**

16 *(a) The Oversight Committee shall have nine voting members each of whom shall be appointed*
17 *by the Board of Supervisors. The Board of Supervisors may remove members at any time.*

18 *(b) Each member of the Committee shall have a two-year term. There shall be no limit on the*
19 *number of terms a member may serve.*

20
21 **SEC. 5.42-4. STAFFING.**

22 *The City Administrator shall provide adequate staffing to the Oversight Committee.*

1 **SEC. 5.42-5. FREQUENCY OF MEETINGS.**

2 The Oversight Committee shall meet at least four times per year, beginning with calendar year
3 2020.

4
5 **SEC. 5.42-6. AMENDMENT.**

6 The Board of Supervisors may amend or repeal this Article XLII by ordinance without a vote of
7 the people.

8
9 Section 4. Chapter 10 of the Administrative Code is hereby amended by adding
10 Section 10.100-325 to Article XIII, to read as follows:

11
12 **SEC. 10.100-325. SHARED PROSPERITY FUND.**

13 (a) Establishment of Fund. The Shared Prosperity Fund ("Fund") is established as a category
14 four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all taxes,
15 penalties, interest, and fees collected from the Stock-Based Compensation Tax imposed under
16 Article 35 of the Business and Tax Regulations Code.

17 (b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the
18 Fund shall be used exclusively for the purposes described in Section 3507(b) of Article 35 of the
19 Business and Tax Regulations Code.

20 (c) Administration of Fund. As stated in Section 3507(c) of Article 35 of the Business and Tax
21 Regulations Code, commencing with a report filed no later than February 15, 2021, covering the fiscal
22 year ending June 30, 2020, the Controller shall file annually with the Board of Supervisors, by
23 February 15 of each year, a report containing the amount of monies collected in and expended from the
24 Fund during the prior fiscal year, the status of any project required or authorized to be funded by

1 Section 3507, and such other information as the Controller, in the Controller's sole discretion, deems
2 relevant to the operation of Article 35.

3
4 Section 5. Appropriations Limit Increase.

5 Pursuant to California Constitution Article XIII B and applicable laws, for four years
6 from November 5, 2019, the appropriations limit for the City shall be increased by the
7 aggregate sum collected by the levy of the tax imposed under this ordinance.

8
9 APPROVED AS TO FORM:

10 DENNIS J. HERRERA, City Attorney

11
12 By: 
13 KERNE H. O. MATSUBARA
Deputy City Attorney

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LEGISLATIVE DIGEST

[Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Stock-Based Compensation Tax]

Motion ordering submitted to the voters at an election to be held on November 5, 2019, an Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an additional tax on stock-based compensation payroll expense to fund affordable housing, programs for families, education, and youth, support for the low- and moderate-income workforce, and small business stabilization; to create an advisory oversight committee regarding the tax and funding; and to increase the City's appropriations limit by the amount collected under the additional tax for four years from November 5, 2019.

Existing Law

Persons engaged in business in the City currently pay a payroll expense tax under Article 12-A of the Business and Tax Regulations Code. The payroll expense tax rate is 0.38% of taxable payroll expense.

Amendments to Current Law

This ordinance would impose an additional payroll expense tax at the rate of 1.12% on persons with taxable payroll expense attributable to stock-based compensation. Stock-based compensation means any compensation in the form of, or dependent on the value of, equity interests, including but not limited to stock, stock options, restricted stock, restricted stock units, stock acquired as a result of employee stock purchase plans, stock appreciation rights, and phantom stock. Persons subject to the additional tax would also remain liable for the existing payroll expense tax.

The additional tax would be dedicated to a fund for affordable housing, programs for families, education, and youth, support for the low- and moderate-income workforce, and small business stabilization. An advisory oversight committee would be established to monitor and make recommendations regarding the administration of, and appropriations from, the fund to ensure that the fund is administered in a manner accountable to the community.

The additional tax would be retroactive to May 7, 2019.

This ordinance would increase the City's appropriations limit under Article XIII B by the amounts collected from the additional tax from this new industry category, for four years from November 5, 2019.

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