

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: *el*
for Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: February 20, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 180157

Ordinance amending the Business and Tax Regulations Code to suspend temporarily the application of the business registration and fee requirements for transportation network company drivers and taxi drivers.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

1 [Business and Tax Regulations Code - Temporary Suspension of Business Registration and
2 Fee for Transportation Network Company Drivers and Taxi Drivers]

3 **Ordinance amending the Business and Tax Regulations Code to suspend temporarily**
4 **the application of the business registration and fee requirements for transportation**
5 **network company drivers and taxi drivers.**

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

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

14 Section 1. Background, Purpose, and Findings.

15 (a) The California Constitution gives charter cities, including San Francisco, the power
16 to “make and enforce all ordinances and regulations in respect to municipal affairs, subject
17 only to restrictions and limitations” contained in their own charters. (Cal. Const., art. XI, § 5,
18 subd. (a).)

19 (b) This constitutional power of charter cities to regulate their own municipal affairs
20 without interference from the Legislature has long been held to encompass the power to
21 license and tax local businesses for revenue purposes.

22 (c) In 2017, the Legislature enacted Senate Bill 182 (“SB 182”), the effect of which is to
23 largely immunize automobile drivers who drive for online ride-hailing entities known as
24 transportation network companies (“TNCs”) from local business license requirements. (Cal.
25 Bus. & Prof. Code §§ 16550-16550.2.) Under SB 182, a city – purportedly including a charter
city – must allow such a driver to conduct business freely within its borders without obtaining

1 any locally-issued business license, and without paying any business license tax, unless that
2 driver is “domiciled” in that city.

3 (d) On February 8, 2018, the City filed a lawsuit in San Francisco Superior Court
4 challenging the application of SB 182 to San Francisco, as an unlawful violation of the City’s
5 power to regulate its own municipal affairs as guaranteed by the California Constitution. City
6 and County of San Francisco v. State of California (S.F. Sup. Ct. No. CPF-18-516041).

7 (e) In deference to state law and the judicial process, pending the resolution of this
8 litigation, the City intends to ensure that it is not in violation of SB 182. In addition to making
9 the City’s business registration and fee requirements very difficult to administer, SB 182, as
10 applied in San Francisco, would lead to anomalous and unfair results. TNC drivers domiciled
11 outside of the City but providing services in the City would be exempt from the City’s business
12 registration and fee requirements, but (1) TNC drivers domiciled in the City and providing
13 identical services in the City would have to register and pay, and (2) taxi drivers providing very
14 similar services in the City would have to register and pay, regardless of where they were
15 domiciled.

16 (f) To remedy this unfairness created by SB 182, it is in the City’s best interests to
17 temporarily suspend the application of the business registration and fee requirements for all
18 TNC drivers and taxi drivers, whose only business activity in the City is TNC driving or taxi
19 driving, even though this will significantly reduce the City’s business registration fee revenues.
20 The suspension is intended to remain in place through the resolution of the City’s litigation
21 challenging SB 182.

22 (g) In applying SB 182 and temporarily suspending the business registration and fee
23 requirements for TNC drivers and taxi drivers, the City is not conceding the validity of SB 182
24 in whole or in part, as applied to the City or as applied elsewhere.
25

1 Section 2. The Business and Tax Regulations Code is hereby amended by revising
2 Section 853, to read as follows:

3 **SEC. 853. REGISTRATION CERTIFICATE – REQUIRED.**

4 (a) Except as provided in ~~subsections~~*Subsection* (d) and (e), no person may engage in
5 business within the City unless the person has obtained a current registration certificate
6 pursuant to this Article 12. Every person engaging in business within the City shall
7 conspicuously display a current registration certificate on the business premises, regardless of
8 whether such person is subject to tax pursuant to the provisions of the Business and Tax
9 Regulations Code.

10 (b) Any organization having a formally recognized exemption from income taxation
11 pursuant to Section 501(c), 501(d), or 401(a) of the Internal Revenue Code of 1986, as
12 amended, as qualified by Sections 502, 503, 504, and 508 of Title 26 of the Internal Revenue
13 Code of 1986, as amended, and engaging in business within the City shall obtain a
14 registration certificate.

15 (c) Failure to obtain a registration certificate shall not absolve any person from
16 payment of any tax imposed or license required by the City.

17 (d) A person receiving rental income in connection with the operation of any of the
18 following shall not, by reason of that fact alone, be required to obtain a registration certificate
19 pursuant to this Article 12:

20 (1) a cooperative housing corporation, as defined in Section 216(b) of the
21 Internal Revenue Code of 1986, as amended;

22 (2) one residential structure consisting of fewer than four units; or

23 (3) one residential condominium.

24 (e) The requirements to obtain a registration certificate and pay a fee under this Article 12
25 shall be suspended for any driver for a transportation network company and for any taxi driver for

1 registration years 2018-2019 and 2019-2020. Additionally, the requirements to obtain a registration
2 certificate and pay a fee under this Article 12 shall be suspended for any driver for a transportation
3 network company and for any taxi driver commencing business in the City on or after January 1, 2018,
4 for registration year 2017-2018. The suspensions in this subsection (e) are further qualified and
5 defined as follows:

6 (1) The suspensions apply only to drivers whose business activity in the City is limited
7 to transportation network company driving and/or taxi driving.

8 (2) "Transportation network company" has the same meaning as in Section 5431(c) of
9 the California Public Utilities Code.

10 (3) "Taxi" has the same meaning as in Section 1102 of Article 1100 of the
11 Transportation Code.

12 (4) The Board of Supervisors may at any time, by ordinance, extend or terminate the
13 suspensions.

14
15 Section 2. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the "Note" that appears under
20 the official title of the ordinance.

21
22 Section 3. Effective Date; Retroactivity.

23 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
24 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
25

1 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
2 Mayor's veto of the ordinance.

3 (b) This ordinance shall be retroactive to January 1, 2018.
4

5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By:



8 KERNE H. O. MATSUBARA
9 Deputy City Attorney

10 n:\legana\as2018\1800382\01253241.docx
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Temporary Suspension of Business Registration and Fee for Transportation Network Company Drivers and Taxi Drivers]

Ordinance amending the Business and Tax Regulations Code to suspend temporarily the application of the business registration and fee requirements for transportation network company drivers and taxi drivers.

Existing Law

In general, the City currently requires each business operating within the City, including taxi drivers and persons who drive for ride-hailing entities known as transportation network companies (“TNCs”) that are independent contractors, to obtain a registration certificate and pay an annual registration fee.

Amendments to Current Law

This ordinance would temporarily suspend the application of the business registration and fee requirements for TNC drivers and taxi drivers, for registration years 2018-2019 and 2019-2020. The suspension also would apply retroactively to registration year 2017-2018 for TNC drivers and taxi drivers who commence business in the City on or after January 1, 2018.

Background Information

In 2017, the Legislature enacted Senate Bill 182 (“SB 182”), the effect of which is to largely immunize automobile drivers who drive for TNCs from local business license requirements. SB 182 requires a city, purportedly including a charter city, to allow such a driver to conduct business within its borders without obtaining any locally-issued business license or paying business license tax, unless that driver lives in that city. On February 8, 2018, the City filed a lawsuit in San Francisco Superior Court challenging the validity of SB 182. This ordinance would temporarily suspend the business registration and fee requirements for all TNC drivers pending the resolution of this litigation so that drivers that live in the City are not treated less favorably than drivers that live outside the City. The business registration and fee requirements also would be temporarily suspended for taxi drivers so that they are not treated less favorably than TNC drivers that live outside the City with respect to the City’s business registration and fee requirements.

n:\legana\as2018\1800382\01253461.docx