

BOARD of SUPERVISORS



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MEMORANDUM

TO: Katy Tang
Small Business Commission, City Hall, Room 448

FROM: Brent Jalipa, Assistant Clerk
Budget and Appropriations Committee

DATE: June 6, 2023

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Appropriations Committee

The Board of Supervisors' Budget and Appropriations Committee has received the following proposed legislation, introduced by Mayor London Breed, which is being referred to the Small Business Commission for comment and recommendation.

File No. 230664

Ordinance amending the Business and Tax Regulations Code to waive, retroactively to July 1, 2023, certain first-year permit, license, and business registration fees for specified small businesses that newly form or that open a new location; and refunding any waived fees that have been paid to the City.

Please return this cover sheet with the Commission's response to Brent Jalipa, Budget and Appropriations Clerk, by email to: brent.jalipa@sfgov.org.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

1 [Business and Tax Regulations Code - Waiver of Permit, License, and Business Registration
2 Fees for Certain Small Businesses]

3 **Ordinance amending the Business and Tax Regulations Code to waive, retroactively to**
4 **July 1, 2023, certain first-year permit, license, and business registration fees for**
5 **specified small businesses that newly form or that open a new location; and refunding**
6 **any waived fees that have been paid to the City.**

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

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

16 Section 1. Background, Purpose, and Findings.

17 (a) San Francisco is home to thousands of small businesses, employing hundreds of
18 thousands of workers. Small businesses are the lifeblood of our neighborhoods and our
19 communities. While many have managed to stay afloat during the COVID-19 pandemic and
20 economic downturn, adjust to quickly shifting guidelines and practices, and creatively promote
21 new ways of doing business, many have not, and have not survived.

22 (b) The City seeks a robust and equitable recovery that revives the small business
23 sector, gets service and retail workers back to work, incentivizes the filling of ground floor
24 commercial vacancies, reassures San Franciscans that neighborhood corridors are still there
25 for them to gather, shop, and dine, and attracts visitors to enjoy all that is special and unique
about our City.

1 (c) In March 2021, the San Francisco Budget and Legislative Analyst issued a report
2 estimating unpaid commercial rent in San Francisco through December 2020 due to the
3 COVID-19 pandemic and related public health orders. The report estimated that, while
4 non-payment of rent from retail chains had recovered slightly from spikes early in the
5 pandemic, between 52% and 63% of small local businesses had not been able to pay rent in
6 full, and unpaid commercial rent ranged from \$172 million to \$404 million, with almost all of
7 that – 89% to 98% – owed by storefront retail, services, restaurants, and bars. Commercial
8 eviction protections, lease renegotiations, and other strategies will allow some, but not all, of
9 these small businesses to continue to operate.

10 (d) Prior to the pandemic, neighborhoods across the City were already seeing a
11 proliferation of vacant storefronts. To ensure vibrant commercial corridors, the City must
12 focus not only on sustaining existing businesses but also on addressing vacancies. In order
13 to lower the barriers that new businesses face before they open their doors, San Francisco
14 voters passed Proposition H in November 2020, a package of commercial permit streamlining
15 changes, and subsequent legislation expanded those streamlining changes. To further lower
16 those barriers, complement the permit process changes, remove the financial barrier that City
17 fees create for prospective small business owners, and support a full and fast recovery of the
18 City’s commercial corridors and small businesses, this ordinance will waive certain City
19 first-year permit, initial license, and initial business registration fees for many new small
20 businesses and certain first-year permit and initial license fees for many small businesses that
21 open a new location.

22 (e) Small businesses are an effective economic development pathway for communities
23 of color and an alternative to minimum wage jobs for working class San Franciscans.
24 According to a 2015 paper published by the Brookings Institution, “Business ownership can
25 catalyze social mobility. . . . African American entrepreneurs are both more likely to move into

1 higher income groups than are African American nonentrepreneurs, . . . [and] successful
2 entrepreneurship is correlated with wealth, savings, job satisfaction, and economic mobility.”
3 A recent article by What Works Cities stated, “[S]mall business entrepreneurship has long
4 served as an important vehicle of economic mobility for families. In many immigrant
5 communities and communities of color, owning a business and hiring neighbors and
6 community members is a way to build wealth for their families and create vibrant
7 communities.” Among its benefits, this ordinance will encourage and support small business
8 entrepreneurship in immigrant communities and communities of color, though its reach will be
9 broader and its impact will be across-the-board and citywide.

10 (f) The Board of Supervisors finds that it is reasonable and in the public interest to
11 waive first-year permit, license, and business registration fees for certain small businesses
12 whose business location is for commercial use.

13
14 Section 2. Article 2 of the Business Regulations and Tax Code is hereby amended by
15 adding Section 76.3, to read as follows:

16 **SEC. 76.3. WAIVER OF FIRST-YEAR PERMIT, LICENSE, AND BUSINESS REGISTRATION**
17 **FEES.**

18 (a) **Definitions.** *Unless otherwise defined in this Section 76.3, the terms used in this Section*
19 *shall have the meanings given to them in Article 6 of the Business and Tax Regulations Code, as*
20 *amended from time to time. For purposes of this Section 76.3, the following definitions shall apply:*

21 *“Business Registration Certificate” means a “registration certificate,” as defined in*
22 *Section 852.2 of Article 12 of the Business and Tax Regulations Code, as may be amended from time to*
23 *time.*

24 *“Business Registration Fee” means the tax imposed under Article 12 of the Business and Tax*
25 *Regulations Code, as may be amended from time to time.*

1 “City Departments” means the departments and agencies that issue any permit, license, or
2 Business Registration Certificate, including but not limited to the Planning Department, Department of
3 Building Inspection, Fire Department, Department of Public Works, Department of Public Health,
4 Police Department, Entertainment Commission, Office of Cannabis, and Office of the Treasurer and
5 Tax Collector.

6 “Commercial Use” means any non-residential use, other than a use at a business location
7 operated from a home or other residential location or for a short-term residential rental use, as that
8 term is defined in Section 41A.4 of Chapter 41A of the Administrative Code, as may be amended from
9 time to time.

10 “Gross Receipts Tax Return” means the return reporting taxes imposed by Article 12-A-1 of the
11 Business and Tax Regulations Code and filed in accordance with Article 6 of that Code.

12 “License Fees” means all license fees payable to the City, including but not limited to fees
13 payable to the City under Sections 76.1 and 76.2 of this Article 2, relating to the operation of a
14 business at a location that is for Commercial Use, but not including fees for licenses under
15 Chapter 94A of the Administrative Code, as may be amended from time to time.

16 “Permit Fees” means the fees payable to the City upon application for and issuance of any
17 permit, including but not limited to permits subject to Article 1 of the Business and Tax Regulations
18 Code, for the establishment, modification, and/or operation of a Commercial Use, but not including
19 fees for permits under Chapter 94A of the Administrative Code, as may be amended from time to time.

20 “Qualified Business” means either a Qualified New Business or a Qualified Business With New
21 Location.

22 “Qualified Business With New Location” means a person that (1) commences business at a new
23 business location that is for Commercial Use, as reported to the Tax Collector, after commencing
24 business within the City at a different location, and (2) reported \$5,000,000 or less in annual
25 San Francisco Gross Receipts or estimated San Francisco Gross Receipts on its most recently filed

1 Gross Receipts Tax Return, application for a Business Registration Certificate, or renewal of a
2 Business Registration Certificate.

3 “Qualified New Business” means a person that (1) applies for an initial Business Registration
4 Certificate in accordance with Section 856 of Article 12 of the Business and Tax Regulations Code,
5 (2) has \$5,000,000 or less in estimated San Francisco Gross Receipts for the calendar year in which
6 the person commences business within the City, and (3) has a registered business location that is for
7 Commercial Use as reported on the person’s application for a Business Registration Certificate or any
8 update to that registration information provided to the Tax Collector. A “Qualified New Business”
9 shall not include a continuing business that applies for a new Business Registration Certificate as a
10 result of a change in its ownership or the form of how the business is held.

11 “San Francisco Gross Receipts” has the same meaning as used in Section 855 of Article 12 of
12 the Business and Tax Regulations Code.

13 (b) Waiver for Qualified New Businesses. All Permit Fees, initial License Fees, and the initial
14 Business Registration Fee shall be waived for each Qualified New Business as follows:

15 (1) Permit Fees and initial License Fees shall be waived, provided the Qualified New
16 Business has filed the application for the permit or initial license on or after July 1, 2023 and during
17 the one-year period beginning on the date the Qualified New Business commenced business within the
18 City, and the Qualified New Business has a Business Registration Certificate at the time it files the
19 application for the permit or initial license. The waiver in this Section 76.3(b)(1) shall not apply to
20 (A) any fees for the renewal of a license or (B) any fees collected by the City on behalf of any federal,
21 state, or other local government agency.

22 (2) The initial Business Registration Fee shall be waived, provided the Qualified New
23 Business has filed the application for an initial Business Registration Certificate in accordance with
24 Section 856 of Article 12 of the Business and Tax Regulations Code, and that application was filed on
25

1 or after July 1, 2023. The waiver in this Section 76.3(b)(2) shall not apply to any fees for the renewal
2 of a Business Registration Certificate.

3 (c) **Waiver for Qualified Businesses With New Location.** All Permit Fees and initial License
4 Fees shall be waived for each Qualified Business With New Location. The waiver in this
5 Section 76.3(c) shall apply to applications for a permit or initial license filed by the Qualified Business
6 With New Location on or after July 1, 2023, provided the Qualified Business With New Location files
7 the application during the one-year period beginning on the date the Qualified New Business With New
8 Location commenced business at the new business location and has registered the new business
9 location with the Tax Collector no later than the time it files the application for the permit or initial
10 license, and shall apply only to Permit Fees and initial License Fees with respect to that new business
11 location. The waiver in this Section 76.3(c) shall not apply to (1) any fees for the renewal of a license,
12 and (2) any fees collected by the City on behalf of any federal, state, or other local government agency.

13 (d) **Repayment of Waived Fees.**

14 (1) If the Tax Collector determines, based on any information in the Tax Collector's
15 possession or that may come into the Tax Collector's possession, that a person claiming a waiver under
16 subsection (b) or (c) of this Section 76.3 was not entitled to that waiver, the Tax Collector shall issue a
17 determination to such person voiding the waiver, and demanding payment of the unpaid Permit Fees,
18 License Fees, and/or Business Registration Fee, plus penalties and interest accruing on such fees under
19 Business and Tax Regulations Code Section 6.17-1.1, calculated based on the original due date of the
20 applicable fee. Such notice shall be issued under the rules in Section 6.11-2(b) and (c) of the Business
21 and Tax Regulations Code.

22 (2) Except in the case of fraud, or in the case of an intent to evade the Business and Tax
23 Regulations Code or rules and regulations issued or promulgated by the Tax Collector, in all of which
24 cases there is no statute of limitations, every Tax Collector determination under this Section 76.3(d)
25 shall be served within three years after the date that the person claimed the waiver under subsection (b)

1 or (c) of this Section 76.3. The person may agree in writing to extend this three-year period for service
2 of a notice of a determination.

3 (3) All Tax Collector determinations under this Section 76.3(d) shall be final and are
4 immediately due and payable to the Office of the Treasurer and Tax Collector. Any person that wishes
5 to challenge a Tax Collector determination under this Section 76.3(d) must pay the Permit Fees,
6 License Fees, Business Registration Fees, penalties, and interest due, and file a claim for refund with
7 the Controller under California Government Code Sections 900 et seq.

8 **(e) Revocation of Fee Waiver.**

9 (1) If a Qualified Business has more than \$15,000,000 in San Francisco Gross Receipts
10 in the calendar year of, or in any tax year during the three full-year tax years following, the date the
11 Qualified Business commenced business within San Francisco or opened a new business location for
12 Commercial Use, as applicable, any waiver under subsection (b) or (c) of this Section 76.3 shall be
13 revoked retroactively for that Qualified Business.

14 (2) The Tax Collector shall issue a determination that the Qualified Business exceeded
15 the \$15,000,000 threshold in Section 76.3(e)(1), which determination may be based on the Qualified
16 Business's Gross Receipts Tax Return or any other information in the Tax Collector's possession or
17 that may come into the Tax Collector's possession. Such notice shall be issued under Section 6.11-2(b)
18 and (c) of the Business and Tax Regulations Code.

19 (3) Except in the case of fraud, or in the case of an intent to evade the Business and Tax
20 Regulations Code or rules and regulations issued or promulgated by the Tax Collector, or in the case
21 of failure to file a Gross Receipts Tax Return for the tax year in which the Qualified Business exceeded
22 the \$15,000,000 threshold, in all of which cases there is no statute of limitations, every Tax Collector
23 determination under this Section 76.3(e) shall be served within three years after the date that a Gross
24 Receipts Tax Return was due for the tax year in which the Qualified Business exceeded the \$15,000,000
25

1 threshold or three years after that return was filed for that period, whichever is later. The Qualified
2 Business may agree in writing to extend this three-year period for service of a notice of determination.

3 (4) A Qualified Business may petition the Tax Collector for a redetermination of the
4 determination issued under this Section 76.3(e) under Business and Tax Regulations Code
5 Sections 6.13-1 through 6.13-6. The full amount of any Permit Fees, License Fees, and/or Business
6 Registration Fee waived under subsection (b) or (c) of this Section 76.3 and revoked under this
7 Section 76.3(e) shall be due and payable without interest by the Qualified Business to the Office of the
8 Treasurer and Tax Collector upon the later of the expiration of the period for filing a petition for
9 redetermination under Section 6.13-1 and the date the Tax Collector's decision on a timely filed
10 petition for redetermination becomes final under Section 6.13-4.

11 (5) A Qualified Business that fails to pay the Permit Fees, License Fees, and/or
12 Business Registration Fee due and payable by the due date under Section 76.3(e)(4) shall be treated as
13 delinquent and subject to the penalties and interest in Business and Tax Regulations Code
14 Section 6.17-1.1, calculated commencing on the payment due date under this Section 76.3(e)(4).

15 (f) **Administration.** City Departments shall implement the waiver of fees under subsections (b)
16 and (c) of this Section 76.3 and the refunding of any fees under subsection (g) of this Section 76.3.

17 (g) **Refunds.** Any fee waived under subsection (b) or (c) of this Section 76.3 that has been
18 collected by the City shall be refunded, without interest, upon request of the payer of the fee. Any
19 refund request under this Section 76.3(g) must be filed in writing with the Tax Collector within one
20 year of payment of the fee.

21 **(h) Effect of Fee Waiver.**

22 (1) Notwithstanding Article 1 and Article 2 of the Business and Tax Regulations Code,
23 the failure of a person to pay any Permit Fees and/or License Fees waived under subsection (b) or (c)
24 of this Section 76.3 shall not preclude the person from continuing to do or perform the act or carry on
25 the business, trade, profession, or calling for which City law requires the permit or license.

1 (2) The waiver of a person’s Business Registration Fee under subsection (b) of this
2 Section 76.3 shall not relieve a person from the registration and other applicable requirements under
3 Articles 6 and 12 of the Business and Tax Regulations Code, except for the payment of that person’s
4 waived Business Registration Fee. If a person satisfies the registration and other applicable
5 requirements under Articles 6 and 12 of the Business and Tax Regulations Code, except for the
6 payment of any waived Business Registration Fee, such person shall be treated for all purposes as if
7 they had paid the Business Registration Fee.

8 (i) **Information Collection and Reporting.** The Tax Collector shall collect information on the
9 number of Qualified Businesses by supervisorial district that received a waiver of one or more fees
10 under subsections (b) and (c) of this Section 76.3, the business activity codes under the North American
11 Industry Classification System of those Qualified Businesses by supervisorial district, and the fees and
12 total amounts waived in the aggregate. Commencing with a report filed no later than April 15, 2024,
13 covering the period July 1, 2023 through December 31, 2023, the Tax Collector shall submit annually a
14 report to the Board of Supervisors for the prior calendar year no later than April 15 following that
15 calendar year.

16 (j) The waiver of fees provided by this Section 76.3 shall expire by operation of law at the end
17 of the day on June 30, 2028. By December 31, 2029, the City Attorney shall cause the Section 76.3 to
18 be removed from the Business and Tax Regulations Code.

1 Section 3. Article 12 of the Business Regulations and Tax Code is hereby amended by
2 revising Section 855, to read as follows:

3 **SEC. 855. REGISTRATION CERTIFICATE – FEE.**

4 * * * *

5 (b) **Fee for Registration Years Beginning On or After July 1, 2021.**

6 (1) **General Rule.** Except as otherwise provided in this Section 855 and
7 Section 856 of this Article 12, and Section 76.3 of Article 2 of this Code, the annual fee for
8 obtaining a registration certificate, for the registration years beginning on or after July 1, 2021,
9 payable in advance, shall be as follows:

10 * * * *

11 (2) **Fee for Retail Trade, Wholesale Trade, and Certain Services.** Except as
12 otherwise provided in this Section 855 and Section 856 of this Article 12, and Section 76.3 of
13 Article 2 of this Code, for registration years beginning on or after July 1, 2021, the annual fee
14 for obtaining a registration certificate, payable in advance, for a person or combined group
15 that was required to report all of its gross receipts pursuant to Section 953.1 of Article 12-A-1
16 for the preceding tax year, shall be as follows:

17 * * * *

18 (d) **Fee for Persons Subject to Administrative Office Tax.** Except as otherwise
19 provided in this Section 855 and Section 856 of this Article 12, and Section 76.3 of Article 2 of
20 this Code, the annual fee for obtaining a registration certificate, payable in advance, for a
21 person or combined group that was required to pay the Administrative Office Tax under
22 Section 953.8 of Article 12-A-1 for the preceding tax year, shall be as follows:

23 * * * *

1 Section 4. Effective Date; Retroactivity.

2 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
3 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
4 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
5 Mayor’s veto of the ordinance.

6 (b) Upon the effective date of this ordinance, this ordinance shall be retroactive to
7 July 1, 2023.

8
9 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
10 of this ordinance, or any application thereof to any person or circumstance, is held to be
11 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
12 shall not affect the validity of the remaining portions or applications of this ordinance. The
13 Board of Supervisors hereby declares that it would have passed this ordinance and each and
14 every section, subsection, clause, phrase, and word not declared invalid or unconstitutional
15 without regard to whether any other portion of this ordinance or application thereof would be
16 subsequently declared invalid or unconstitutional.

LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Waiver of Permit, License, and Business Registration Fees for Certain Small Businesses]

Ordinance amending the Business and Tax Regulations Code to waive, retroactively to July 1, 2023, certain first-year permit, license, and business registration fees for specified small businesses that newly form or that open a new location; and refunding any waived fees that have been paid to the City.

Existing Law

In 2021, the Board of Supervisors established a pilot program, commonly referred to as “First Year Free,” which waived initial registration fees, initial license fees, and permit fees for certain new small businesses, through October 31, 2022. The “First Year Free” program also waived initial license fees and permit fees for certain small businesses with a new location in the City, through October 31, 2022. The waiver was limited to specified commercial uses and required that the business be located on the ground floor. The small business ceiling was \$2,000,000 in annual San Francisco gross receipts, and if the business had more than \$10,000,000 in San Francisco gross receipts in any year through its third full year after commencing business in San Francisco or opening a new business location in San Francisco, the waiver would be revoked retroactively and the business would be required to remit to the City any waived fee amounts.

In 2022, the Board of Supervisors extended the “First Year Free” program through June 30, 2023 and expanded that program by (1) increasing from \$2,000,000 to \$5,000,000 the maximum San Francisco gross receipts permissible for a business to qualify for the waiver; (2) removing the requirement that the business be located on the ground floor; (3) expanding the business types that qualify for the waiver to include all commercial uses; and (4) increasing from \$10,000,000 to \$15,000,000 the San Francisco gross receipts above which the waiver would be retroactively revoked.

Amendments to Current Law

This ordinance would further extend the “First Year Free” program, with modifications, for five years and codify that program in Article 2 of the Business and Tax Regulations Code. This ordinance would waive, retroactively to July 1, 2023, permit, initial license, and initial business registration fees for businesses that have estimated first-year San Francisco gross receipts of \$5,000,000 or less, have a registered business location that is for commercial use other than for a home-based business or short-term residential rental use, and have actual San Francisco gross receipts of \$15,000,000 or less in the calendar year of, or in any calendar year during the three full calendar years following, the date the business commenced business within San Francisco.

This ordinance also would waive, retroactively to July 1, 2023, permit and initial license fees for businesses that open a location in the City for commercial use other than for a home-based business or short-term residential rental use, reported San Francisco gross receipts of \$5,000,000 or less on its most recent return, and have actual San Francisco gross receipts of \$15,000,000 or less in the calendar year of, or in any calendar year during the three full calendar years following, the date the business opened the new location. The waiver would apply only to the new location.

A home-based business is defined as a business operated from a home or other residential location. A short-term residential rental use is as defined in Section 41A.4 of Chapter 41A of the Administrative Code (residential unit conversion and demolition).

This ordinance would require the Tax Collector to refund any waived fees paid to the City, if the fee payer files a written request with the Tax Collector within one year of payment. This ordinance also would establish procedures for the administration of the waiver. The waiver would sunset on June 30, 2028.

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