

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*
br Linda Wong, Clerk
Budget and Finance Committee

DATE: December 22, 2017

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors' Budget and Finance 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. 171294

Motion ordering submitted to the voters, at an election to be held on June 5, 2018, an Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an additional tax of 2% on the gross receipts from the lease of commercial space in the City, to fund transportation operations and infrastructure; and increasing the City's appropriations limit by the amount collected under the new tax for four years from June 5, 2018.

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 [Initiative Ordinance - Business and Tax Regulations and Administrative Codes - Additional
2 Gross Receipts Tax on Commercial Rents]

3 **Motion ordering submitted to the voters, at an election to be held on June 5, 2018, an**
4 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**
5 **to impose an additional tax of 2% on the gross receipts from the lease of commercial**
6 **space in the City, to fund transportation operations and infrastructure; and increasing**
7 **the City’s appropriations limit by the amount collected under the new tax for four years**
8 **from June 5, 2018.**

9
10 **MOVED,** That the Board of Supervisors hereby submits the following ordinance to the
11 voters of the City and County of San Francisco, at an election to be held on June 5, 2018.

12
13 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**
14 **to impose an additional tax of 2% on the gross receipts from the lease of commercial**
15 **space in the City, to fund transportation operations and infrastructure; and increasing**
16 **the City’s appropriations limit by the amount collected under the new tax for four years**
17 **from June 5, 2018.**

18
19 **NOTE:** **Unchanged Code text and uncodified text** are in plain font.
20 **Additions to Codes** are in *single-underline italics Times New Roman font*.
21 **Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.
22 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
23 parts of tables.

24
25 **Be it ordained by the People of the City and County of San Francisco:**

1 Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this
2 ordinance shall be submitted to the qualified electors of the City and County of San Francisco
3 at the June 5, 2018, consolidated statewide direct primary election.

4
5 Section 2. The Business and Tax Regulations Code is hereby amended by adding
6 Article 19, consisting of Sections 1901 through 1914, to read as follows:

7
8 **ARTICLE 19: COMMERCIAL RENTS TAX ORDINANCE**

9
10 **SEC. 1901. SHORT TITLE.**

11 *This Article 19 shall be known as the "Commercial Rents Tax Ordinance," and the tax it*
12 *imposes shall be known as the "Commercial Rents Tax."*

13
14 **SEC. 1902. DEFINITIONS.**

15 *(a) Unless otherwise defined in this Article 19, the terms used in this Article shall have the*
16 *meanings given to them in Articles 6, 12-A, and 12-A-1 of the Business and Tax Regulations Code, as*
17 *amended from time to time.*

18 *(b) For purposes of this Article 19, "commercial space" means any building or structure, or*
19 *portion of a building or structure, that is not "residential real estate," as that phrase is defined in*
20 *Section 954.1(e) of Article 12-A-1, as amended from time to time.*

21
22 **SEC. 1903. IMPOSITION OF TAX.**

23 *(a) Except as otherwise provided in this Article 19, for the privilege of engaging in the business*
24 *of leasing commercial space in properties in the City, the City imposes an annual Commercial Rents*
25

1 Tax on each person or combined group engaged in business in the City that receives gross receipts
2 from the lease of commercial space in properties in the City.

3 (b) The Commercial Rents Tax shall be calculated as 2% of the person or combined group's
4 gross receipts from the lease of commercial space in properties in the City.

5
6 **SEC. 1904. EXEMPTIONS AND EXCLUSIONS.**

7 (a) An organization that is exempt from income taxation by Chapter 4 (commencing with
8 Section 23701) of Part 11 of Division 2 of the California Revenue and Taxation Code or Subchapter F
9 (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as
10 amended, as qualified by Sections 502, 503, 504, and 508 of the Internal Revenue Code of 1986, as
11 amended, shall be exempt from taxation under this Article 19, only so long as those exemptions
12 continue to exist under state or federal law.

13 (b) For purposes of this Article 19, gross receipts shall not include receipts from organizations
14 described in subsection (a) of this Section 1904.

15 (c) For purposes of this Article 19, gross receipts shall not include receipts from business
16 activities if, and only so long as and to the extent that, the City is prohibited from taxing such receipts
17 under the Constitution or laws of the United States or under the Constitution or laws of the State of
18 California.

19 (d) For only so long as and to the extent that the City is prohibited from imposing the
20 Commercial Rents Tax, the following persons shall be exempt from the Commercial Rents Tax:

21 (1) Banks and financial corporations exempt from local taxation under Article XIII,
22 Section 27 of the California Constitution and California Revenue and Taxation Code Section 23182;

23 (2) Insurance companies exempt from local taxation under Article XIII, Section 28 of
24 the California Constitution;

1 (3) Persons engaging in business as a for-hire motor carrier of property under
2 California Revenue and Taxation Code Section 7233;

3 (4) Persons engaging in intercity transportation as a household goods carrier under
4 California Public Utilities Code Section 5327;

5 (5) Charter-party carriers operating limousines that are neither domiciled nor maintain
6 a business office within the City under California Public Utilities Code Section 5371.4; and

7 (6) Any person upon whom the City is prohibited under the Constitution or laws of the
8 State of California from imposing the Commercial Rents Tax.

9
10 **SEC. 1905. SMALL BUSINESS EXEMPTION.**

11 Notwithstanding any other provision of this Article 19, a person or combined group exempt
12 from payment of the gross receipts tax under Section 954.1 of Article 12-A-1, as amended from time to
13 time, shall also be exempt from payment of the Commercial Rents Tax.

14
15 **SEC. 1906. COMBINED RETURNS.**

16 (a) Persons or combined groups subject to the Commercial Rents Tax shall file returns at the
17 same time and in the same manner as returns filed for the gross receipts tax (Article 12-A-1), including
18 the rules for combined returns under Section 956.3, as amended from time to time.

19 (b) If a person or combined group is liable for the Commercial Rents Tax but is not required to
20 file a gross receipts tax return, such person or combined group's Commercial Rents Tax return shall be
21 filed at the same time and in the same manner as if such person or combined group was required to file
22 a gross receipts tax return.

23 (c) For purposes of this Article 19, a lessor of residential real estate is treated as a separate
24 person with respect to each individual building in which it leases residential real estate units,
25 notwithstanding Section 6.2-15 of Article 6, as amended from time to time, or subsection (a) of this

1 Section 1906. The provisions of this subsection (c) apply only to leasing residential real estate units
2 within a building, and not to any business activity related to other space, either within the same
3 building or other buildings, which is not residential real estate. The Tax Collector is authorized to
4 determine what constitutes a separate building and the number of units in a building.

5
6 **SEC. 1907. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.**

7 The Tax Collector may, in his or her reasonable discretion, independently establish a person or
8 combined group's gross receipts from the lease of commercial space in properties in the City and
9 establish or reallocate gross receipts among related entities so as to fairly reflect the gross receipts
10 from the lease of commercial space in properties in the City of all persons and combined groups.

11
12 **SEC. 1908. CONSTRUCTION AND SCOPE OF THE COMMERCIAL RENTS TAX**
13 **ORDINANCE.**

14 (a) The voters intend by adopting this measure to authorize application of the Commercial
15 Rents Tax in the broadest manner consistent with the provisions of this Article 19 and the requirements
16 of the California Constitution, the United States Constitution, and any other applicable provision of
17 federal or state law.

18 (b) The Commercial Rents Tax imposed by this Article 19 is in addition to all other City taxes,
19 including the gross receipts tax imposed by Article 12-A-1, as amended from time to time. Accordingly,
20 by way of example and not limitation, persons and combined groups subject to both the Commercial
21 Rents Tax and the gross receipts tax shall pay both taxes. Persons and combined groups exempt from
22 either the gross receipts tax or the Commercial Rents Tax, but not both, shall pay the tax from which
23 they are not exempt.

1 **SEC. 1909. ADMINISTRATION OF THE COMMERCIAL RENTS TAX ORDINANCE.**

2 Except as otherwise provided under this Article 19, the Commercial Rents Tax Ordinance shall
3 be administered pursuant to Article 6 of the Business and Tax Regulations Code, as amended from time
4 to time.

5
6 **SEC. 1910. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.**

7 (a) All monies collected under the Commercial Rents Tax Ordinance shall be deposited to the
8 credit of the Transportation Operations and Infrastructure Fund, established in Administrative Code
9 Section 10.100-344, which shall be a category four fund under Administrative Code Section 10.100-1.
10 The Fund shall be maintained separate and apart from all other City funds and shall be subject to
11 appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to
12 have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be
13 carried forward and accumulated in the Fund for the purposes described in subsection (b).

14 (b) Monies in the Transportation Operations and Infrastructure Fund shall be used exclusively
15 for the purposes specified in this subsection (b). Subject to the budgetary and fiscal provisions of the
16 City Charter, monies in the Fund shall be appropriated on an annual or supplemental basis and used
17 exclusively for the following purposes:

18 (1) Up to 2% of the proceeds of the Commercial Rents Tax, distributed in any
19 proportion to the Tax Collector and other City departments, for administration of the Commercial
20 Rents Tax;

21 (2) Refunds of any overpayments of the Commercial Rents Tax imposed by this
22 Article 19; and

23 (3) Transportation operations and infrastructure.

24 (c) Commencing with a report filed no later than January 1, 2020, covering the fiscal year
25 ending on June 30, 2019, the Controller shall file annually with the Board of Supervisors, by January 1

1 of each year, a report containing the amount of monies collected in and expended from the
2 Transportation Operations and Infrastructure Fund during the prior fiscal year, and such other
3 information as the Controller, in the Controller's sole discretion, shall deem relevant to the operation
4 of this Article 19.

5
6 **SEC. 1911. AMENDMENT OF ORDINANCE.**

7 The Board of Supervisors may amend or repeal this Article 19 by ordinance without a vote of
8 the people except as limited by Articles XIII A and XIII C of the California Constitution.

9
10 **SEC. 1912. EFFECT OF STATE AND FEDERAL AUTHORIZATION.**

11 To the extent that the City's authorization to impose or collect any tax imposed under this
12 Article 19 is expanded or limited as a result of changes in state or federal statutes, regulations, or other
13 laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be
14 required to conform the taxes to those changes, and the taxes are hereby imposed and the Tax
15 Collector shall collect them to the full extent of the City's authorization up to the full amount and rate
16 of the taxes imposed under this Article.

17
18 **SEC. 1913. SEVERABILITY.**

19 (a) Except as provided in Section 1913(b), below, if any section, subsection, sentence, clause,
20 phrase, or word of this Article 19, or the application thereof to any person or circumstance, is for any
21 reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such
22 decision shall not affect the validity of the remaining portions of this Article, including the application
23 of such portions to other persons or circumstances. The People of the City and County of San
24 Francisco hereby declare that, except as provided in Section 1913(b), they would have adopted each
25 section, subsection, sentence, clause, phrase, and word of this Article not declared invalid or

1 unconstitutional without regard to whether any other portion of this ordinance would be subsequently
2 declared invalid or unconstitutional.

3 (b) If the imposition of the Commercial Rents Tax in Section 1903 is held in its entirety to be
4 facially invalid or unconstitutional in a final court determination, the remainder of this Article 19 shall
5 be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business
6 and Tax Regulations Code.

7
8 **SEC. 1914. SAVINGS CLAUSE.**

9 No section, clause, part, or provision of this Article 19 shall be construed as requiring the
10 payment of any tax that would be in violation of the Constitution or laws of the United States or of the
11 Constitution or laws of the State of California.

12
13 Section 3. The Administrative Code is hereby amended by adding Section 10.100-344,
14 to read as follows:

15
16 **SEC. 10.100-344. TRANSPORTATION OPERATIONS AND INFRASTRUCTURE FUND.**

17 (a) Establishment of Fund. The Transportation Operations and Infrastructure Fund ("Fund")
18 is established as a category four fund as defined in Section 10.100-1 of the Administrative Code, and
19 shall receive all taxes, penalties, interest, and fees collected from the Commercial Rents Tax imposed
20 under Article 19 of the Business and Tax Regulations Code.

21 (b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the
22 Fund shall be used exclusively for the purposes described in Section 1910(b) of Article 19 of the
23 Business and Tax Regulations Code.

24 (c) Administration of Fund. As stated in Section 1910 of Article 19 of the Business and Tax
25 Regulations Code, commencing with a report filed no later than January 1, 2020, covering the fiscal

1 year ending June 30, 2019, the Controller shall file annually with the Board of Supervisors, by
2 January 1 of each year, a report containing the amount of monies collected in and expended from the
3 Fund during the prior fiscal year, and such other information as the Controller, in the Controller's sole
4 discretion, shall deem relevant to the operation of Article 19.

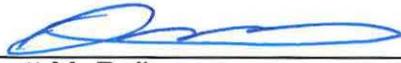
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6 Section 4. Appropriations Limit Increase. Pursuant to California Constitution
7 Article XIII B and applicable laws, for four years from June 5, 2018, the appropriations limit for
8 the City shall be increased by the aggregate sum collected by the levy of the tax imposed
9 under this ordinance.

10
11 Section 5. Effective and Operative Date. The effective date of this ordinance shall be
12 ten days after the date the official vote count is declared by the Board of Supervisors. This
13 ordinance shall become operative on January 1, 2019.

14
15 APPROVED AS TO FORM:

16 DENNIS J. HERRERA, City Attorney

17
18 By:



19 Scott M. Reiber
Deputy City Attorney

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LEGISLATIVE DIGEST

[Initiative Ordinance - Business and Tax Regulations and Administrative Codes - Additional Gross Receipts Tax on Commercial Rents]

Motion ordering submitted to the voters, at an election to be held on June 5, 2018, an Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an additional tax of 2% on the gross receipts from the lease of commercial space in the City, to fund transportation operations and infrastructure; and increasing the City's appropriations limit by the amount collected under the new tax for four years from June 5, 2018.

Existing Law

Businesses that receive rent or other amounts from the lease of real property in the City currently pay a gross receipts tax under Article 12-A-1 of the Business and Tax Regulations Code. The maximum rates are 0.285% of such gross receipts for gross receipts between \$0 and \$5,000,000, and 0.3% of such gross receipts for gross receipts above \$5,000,000. The maximum rate for businesses with over \$25,000,000 in gross receipts will be 0.325% commencing in tax year 2021.

Businesses with \$1,000,000 or less in total gross receipts within the City (whether from commercial rents or any other line of business), adjusted for inflation, are generally exempt from the gross receipts tax in Article 12-A-1. Certain other businesses (e.g., certain non-profits, banks, insurance companies, etc.) are also exempt.

Amendments to Current Law

Effective January 1, 2019, this ordinance would impose an additional gross receipts tax on businesses that receive rent or other amounts from the lease of commercial space (i.e., non-residential real estate) in the City equal to 2% of such gross receipts. These businesses would also remain liable for the existing gross receipts tax.

As with the existing gross receipts tax, businesses with \$1,000,000 or less in total gross receipts within the City (whether from commercial rents or any other line of business), adjusted for inflation, would be exempt from this additional tax. Certain other businesses exempt from the existing gross receipts tax (e.g., certain non-profits, banks, insurance companies, etc.) would also be exempt from this additional tax. Additionally, amounts received from non-profits exempt from federal and state income taxes would be excluded from the calculation of this additional tax, but not from the calculation of the existing gross receipts tax.

The additional tax would be dedicated to funding transportation operations and infrastructure.

FILE NO. 171294

This ordinance would also increase the City's appropriations limit under Article XIII B by the amounts collected from the additional tax, for four years from June 5, 2018.

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