


BOARD of SUPERVISORS



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MEMORANDUM

TO: Mawuli Tugbenyoh, Liaison to the Board of Supervisors, Mayor's Office
Jon Givner, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission
Naomi Kelly, City Administrator, Office of the City Administrator
Jose Cisneros, Treasurer, Office of the Treasurer & Tax Collector
September Jarrett, Director, Office of Early Care and Education
Harvey Rose, Budget Analyst, Budget and Legislative Analyst

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

DATE: January 12, 2018

SUBJECT: CHARTER AMENDMENT INTRODUCED
June 5, 2018 Election

The Board of Supervisors' Rules Committee has received the following Charter Amendment for the June 5, 2018, Election, introduced by Supervisor Kim on January 9, 2018. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 180058

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 on the gross receipts from the lease of commercial space in the City, in the amount of 1% for warehouses and 3.5% for other commercial uses, to fund the Babies and Families First Fund for quality early care and education for children from birth through five years of age and the General Fund; exempting from the additional tax rents from industrial, artist, non-formula retail, nonprofit, and government uses; increasing the City's appropriations limit by the amount collected under the new tax for four years from June 5, 2018; and affirming the Planning Department's determination under the California Environmental Quality Act.

Please review and submit any reports or comments you wish to be included with the legislative file.

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: Shahde Tavakoli, Mayor's Office
 Kyle Kundert, Ethics Commission
 Lynn Khaw, Office of the City Administrator
 Lihmeei Leu, Office of the City Administrator
 Amanda Kahn Fried, Office of the Treasurer & Tax Collector
 Vanessa Price-Cooper, Office of Early Care and Education
 Debra Newman, Budget and Legislative Analyst
 Severin Campbell, Budget and Legislative Analyst
 Gabriela Loeza, Budget and Legislative Analyst

1 [Initiative Ordinance - Business and Tax Regulations and Administrative Codes - Commercial
2 Rents Tax - Early Child Care and Education]

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 on the gross receipts from the lease of commercial space**
6 **in the City, in the amount of 1% for warehouses and 3.5% for other commercial uses, to**
7 **fund the Babies and Families First Fund for quality early care and education for**
8 **children from birth through five years of age and the General Fund; exempting from the**
9 **additional tax rents from industrial, artist, non-formula retail, nonprofit, and**
10 **government uses; increasing the City's appropriations limit by the amount collected**
11 **under the new tax for four years from June 5, 2018; and affirming the Planning**
12 **Department's determination under the California Environmental Quality Act.**

13
14 MOVED, That the Planning Department has determined that the actions contemplated
15 in the following ordinance comply with the California Environmental Quality Act (California
16 Public Resources Code Sections 21000 *et seq.*). Said determination is on file with the Clerk
17 of the Board of Supervisors in File No. ____ and is incorporated herein by reference. The
18 Board affirms this determination; and be it further

19
20 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
21 voters of the City and County of San Francisco, at an election to be held on June 5, 2018.

22
23 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**
24 **to impose an additional tax on the gross receipts from the lease of commercial space**
25 **in the City, in the amount of 1% for warehouses and 3.5% for other commercial uses, to**

1 fund the Babies and Families First Fund for quality early care and education for
2 children from birth through five years of age and the General Fund; exempting from the
3 additional tax rents from industrial, artist, non-formula retail, nonprofit, and
4 government uses; increasing the City's appropriations limit by the amount collected
5 under the new tax for four years from June 5, 2018; and affirming the Planning
6 Department's determination under the California Environmental Quality Act.

7 NOTE: Unchanged Code text and uncodified text are in plain 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 Asterisks (* * * *) indicate the omission of unchanged Code subsections or
11 parts of tables.

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

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

16 Section 2. The Business and Tax Regulations Code is hereby amended by adding
17 Article 21, consisting of Sections 2101 through 2116, to read as follows:

18 **ARTICLE 21: EARLY CARE AND EDUCATION COMMERCIAL RENTS TAX ORDINANCE**

19 **SEC. 2101. FINDINGS.**

20 *(a) For more than a decade, San Francisco has been a national leader in early care and*
21 *education (ECE) with the introduction of the Preschool For All program in 2004. This revolutionary*
22 *program expanded access, defined and measured quality programs, and supported educators to deliver*
23 *and measure quality programs.*

1 high-quality early education. Ninety-two percent of San Francisco children attend preschool or
2 transitional kindergarten before attending public kindergarten.

3 (b) Preschool enrollment of three- to five-year-olds in San Francisco rose from 57% in 2005 to
4 71% in 2013. Citywide school readiness assessments in 2007 and 2009 charted a similar increase,
5 from 72% of four-year-olds in 2007 to 83% in 2009. These accomplishments are due to the targeted
6 and committed investments of the State and the City and the work of First 5 San Francisco and the
7 Office of Early Care and Education.

8 (c) However, the City cannot claim the same success when it comes to infants and toddlers
9 under the age of four. Despite medical professionals, child development specialists, and scientific
10 researchers uniformly agreeing that the most critical time in brain development is from birth to age
11 three, and that the brain is 90% developed before a child reaches age five, San Francisco has more
12 than 2,400 children on the waitlist for subsidized ECE, and more than 1,600 of these children are
13 under the age of three. When two-thirds of the children on the waitlist, and in these large numbers, are
14 infants and toddlers, the critical and urgent need for targeted investment in infants and toddlers, akin
15 to the level of City support prioritized for our four-year-olds, becomes dramatically evident.

16 (d) Three out of four families in San Francisco with children under the age of six have both
17 parents working outside the home, making childcare a necessity, not a luxury. But, as of 2017, infant
18 and toddler early education and childcare can cost a staggering \$20,000 a year in San Francisco; in
19 comparison, tuition at UC Berkeley costs \$13,600 a year. The heavy toll that childcare costs can take
20 on families is undeniable. In a 2016 poll conducted by the Robert Wood Johnson Foundation,
21 Harvard's T.H. Chan School of Public Health, and National Public Radio, 71% of the over 1,100
22 parents polled stated that the cost of childcare is a serious problem for their families.

23 (e) Without affordable and accessible childcare, one significant consequence is the loss of
24 women from the workforce, a serious problem not just for those women, but for society at large. One
25 stark consequence of losing women in our workforce is the difficulties they face when attempting to

1 return to work in the technology sector after having children. Recent research indicates that such
2 women are 79% less likely to be hired and half as likely to be promoted as other employees, and are
3 offered an average of \$11,000 less in salary upon trying to re-enter the technology workforce later in
4 life.

5 (f) Further, as female employees leave the workforce, the lack of gender diversity in fields like
6 technology and venture capital continues apace. A study conducted by the Deloitte University
7 Leadership Center for Inclusion and the National Venture Capital Association, of 2,500 employees at
8 217 venture capital firms nationwide, found that lack of family assistance and childcare may be
9 hindering women's success in venture capital. The same study found that gender diversity in leadership
10 results in greater returns, innovation, and success. Fortune 500 firms that aggressively promote
11 women realize 34% higher profits than those that do not.

12 (g) Our San Francisco families want and need quality ECE for their children, and society as a
13 whole benefits when we invest in them and their families. Rigorous long-term studies have found a
14 return on investment averaging seven dollars for every dollar spent on quality early learning programs.
15 In addition, children in these studies who have been followed into adulthood have benefitted from
16 increased earnings.

17 (h) The most effective guarantee of quality ECE is workforce compensation. A 2014 UC
18 Berkeley study showed that educator wages are one of the most important predictors of the quality of
19 education children receive. But today, one third of full-time teaching staff in ECE programs use some
20 form of public assistance to make ends meet. In San Francisco, 92% of our early childcare and
21 education workforce are women; 83% are estimated to be women of color.

22 (i) Children who come to kindergarten without the skills they need often stay behind and
23 struggle in school. Early childhood care and education programs give children a chance to learn,
24 become excited about school, and be better students over their lifetimes. Investing in ECE helps ensure
25

1 we have highly-trained and skilled educators, gives our babies and children the best possibility to
2 succeed, while providing essential support for struggling working families.

3
4 **SEC. 2102. SHORT TITLE.**

5 This Article 21 shall be known as the “Early Care and Education Commercial Rents Tax
6 Ordinance,” and the tax it imposes shall be known as the “Early Care and Education Commercial
7 Rents Tax.”

8
9 **SEC. 2103. DEFINITIONS.**

10 (a) Unless otherwise defined in this Article 21, the terms used in this Article shall have the
11 meanings given to them in Articles 6 and 12-A-1 of the Business and Tax Regulations Code, as
12 amended from time to time. All references to Sections of the Planning Code are to the text of those
13 Sections as of June 5, 2018.

14 (b) For purposes of this Article 21, the following definitions shall apply:

15 “Area Median Income” or “AMI” means Area Median Income for the San Francisco area,
16 derived from the U.S. Department of Housing and Urban Development, adjusted solely for household
17 size, as described in Administrative Code Section 10.100-81(c).

18 “Base Amount” means the Controller’s calculation of the amount of City appropriations (not
19 including appropriations from the Fund and exclusive of expenditures funded by private funding,
20 development impact fees, or prior period balances, or funded or mandated by state or federal law) for
21 Baseline Programs for the Baseline Year, as adjusted in the manner provided in subsections (g) and (h)
22 of Section 2112.

23 “Baseline Programs” means all programs serving children of all ages under six that are
24 allocated funding through OECE.

25 “Baseline Year” means the Fiscal Year July 1, 2017 through June 30, 2018.

1 “Commercial Space” means any building or structure, or portion of a building or structure,
2 that is not “residential real estate,” as that term is defined in Section 954.1(e) of Article 12-A-1 of the
3 Business and Tax Regulations Code, as amended from time to time. Notwithstanding the preceding
4 sentence, Commercial Space shall not include any building or structure, or portion of a building or
5 structure, that is used for: (a) Industrial Use as defined in Section 102 of the Planning Code; (b) Arts
6 Activities as defined in Section 102 of the Planning Code; or (c) Retail Sales or Service Activities or
7 Retail Sales or Service Establishments, as defined in Section 303.1(c) of the Planning Code, that are
8 not Formula Retail uses as defined in Section 303.1(b) of the Planning Code.

9 “Eligible Programs” are described in Section 2112(d)(1) of this Article 21.

10 “Fiscal Year” means the period starting July 1 and ending on the following June 30.

11 “Fund” means the Babies and Families First Fund described in Section 2111 of this Article 21.

12 “OECE” means the City’s Office of Early Care and Education, described in Section 2A.310 of
13 the Administrative Code, or its successor.

14 “State Median Income” or “SMI” means the state median income, adjusted for family size,
15 calculated by the California Department of Finance under California Education Code Section 8263.1.

16 “Warehouse Space” means Commercial Space that is used for Commercial Storage, for
17 Volatile Materials Storage, for Wholesale Storage, or as a Storage Yard, as each of these capitalized
18 terms is defined in Section 102 of the Planning Code.

19
20 **SEC. 2104. IMPOSITION OF TAX.**

21 (a) Except as otherwise provided in this Article 21, for the privilege of engaging in the business
22 of leasing Commercial Space in properties in the City, the City imposes an annual Early Care and
23 Education Commercial Rents Tax on each person engaged in business in the City that receives gross
24 receipts from the lease of Commercial Space in properties in the City. For purposes of this Article 21,
25 the term “lease” includes any “sublease.”

1 (b) The Early Care and Education Commercial Rents Tax shall be calculated by applying the
2 following percentages to the person or combined group's gross receipts from the lease of Commercial
3 Space in properties in the City:

4 (1) 1% to the person or combined group's gross receipts from the lease of Warehouse
5 Space in properties in the City; and

6 (2) 3.5% to the person or combined group's gross receipts from the lease of all other
7 Commercial Space in properties in the City.

8 (c) The Early Care and Education Commercial Rents Tax shall become operative on
9 January 1, 2019.

10
11 **SEC. 2105. EXEMPTIONS AND EXCLUSIONS.**

12 (a) An organization that is exempt from income taxation by Chapter 4 (commencing with
13 Section 23701) of Part 11 of Division 2 of the California Revenue and Taxation Code or Subchapter F
14 (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as
15 amended, as qualified by Sections 502, 503, 504, and 508 of the Internal Revenue Code of 1986, as
16 amended, shall be exempt from taxation under this Article 21, only so long as those exemptions
17 continue to exist under state or federal law.

18 (b) For purposes of this Article 21, gross receipts from the lease of Commercial Space shall not
19 include receipts from the leasing of Commercial Space to (1) organizations described in subsection (a)
20 of this Section 2105; or (2) federal, state, or local governments.

21 (c) For purposes of this Article 21, gross receipts from the lease of Commercial Space shall not
22 include receipts from business activities if, and only so long as and to the extent that, the City is
23 prohibited from taxing such receipts under the Constitution or laws of the United States or under the
24 Constitution or laws of the State of California.

1 (d) For only so long as and to the extent that the City is prohibited from imposing the Early
2 Care and Education Commercial Rents Tax, any person upon whom the City is prohibited under the
3 Constitution or laws of the State of California or the Constitution or laws of the United States from
4 imposing the Early Care and Education Commercial Rents Tax shall be exempt from the Early Care
5 and Education Commercial Rents Tax.

6
7 **SEC. 2106. SMALL BUSINESS EXEMPTION.**

8 Notwithstanding any other provision of this Article 21, a person or combined group exempt
9 from payment of the gross receipts tax under Section 954.1 of Article 12-A-1, as amended from time to
10 time, shall also be exempt from payment of the Early Care and Education Commercial Rents Tax.

11
12 **SEC. 2107. FILING; COMBINED RETURNS.**

13 (a) Persons subject to the Early Care and Education Commercial Rents Tax shall file returns at
14 the same time and in the same manner as returns filed for the gross receipts tax (Article 12-A-1),
15 including the rules for combined returns under Section 956.3, as amended from time to time.

16 (b) If a person is subject to the Early Care and Education Commercial Rents Tax but is not
17 required to file a gross receipts tax return, such person or combined group's Early Care and Education
18 Commercial Rents Tax return shall be filed at the same time and in the same manner as if such person
19 or combined group were required to file a gross receipts tax return.

20 (c) For purposes of this Article 21, a lessor of residential real estate is treated as a separate
21 person with respect to each individual building in which it leases residential real estate units,
22 notwithstanding Section 6.2-15 of Article 6, as amended from time to time, or subsection (a) of this
23 Section 2107. This subsection (c) applies only to leasing residential real estate units within a building,
24 and not to any business activity related to other space, either within the same building or other
25

1 buildings, which is not residential real estate. The Tax Collector is authorized to determine what
2 constitutes a separate building and the number of units in a building.

3
4 **SEC. 2108. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.**

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

9
10 **SEC. 2109. CONSTRUCTION AND SCOPE OF THE EARLY CARE AND EDUCATION**
11 **COMMERCIAL RENTS TAX ORDINANCE.**

12 (a) This Article 21 is intended to authorize application of the Early Care and Education
13 Commercial Rents Tax in the broadest manner consistent with its provisions and with the California
14 Constitution, the United States Constitution, and any other applicable provision of federal or state law.

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

1 **SEC. 2110. ADMINISTRATION OF THE EARLY CARE AND EDUCATION COMMERCIAL**
2 **RENTS TAX ORDINANCE.**

3 Except as otherwise provided under this Article 21, the Early Care and Education Commercial
4 Rents Tax Ordinance shall be administered pursuant to Article 6 of the Business and Tax Regulations
5 Code, as amended from time to time.

6
7 **SEC. 2111. DEPOSIT OF PROCEEDS.**

8 All monies collected under the Early Care and Education Commercial Rents Tax Ordinance
9 shall be deposited to the credit of the Babies and Families First Fund, established in Administrative
10 Code Section 10.100-36. The Fund shall be maintained separate and apart from all other City funds
11 and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal
12 year shall be deemed to have been provided for a special purpose within the meaning of Charter
13 Section 9.113(a) and shall be carried forward and accumulated in the Fund for the purposes described
14 in Section 2112(d) of this Article 21.

15
16 **SEC. 2112. EXPENDITURE OF PROCEEDS**

17 Monies in the Babies and Families First Fund shall be used exclusively for the purposes
18 specified in this Section 2112. Subject to the budgetary and fiscal provisions of the Charter, monies in
19 the Fund shall be appropriated on an annual or supplemental basis and used exclusively for the
20 following purposes:

21 (a) Up to 2% of the proceeds of the Early Care and Education Commercial Rents Tax,
22 distributed in any proportion to the Tax Collector and other City departments, for administration of the
23 Early Care and Education Commercial Rents Tax;

24 (b) Refunds of any overpayments of the Early Care and Education Commercial Rents Tax
25 imposed by this Article 21;

1 (c) Fifteen percent of all amounts remaining after application of subsections (a) and (b) to the
2 General Fund, to be expended for any purposes of the City; and

3 (d) All remaining amounts to funding, including administrative costs, Eligible Programs.

4 (1) "Eligible Programs" means:

5 (A) Support for quality early care and education for children under the age of
6 six in San Francisco families at 85% or less of State Median Income (SMI);

7 (B) Support for quality early care and education for children under the age of
8 four in San Francisco families earning up to 200% of the Area Median Income (AMI);

9 (C) Investment in comprehensive early care and education services that support
10 the physical, emotional, and cognitive development of children under the age of six; and

11 (D) Increasing compensation (including but not limited to wages, benefits, and
12 training) of care professionals and staff in order to improve the quality and availability of early care
13 and education for children under the age of six.

14 (2) Monies in the Fund shall be allocated between the purposes set forth in subsections
15 (d)(1)(A), (d)(1)(B), (d)(1)(C), and (d)(1)(D), as provided by the Board of Supervisors or OECE.

16 (e) Commencing with a report filed with the Board of Supervisors not later than January 1,
17 2030, and every ten years thereafter, or as directed by the Board of Supervisors, OECE shall file a
18 "needs assessment" containing recommendations for expenditures from the Fund for the following ten
19 years to support quality early care and education for children under the age of six through the Eligible
20 Programs.

21 (f) The intent of subsection (d) of this Section 2112 is to provide dedicated revenues to increase
22 funding for quality early care and education for San Francisco children under the age of six. It is not
23 intended to supplant existing funding. Therefore, except as otherwise specified in this Section 2112,
24 revenues in the Fund may only be expended for the purposes specified in Section 2112(d) in years when
25 the Controller certifies that appropriations contained in the adopted budget from other funding sources

1 exceed those in a given year, as measured and adjusted by the Controller pursuant to subsections (g)
2 and (h) of this Section 2112.

3 (g) Expenditures After Baseline Year. No monies in the Fund shall be expended pursuant to
4 subsection (d) of this Section 2112 in any Fiscal Year in which the amount appropriated for Baseline
5 Programs (not including appropriations from the Fund and exclusive of expenditures funded by private
6 funding, development impact fees, or prior period balances, or funded or mandated by state or federal
7 law) is below the Base Amount. All funds unexpended in accordance with the preceding sentence shall
8 be held in the Fund and may be expended in any future Fiscal Year in which other expenditures from
9 the Fund may be made. The Controller shall adjust the Base Amount for each Fiscal Year after the
10 Baseline Year based on calculations consistent from Fiscal Year to Fiscal Year by the percentage
11 increase or decrease in aggregate City discretionary revenues. In determining aggregate City
12 discretionary revenues, the Controller shall include only revenues received by the City that are
13 unrestricted and may be used at the option of the Mayor and the Board of Supervisors for any lawful
14 City purpose. The method used by the Controller to determine discretionary revenues shall be
15 consistent with the method used by the Controller to determine the Library and Children's Fund
16 Baseline calculations, as provided in Charter Section 16.108(h). The change in aggregate
17 discretionary revenues shall be adjusted following the end of the Fiscal Year when final revenues are
18 known.

19 (h) Suspension of Growth in Base Amount. The City may suspend growth in the Base Amount
20 pursuant to subsection (g) of this Section 2112 in Fiscal Year 2018-2019 if the City's projected budget
21 deficit for that year at the time of the Joint Report or Update to the Five Year Financial Plan as
22 prepared jointly by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget
23 Analyst under Chapter 3, Section 3.6 of the Administrative Code, exceeds \$200 million. For Fiscal
24 Year 2019-2020 and thereafter, the City may suspend growth in the Base Amount pursuant to
25 subsection (g) of this Section 2112 in any year that the City's projected budget deficit for that year at

1 the time of the Joint Report or Update to the Five Year Financial Plan as prepared jointly by the
2 Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst under
3 Chapter 3, Section 3.6 of the Administrative Code exceeds \$200 million adjusted annually by changes
4 in aggregate City discretionary revenues as defined in subsection (g) of this Section 2112.

5 (i) Annual Reports. Commencing with a report filed no later than February 15, 2020, covering
6 the Fiscal Year ending on June 30, 2019, the Controller shall file annually with the Board of
7 Supervisors, by February 15 of each year, a report containing the amount of monies collected in and
8 expended from the Fund during the prior Fiscal Year, the status of all Eligible Programs, and such
9 other information as the Controller, in the Controller's sole discretion, shall deem relevant to the
10 operation of this Article 21.

11 (j) Administration of Fund. The Fund shall be maintained by the Controller's Office, which
12 shall record all receipts and expenditures.

13
14 **SEC. 2113. AMENDMENT OF ORDINANCE.**

15 The Board of Supervisors may amend or repeal this Article 21 by ordinance without a vote of
16 the people except as limited by Articles XIII A and XIII C of the California Constitution.

17
18 **SEC. 2114. EFFECT OF STATE AND FEDERAL AUTHORIZATION.**

19 To the extent that the City's authorization to impose or to collect any tax imposed under this
20 Article 21 is expanded or limited as a result of changes in state or federal statutes, regulations, or other
21 laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be
22 required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with
23 those changes, and the Tax Collector shall collect them to the full extent of the City's authorization up
24 to the full amount and rate of the taxes imposed under this Article.

1 **SEC. 2115. SEVERABILITY.**

2 (a) Except as provided in Section 2115(b), below, if any section, subsection, sentence, clause,
3 phrase, or word of this Article 21, or the application thereof to any person or circumstance, is for any
4 reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such
5 decision shall not affect the validity of the remaining portions of this Article, including the application
6 of such portions to other persons or circumstances. The People of the City and County of San
7 Francisco hereby declare that, except as provided in Section 2115(b), they would have adopted each
8 section, subsection, sentence, clause, phrase, and word of this Article not declared invalid or
9 unconstitutional without regard to whether any other portion of this Article would be subsequently
10 declared invalid or unconstitutional.

11 (b) If the imposition of the Early Care and Education Commercial Rents Tax in Section 2104 of
12 this Article 21 is held in its entirety to be facially invalid or unconstitutional in a final court
13 determination, the remainder of this Article 21 shall be void and of no force and effect, and the City
14 Attorney shall cause it to be removed from the Business and Tax Regulations Code, and likewise cause
15 Section 10.100-36 to be removed from the Administrative Code.

16
17 **SEC. 2116. SAVINGS CLAUSE.**

18 No section, clause, part, or provision of this Article 21 shall be construed as requiring the
19 payment of any tax that would be in violation of the Constitution or laws of the United States or of the
20 Constitution or laws of the State of California.

21
22 Section 3. The Administrative Code is hereby amended by adding Section 10.100-36,
23 to read as follows:
24
25

1 **SEC. 10.100-36. BABIES AND FAMILIES FIRST FUND.**

2 (a) Establishment of Fund. The Babies and Families First Fund ("Fund") is established as a
3 category four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all
4 taxes, penalties, interest, and fees collected from the Early Care and Education Commercial Rents Tax
5 imposed under Article 21 of the Business and Tax Regulations Code.

6 (b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the
7 Fund shall be used exclusively for the purposes described in Section 2112 of Article 21 of the Business
8 and Tax Regulations Code.

9 (c) The Controller shall report to the Board of Supervisors as required by subsection (i) of
10 Section 2112 of the Business and Tax Regulations Code.

11
12 Section 4. Appropriations Limit Increase. Pursuant to California Constitution
13 Article XIII B and applicable laws, for four years from June 5, 2018, the appropriations limit for
14 the City shall be increased by the aggregate sum collected by the levy of the tax imposed
15 under this ordinance.

16
17 Section 5. Effective and Operative Date. The effective date of this ordinance shall be
18 ten days after the date the official vote count is declared by the Board of Supervisors. This
19 ordinance shall become operative on January 1, 2019.

20
21 APPROVED AS TO FORM:

22 DENNIS J. HERRERA, City Attorney

23
24 By:


CAROLE RUWART
Deputy City Attorney

25 n:\legan\las2017\1800227\01244430.docx

LEGISLATIVE DIGEST

[Initiative Ordinance - Business and Tax Regulations and Administrative Codes - Commercial Rents Tax - Early Child Care and Education]

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 on the gross receipts from the lease of commercial space in the City, in the amount of 1% for warehouses and 3.5% for other commercial uses, to fund the Babies and Families First Fund for quality early care and education for children from birth through five years of age and the General Fund; exempting from the additional tax rents from industrial, artist, non-formula retail, nonprofit, and government uses; increasing the City's appropriations limit by the amount collected under the new tax for four years from June 5, 2018; and affirming the Planning Department's determination under the California Environmental Quality Act.

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% beginning 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. The rate would be 1% for gross receipts from warehouse uses, and 3.5% for all other commercial rents. The additional tax would not apply to gross receipts from the lease of any portion of a building or structure used for industrial, arts, or non-formula retail uses, even though the existing gross receipts tax applies to receipts from these uses. And, amounts received from non-profits exempt from federal and state income tax, and from federal, state, and local governments, would be excluded from this additional tax, but not from 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.

The additional tax would establish and fund the Babies and Families First Fund (Fund). After administrative costs of the tax, fifteen percent would be dedicated to the General Fund. The remainder would be dedicated to funding quality early care and education for children under six years of age. The Fund's expenditures would be administered by the City's Office of Early Care and Education (OECE), for four purposes: 1) quality early care and education for children under the age of six in San Francisco families at 85% or less of State Median Income (SMI); 2) quality early care and education for children under the age of four in San Francisco families earning up to 200% of the Area Median Income (AMI); 3) investment in services that support the physical, emotional, and cognitive development of children under the age of six; 4) increasing compensation (including but not limited to wages, benefits, and training) of care professionals and staff in order to improve the quality and availability of early care and education for children under the age of six.

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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