

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
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MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller
John Rahaim, Director, Planning Department
Kate Hartley, Director, Mayor's Office of Housing and Community Development
Jeff Kositsky, Director, Department of Homelessness and Supportive Housing
Jose Cisneros, Treasurer, Office of the Treasurer & Tax Collector
Nadia Sesay, Executive Director, Office of Community Investment and Infrastructure
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission
Naomi Kelly, City Administrator, Office of the City Administrator

FROM: *ll*
for Alisa Somera, Legislative Deputy Director, Rules Committee
Board of Supervisors

DATE: February 6, 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 Safai on January 23, 2018. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 180075

Hearing to consider the proposed initiative ordinance submitted by four or more Supervisors to the voters at the June 5, 2018, Election, entitled "Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an additional tax of 1.7% on the gross receipts from the lease of commercial space in the City, to fund low- and middle-income housing and homelessness services and the General Fund; exempting from the additional tax rents from productions, distribution, and repair uses, retail sales and services uses, entertainment, arts and recreation uses, and nonprofit uses; and increasing the City's appropriations limit by the amount collected under the new tax for four years from June 5, 2018."

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) 554-7711 or email: alisa.somera@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

- c: Todd Rydstrom, Office of the Controller
- Peg Stevenson, Office of the Controller
- Natasha Mihal, Office of the Controller
- Scott Sanchez, Planning Department
- Lisa Gibson, Planning Department
- AnMarie Rodgers, Planning Department
- Aaron Starr, Planning Department
- Joy Navarrete, Planning Department
- Laura Lynch, Planning Department
- Eugene Flannery, Mayor's Office of Housing and Community Development
- Amy Chan, Mayor's Office of Housing and Community Development
- Emily Cohen, Department of Homelessness and Supportive Housing
- Amanda Kahn Fried, Office of the Treasurer & Tax Collector
- Kyle Kundert, Ethics Commission
- Lynn Khaw, Office of the City Administrator
- Lihmeei Leu, Office of the City Administrator

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BY

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Prior to Submittal to the Department of Elections

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Submittal Form

For Proposed Initiative Measure(s)

by 4 or more Supervisors or the Mayor

I, hereby submit the following proposed initiative measure(s) for hearing before the Board of Supervisors' Rules Committee prior to the submittal of the proposed initiative measure to the Department of Elections (Proposition C, November 2007).

This matter is for the **June 5th** Election.

Sponsor(s): Supervisor Ahsha Safai

Subject: Initiative Ordinance - Business and Tax Regulations and Administrative Codes - Additional Gross Receipts Tax on Commercial Rents

The text is listed below or attached:

(See attached text.)

Supervisor Ahsha Safai:

Ahsha Safai

Supervisor Jeff Sheehy:

Jeff Sheehy

Supervisor Katy Tang:

Katy Tang

Supervisor Malia Cohen:

Malia Cohen

Supervisor Mark Farrell:

Mark E. Farrell

(Clerk of the Board's Time Stamp)

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BY  **PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED BY FOUR OR MORE SUPERVISORS TO THE VOTERS AT THE JUNE 5, 2018 ELECTION.**

[Under Charter Section 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no less than *45 days prior* to the deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

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

Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an additional tax of 1.7% on the gross receipts from the lease of commercial space in the City, to fund low- and middle-income housing and homelessness services and the General Fund; exempting from the additional tax rents from production, distribution, and repair uses, retail sales and services uses, entertainment, arts and recreation uses, and nonprofit uses; and increasing the City's appropriations limit by the amount collected under the new tax for four years from June 5, 2018.

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

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

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

Section 2. The Business and Tax Regulations Code is hereby amended by adding Article 24, consisting of Sections 2401 through 2414, to read as follows:

ARTICLE 24: COMMERCIAL RENTS GROSS RECEIPTS TAX ORDINANCE

SEC. 2401. SHORT TITLE.

This Article 24 shall be known as the “Commercial Rents Gross Receipts Tax Ordinance,” and the tax it imposes shall be known as the “Commercial Rents Gross Receipts Tax.”

SEC. 2402. DEFINITIONS.

(a) Unless otherwise defined in this Article 24, the terms used in this Article shall have the meanings given to them in Articles 6 and 12-A-1 of the Business and Tax Regulations Code, as amended from time to time.

(b) For purposes of this Article 24, and except as provided in subsection (c), “commercial space” means any building or structure, or portion of a building or structure, that is not “residential real estate,” as that phrase is defined in Section 954.1(e) of Article 12-A-1 of the Business and Tax Regulations Code, as amended from time to time.

(c) For purposes of this Article 24, “commercial space” shall not include any building or structure, or portion of a building or structure, that is used for: (1) Production, Distribution, and Repair (PDR) Use; (2) Sales and Services, Retail; or (3) Entertainment, Arts and Recreation Use, as these capitalized phrases were defined in Section 102 of the Planning Code, as effective June 5, 2018.

SEC. 2403. IMPOSITION OF TAX.

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

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Gross Receipts Tax on each person engaged in business in the City that receives gross receipts from the lease of commercial space in properties in the City. For purposes of this Article 24, a "lease" shall include a sublease, but shall not include an agreement between a person engaged in the business of accommodations, as defined in Section 953.3(b) of Article 12-A-1 of the Business and Tax Regulations Code, as amended from time to time, and a traveler, vacationer, or other person staying at such accommodations.

(b) The Commercial Rents Gross Receipts Tax shall be calculated by applying 1.7% to the person or combined group's gross receipts from the lease of commercial space in properties in the City.

SEC. 2404. EXEMPTIONS AND EXCLUSIONS.

(a) An organization that is exempt from income taxation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the California Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended, as qualified by Sections 502, 503, 504, and 508 of the Internal Revenue Code of 1986, as amended, shall be exempt from taxation under this Article 24, only so long as those exemptions continue to exist under state or federal law.

(b) For purposes of this Article 24, gross receipts shall not include receipts from organizations described in subsection (a) of this Section 2404.

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

(d) For only so long as and to the extent that the City is prohibited from imposing the Commercial Rents Gross Receipts Tax, any person upon whom the City is prohibited under the

Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Commercial Rents Gross Receipts Tax shall be exempt from the Commercial Rents Gross Receipts Tax.

SEC. 2405. SMALL BUSINESS EXEMPTION.

Notwithstanding any other provision of this Article 24, a person or combined group exempt from payment of the gross receipts tax under Section 954.1 of Article 12-A-1, as amended from time to time, shall also be exempt from payment of the Commercial Rents Gross Receipts Tax.

SEC. 2406. COMBINED RETURNS.

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

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

(c) For purposes of this Article 24, a lessor of residential real estate is treated as a separate person with respect to each individual building in which it leases residential real estate units, notwithstanding Section 6.2-15 of Article 6, as amended from time to time, or subsection (a) of this Section 2406. This subsection (c) applies only to leasing residential real estate units within a building, and not to any business activity related to other space, either within the same building or other buildings, which is not residential real estate. The Tax Collector is authorized to determine what constitutes a separate building and the number of units in a building.

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SEC. 2407. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.

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

SEC. 2408. CONSTRUCTION AND SCOPE OF THE COMMERCIAL RENTS GROSS RECEIPTS TAX ORDINANCE.

(a) This Article 24 is intended to authorize application of the Commercial Rents Gross Receipts Tax in the broadest manner consistent with its provisions and with the California Constitution, the United States Constitution, and any other applicable provision of federal or state law.

(b) The Commercial Rents Gross Receipts Tax imposed by this Article 24 is in addition to all other City taxes, including the gross receipts tax imposed by Article 12-A-1, as amended from time to time. Accordingly, by way of example and not limitation, persons subject to both the Commercial Rents Gross Receipts Tax and the gross receipts tax shall pay both taxes. Persons exempt from either the gross receipts tax or the Commercial Rents Gross Receipts Tax, but not both, shall pay the tax from which they are not exempt.

SEC. 2409. ADMINISTRATION OF THE COMMERCIAL RENTS GROSS RECEIPTS TAX ORDINANCE.

Except as otherwise provided under this Article 24, the Commercial Rents Gross Receipts Tax Ordinance shall be administered pursuant to Article 6 of the Business and Tax Regulations Code, as amended from time to time.

SEC. 2410. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.

(a) All monies collected under the Commercial Rents Gross Receipts Tax Ordinance shall be deposited to the credit of the Housing For All Fund, established in Administrative Code Section 10.100-78. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be carried forward and accumulated in the Fund for the purposes described in subsection (b).

(b) Monies in the Housing For All Fund shall be used exclusively for the purposes specified in this subsection (b). Subject to the budgetary and fiscal provisions of the Charter, monies in the Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following purposes:

(1) Up to 2% of the proceeds of the Commercial Rents Gross Receipts Tax, distributed in any proportion to the Tax Collector and other City departments, for administration of the Commercial Rents Gross Receipts Tax and administration of the Housing For All Fund;

(2) Refunds of any overpayments of the Commercial Rents Gross Receipts Tax;

(3) In the following fiscal years, the following amounts to the General Fund, to be expended for any purposes of the City:

<u>Fiscal Year</u> <u>2018-2019</u>	<u>Fiscal Year</u> <u>2019-2020</u>
<u>Up to \$1,500,000</u>	<u>\$3,000,000</u>

For fiscal year 2018-2019, the amount appropriated to the General Fund up to \$1,500,000 shall be determined through the annual budget process. The amount appropriated to the General Fund under this subsection (3) for fiscal year 2020-2021 and all subsequent fiscal years shall be the amount appropriated for fiscal year 2019-2020, adjusted annually in accordance with the

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BY increase in the Consumer Price Index: All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31 of the preceding year, beginning with December 31, 2019; and

(4) All remaining amounts for the following purposes, in the following percentages, which amounts shall include the costs of administering the programs described.

(A) 45% to the Department of Homelessness and Supportive Housing (HSH), or its successor agency, for uses that help homeless adults, families, or youth, including but not limited to homeless persons with mental illness or addiction, secure temporary shelter and permanently exit homelessness. Such uses are limited to:

(i) Temporary shelter and other short-term residential programs, including but not limited to navigation centers;

(ii) Short- and long-term rental subsidies; and

(iii) Acquisition, rehabilitation, lease, preservation, and operation of permanent supportive housing units. For purposes of this subsection (iii), "permanent supportive housing" means housing that provides a rental subsidy and onsite supportive services for formerly homeless adults, families, and youth.

At least 20% of the total amounts appropriated under this subsection (A) must be used for programs supporting homeless youth aged 18 through 29.

(B) 10% to the Mayor's Office of Housing and Community Development (MOHCD), or its successor agency, for the acquisition, rehabilitation, and operation of single room occupancy buildings (SRO buildings), and the associated protection of extremely low- and very low-income households, especially households with seniors, veterans, persons with disabilities, or immigrants. For purposes of this subsection (B), "extremely low- and very low-income households" means households that earn up to 50% of Area Median Income (AMI). Existing, higher-income households may retain occupancy in such buildings, under the program's goal of preventing

displacement. Long-term rental subsidies shall be an eligible use of funds under this subsection (B). For purposes of this subsection (B), "single room occupancy (SRO) unit" means a dwelling unit or group housing room consisting of no more than one occupied room with a maximum gross floor area of 350 square feet and meeting the Housing Code's minimum floor area standards. The unit may have a bathroom in addition to the occupied room. As a dwelling unit, it would have a cooking facility and bathroom. As a group housing room, it would share a kitchen with one or more other single room occupancy unit/s in the same building and may also share a bathroom. A single room occupancy building (or "SRO" building) is one in which at least 90% of the units are SRO units.

(C) 35% to MOHCD, or its successor agency, for the following uses:

(i) Acquiring and rehabilitating existing rent-controlled apartment buildings citywide of three units and larger to protect vulnerable existing residents from displacement, and to create, over time, permanently affordable homes serving households that earn, on average, approximately 80% of AMI;

(ii) The creation of new affordable middle-income housing, and the preservation of existing affordable middle-income housing. For purposes of this subsection (ii), "middle-income housing" means housing for households that earn between 70% and 150% of AMI.

At least 20% of the total amounts appropriated under this subsection (C) must be used for the purposes described in subsection (C)(i).

(D) 10% to MOHCD, or its successor agency, for the provision of permanent, project-based subsidies to extremely low-income senior households in income-restricted developments sponsored by MOHCD or the San Francisco Office of Community Investment and Infrastructure (OCII). For purposes of this subsection (D), "extremely low-income senior households" means households with at least one member age 62 or over where the household earns up to 40% of AMI. The value of the subsidies provided under this subsection (D) shall be the difference between 30% of the

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senior household's gross income, and the cost to operate the building as approved by MOHCD or OCII.

(5) In fiscal year 2029-2030 and any subsequent fiscal year, the Board of Supervisors may, by ordinance passed by a two-thirds' vote and with the approval of the Mayor, reallocate the percentages described in Section 2410(b)(4).

(6) For purposes of this Section 2410(b), "Area Median Income (AMI)" means the area median income for the United States Department of Housing and Urban Development (HUD) Metro Fair Market Rent Area (HFMA) that includes San Francisco, as published annually by MOHCD, adjusted for household size. If HFMA data is unavailable, MOHCD shall calculate area median income using other publicly available and credible data.

(c) Commencing with a report filed no later than February 15, 2020, covering the fiscal year ending on June 30, 2019, the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a report containing the amount of monies collected in and expended from the Housing For All Fund during the prior fiscal year, the status of any project required or authorized to be funded by this Section 2410, and such other information as the Controller, in the Controller's sole discretion, shall deem relevant to the operation of this Article 24.

(d) The Board of Supervisors shall establish by ordinance a Citizens Advisory Committee consisting of five members to make recommendations to the Mayor and the Board of Supervisors to ensure that the Housing For All Fund is administered in a manner consistent with the provisions of Section 2410(b). Three members of the Citizens Advisory Committee shall be appointed by the Mayor under Charter Section 3.100(18), and two members shall be appointed by the Board of Supervisors.

SEC. 2411. AMENDMENT OF ORDINANCE.

The Board of Supervisors may amend or repeal this Article 24 by ordinance without a vote of the people except as limited by Articles XIII A and XIII C of the California Constitution.

SEC. 2412. EFFECT OF STATE AND FEDERAL AUTHORIZATION.

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

SEC. 2413. SEVERABILITY.

(a) Except as provided in Section 2413(b), below, if any section, subsection, sentence, clause, phrase, or word of this Article 24, or the application thereof to any person or circumstance, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article, including the application of such portions to other persons or circumstances. The People of the City and County of San Francisco hereby declare that, except as provided in Section 2413(b), they would have adopted each section, subsection, sentence, clause, phrase, and word of this Article not declared invalid or unconstitutional without regard to whether any other portion of this Article would be subsequently declared invalid or unconstitutional.

(b) If the imposition of the Commercial Rents Gross Receipts Tax in Section 2403 is held in its entirety to be facially invalid or unconstitutional in a final court determination, the remainder of this Article 24 shall be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax Regulations Code, and likewise cause Section 10.100-78 to be removed from the Administrative Code.

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SEC. 2414. SAVINGS CLAUSE.

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No section, clause, part, or provision of this Article 24 shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

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Section 3. The Administrative Code is hereby amended by adding Section 10.100-78, to read as follows:

SEC. 10.100-78. HOUSING FOR ALL FUND.

(a) Establishment of Fund. The Housing For All Fund ("Fund") is established as a category four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all taxes, penalties, interest, and fees collected from the Commercial Rents Gross Receipts Tax imposed under Article 24 of the Business and Tax Regulations Code.

(b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the Fund shall be used exclusively for the purposes described in Section 2410(b) of Article 24 of the Business and Tax Regulations Code.

(c) Administration of Fund. As stated in Section 2410(c) of Article 24 of the Business and Tax Regulations Code, commencing with a report filed no later than February 15, 2020, covering the fiscal year ending June 30, 2019, the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a report containing the amount of monies collected in and expended from the Fund during the prior fiscal year, the status of any project required or authorized to be funded by Section 2410, and such other information as the Controller, in the Controller's sole discretion, shall deem relevant to the operation of Article 24.

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

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

Section 6. Conflicting Measures.

(a) The voters intend to adopt at the June 5, 2018 election only one measure that relates to the taxation of gross receipts from the lease of commercial space in properties in the City.

(b) If the voters adopt this measure and any other measure related to the taxation of gross receipts from the lease of commercial space in properties in the City at the June 5, 2018 election and this measure receives more affirmative votes than any other measure, then the other measure or measures shall not become operative in any respect.

(c) This measure shall not become operative in any respect if another measure related to the taxation of gross receipts from the lease of commercial space in properties in the City receives more affirmative votes than this measure at the June 5, 2018 election.

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BY
MALIA COHEN

Date:

1/16/18

Member, Board of Supervisors

AHSHA SAFAI

Date:

1/16/18

Member, Board of Supervisors

Jeff Sheehy

Date:

1/16/18

Member, Board of Supervisors

Mark G. Farrell

Date:

1/16/18

Member, Board of Supervisors

KATY TANG

Date:

1/16/18

Member, Board of Supervisors

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