

File No. 190092

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date March 20, 2019

Board of Supervisors Meeting

Date _____

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- Grant Budget
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- Award Letter
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Completed by: Linda Wong Date March 15, 2019

Completed by: Linda Wong Date _____

1 [Business and Tax Regulations Code - Credits For Waiver of Homelessness Gross Receipts
2 Tax Refund and Certain Gifts]

3 Ordinance amending the Business and Tax Regulations Code to add a credit against a
4 person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10%
5 of the portion of a person or combined group's Tax liability for a tax year with respect
6 to which the person or combined group enters into an agreement waiving its right to a
7 refund of its Tax payments associated with any claim that the Homelessness Gross
8 Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a
9 majority of the electorate to pass; to add a credit against a person's Tax equal to 110%
10 of a person's gift to support the Our City, Our Home Fund; and to authorize the Office
11 of the Treasurer and Tax Collector to accept gifts from persons to support the Our City,
12 Our Home Fund.

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

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

21 Section 1. Findings.

22 (a) In November 2018, the San Francisco electorate approved Proposition C with
23 approximately 61% of the vote. Proposition C imposes the Homelessness Gross Receipts
24 Tax, which is an additional tax on certain businesses to fund services for the City's homeless
25 population. In doing so, Proposition C amended the San Francisco Business and Tax
Regulations Code to add Article 28 – the Homelessness Gross Receipts Tax Ordinance.

1 (b) A question has been raised as to the validity of the Homelessness Gross Receipts
2 Tax Ordinance because of a legal issue about whether the tax, adopted through a voter
3 initiative, required a simple majority or a two-thirds vote of the electorate to pass. Pending
4 resolution of the legal issue, the Controller plans to impound the revenues from the
5 Homelessness Gross Receipts Tax.

6 (c) Despite the unresolved legal question, the City desires to appropriate and spend
7 revenues from the Homelessness Gross Receipts Tax for the purposes allowed under the
8 Homelessness Gross Receipts Tax Ordinance. But the City is not willing to appropriate and
9 spend these revenues unless taxpayers irrevocably waive any right to a refund of those
10 revenues based on any argument that the Homelessness Gross Receipts Tax Ordinance
11 required at least a two-thirds vote of the electorate to pass, or based on any lawsuit
12 challenging the Homelessness Gross Receipts Tax Ordinance or any other initiative tax
13 measure in San Francisco or elsewhere in California that invalidates the Homelessness Gross
14 Receipts Tax Ordinance or similar initiative tax measure because it was not passed by at least
15 a two-thirds vote of the electorate.

16 (d) To encourage taxpayers to waive their right to a refund as posited in
17 subsection (c), the City is willing to grant such taxpayers a credit of 10% of the Homelessness
18 Gross Receipts Tax refund waived. Similarly, if a taxpayer is willing to make an irrevocable
19 gift to the City for the City to use for the same purposes as the Homelessness Gross Receipts
20 Tax, the City is willing to grant such taxpayers a credit against their Homelessness Gross
21 Receipts Tax liability equal to 110% of their gift amount. Both of these credits further the
22 findings and intent of the Homelessness Gross Receipts Tax Ordinance as set forth in
23 Section 2802 of the Business and Tax Regulations Code by making its funds available earlier
24 than they would otherwise be available.
25

1 (e) In enacting this ordinance, the City takes no position on the federal or state tax
2 consequences to taxpayers of any provision of this ordinance, including, but not limited to, the
3 federal or state tax consequences of the waiver of the right to a refund posited in
4 subsection (c) or the irrevocable gift to the City for the City to use for the same purposes as
5 the Homelessness Gross Receipts Tax.

6
7 Section 2. Article 28 of the Business and Tax Regulations Code is hereby amended by
8 adding Section 2805.1, to read as follows:

9 **SEC. 2805.1. CREDIT FOR WAIVING RIGHT TO REFUND.**

10 (a) Any person or combined group that meets the requirements of subsection (b) for a tax year
11 shall be allowed a non-refundable credit against that person or combined group's Homelessness Gross
12 Receipts Tax liability for that tax year equal to 10% of the amount specified under
13 Section 2805.1(b)(1).

14 (b) To qualify for the credit in subsection (a), a person or combined group must, between
15 January 1 of the tax year following the tax year for which the credit is being claimed and the date the
16 person or combined group timely files its original annual tax return, enter into a binding agreement
17 with the City, in substantially the form of the agreement included in Board of Supervisors File No.
18 190092, in which:

19 (1) The person, or each person in the combined group that is engaging in business
20 within the City, irrevocably, fully, and unconditionally waives and releases its right to a refund
21 (whether by return of payment, credit, offset, carryforward, or otherwise) of a specified amount of the
22 Homelessness Gross Receipts Taxes reported on the person or combined group's originally-filed
23 Homelessness Gross Receipts Tax return for the tax year for which the person or combined group is
24 claiming the credit based on either or both of the following:
25

1 (A) Any argument that the Homelessness Gross Receipts Tax Ordinance
2 required at least a two-thirds vote of the electorate to pass.

3 (B) Any lawsuit challenging the Homelessness Gross Receipts Tax Ordinance or
4 any other initiative tax measure in San Francisco or elsewhere in California that invalidates the
5 Homelessness Gross Receipts Tax Ordinance or similar initiative tax measure because it was not
6 passed by at least a two-thirds vote of the electorate.

7 (2) Notwithstanding Section 6.22-1 of the Business and Tax Regulations Code or any
8 other provision of law that would limit public disclosure, the person or each person in the combined
9 group that is engaging in business within the City waives any right to confidentiality in the aggregate
10 amount of Homelessness Gross Receipts Tax liability subject to waiver under all agreements described
11 in Section 2805.1(b) of all persons and combined groups, regardless of the number of persons or
12 combined groups that enter into such agreements. Nothing in this subsection (b)(2) shall constitute a
13 waiver of the confidentiality of the information in the person or combined group's Homelessness Gross
14 Receipts Tax return, or the terms of each agreement under Section 2805.1(b), other than the aggregate
15 amount of Homelessness Gross Receipts Tax liability subject to waiver under all agreements described
16 in Section 2805.1(b) of all persons and combined groups.

17 (3) The person, or each person in the combined group that is engaging in business
18 within the City, agrees to indemnify the City if, subsequent to the person or combined group entering
19 into the agreement, there are additional persons determined to have been engaging in business within
20 the City as a member of the combined group for that tax year and such additional person or persons
21 requests a refund (whether by return of payment, credit, offset, carryforward, or otherwise) of all or
22 any portion of the amount waived under Section 2805.1(b)(1) for the tax year for which the person or
23 combined group is claiming the credit in contravention of Section 2805.1(d).

1 (c) If a person or combined group enters into an agreement described in subsection (b), but
2 does not claim the credit authorized by this Section 2805.1, the person or combined group shall remain
3 subject to the terms of the agreement.

4 (d) Any person determined to have been engaging in business within the City as a member of a
5 combined group for a tax year after that combined group entered into an agreement described in
6 subsection (b) for that tax year shall be deemed to have entered into the agreement and shall be subject
7 to the terms of the agreement as if it had executed the agreement itself.

8 (e) The Tax Collector shall verify that any credit claimed pursuant to this Section 2805.1 is
9 correct.

10 (f) The tax credit authorized by this Section 2805.1 shall be effective for tax year 2019 and each
11 subsequent tax year, but shall expire by operation of law and not be available for the tax year and all
12 subsequent tax years from the earlier of:

13 (1) The tax year in which San Francisco Superior Court Case No. CGC-19-573230 (City
14 and County of San Francisco v. All persons interested in the matter of Proposition C on the
15 November 6, 2018 San Francisco ballot, authorizing an increase in specified business taxes to fund
16 specified homeless services in San Francisco, and all other matters and proceedings relating thereto),
17 is finally resolved; and

18 (2) Tax year 2024.

19 No person or combined group may claim the credit authorized by this Section for the tax year
20 in which San Francisco Superior Court Case No. CGC-19-573230 is finally resolved or in any tax year
21 thereafter, or for any tax year commencing on or after January 1, 2024, whichever is earlier.

22 (g) The Board of Supervisors hereby authorizes the Tax Collector to enter into the agreements
23 described in subsection (b), in substantially the form included in Board of Supervisors File No. 190092,
24 and authorizes the Tax Collector, in consultation with the City Attorney and the Controller, to agree to
25

1 changes to the agreements that do not materially decrease the benefits to the City or materially
2 increase the obligations to the City.

3
4 Section 3. Article 28 of the Business and Tax Regulations Code is hereby amended by
5 adding Section 2805.2, to read as follows:

6 **SEC. 2805.2. CREDIT FOR GIFTS TO THE OUR CITY, OUR HOME FUND.**

7 (a) Any person that, on or before the expiration of this Section 2805.2, makes an irrevocable
8 gift to the Our City, Our Home Fund (established in Administrative Code Section 10.100-164) shall be
9 allowed a non-refundable credit against the Homelessness Gross Receipts Tax liability of that person
10 or the combined group of which that person is a part.

11 (b) The credit authorized by this Section 2805.2 shall equal 110% of the amount of the
12 irrevocable gift made under subsection (a).

13 (c) If the irrevocable gift described in subsection (a) is made between January 1 and the date
14 the person or combined group timely files its original annual tax return, the credit authorized by this
15 Section 2805.2 shall be available for the tax year prior to the calendar year in which the person makes
16 the irrevocable gift. If the irrevocable gift is made between the date the person or combined group
17 timely files its original annual tax return and December 31, the credit authorized by this Section shall
18 be available for the tax year in which the irrevocable gift is made. The person making the irrevocable
19 gift may carry forward any unused portion of this credit to future tax years up to and including tax year
20 2023 to be used against the future Homelessness Gross Receipts Tax liability of the person or the
21 combined group of which that person is a part in that future tax year. No part of this credit may be
22 carried forward to tax years commencing on or after January 1, 2024.

23 (d) The Tax Collector shall verify that any credit claimed pursuant to this Section 2805.2 is
24 correct.

1 (e) Notwithstanding Administrative Code Section 10.100-305 or any other provision of the
2 Municipal Code restricting the department's acceptance of gifts, the Office of the Treasurer-Tax
3 Collector is authorized to accept the gifts described in subsection (a) of this Section 2805.2.

4 (f) This Section 2805.2 shall expire by operation of law and shall not be available for
5 irrevocable gifts made on or after the earlier of:

6 (1) The date on which San Francisco Superior Court Case No. CGC-19-573230 (City
7 and County of San Francisco v. All persons interested in the matter of Proposition C on the
8 November 6, 2018 San Francisco ballot, authorizing an increase in specified business taxes to fund
9 specified homeless services in San Francisco, and all other matters and proceedings relating thereto) is
10 finally resolved; and

11 (2) January 1, 2024.

12 Any irrevocable gift made to the Our City, Our Home Fund on or after the date on which San
13 Francisco Superior Court Case No. CGC-19-573230 is finally resolved, or on or after January 1, 2024,
14 whichever is earlier, shall not entitle the person making the irrevocable gift to the credit described in
15 this Section 2805.2.

16
17 Section 4. Effective Date. This ordinance shall become effective 30 days after
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
20 of Supervisors overrides the Mayor's veto of the ordinance.

21
22 Section 5. Severability.

23 (a) If any part of Section 2805.1 of the Business and Tax Regulations Code, or any
24 application of that Section to any person or circumstance, is held to be invalid or
25 unconstitutional by a decision of a court of competent jurisdiction, Section 2805.1 shall in its

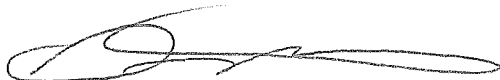
1 entirety become inoperative; but any such decision shall not affect the validity of
2 Section 2805.2.

3 (b) If any part of Section 2805.2 of the Business and Tax Regulations Code, or any
4 application of that Section to any person or circumstance, is held to be invalid or
5 unconstitutional by a decision of a court of competent jurisdiction, Section 2805.2 shall in its
6 entirety become inoperative; but any such decision shall not affect the validity of
7 Section 2805.1.

8
9 Section 6. Pursuant to Section 2811 of the Business and Tax Regulations Code, this
10 ordinance requires a two-thirds vote of the Board of Supervisors to pass.

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14
15 By:



16 SCOTT M. REIBER
17 Chief Tax Attorney

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REVISED LEGISLATIVE DIGEST

(Substituted, 3/5/2019)

[Business and Tax Regulations Code - Credits For Waiver of Homelessness Gross Receipts Tax Refund and Certain Gifts]

Ordinance amending the Business and Tax Regulations Code to add a credit against a person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10% of the portion of a person or combined group's Tax liability for a tax year with respect to which the person or combined group enters into an agreement waiving its right to a refund of its Tax payments associated with any claim that the Homelessness Gross Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a majority of the electorate to pass; to add a credit against a person's Tax equal to 110% of a person's gift to support the Our City, Our Home Fund; and to authorize the Office of the Treasurer and Tax Collector to accept gifts from persons to support the Our City, Our Home Fund.

Background and Existing Law

In November 2018, the San Francisco electorate approved Proposition C with approximately 61% of the vote. Proposition C imposes the Homelessness Gross Receipts Tax, which is an additional tax on certain businesses to fund services for the City's homeless population. In doing so, Proposition C amended the San Francisco Business and Tax Regulations Code to add Article 28 – the Homelessness Gross Receipts Tax Ordinance.

A question has been raised as to the validity of the Homelessness Gross Receipts Tax Ordinance because of a legal issue about whether the tax, adopted through a voter initiative, required a simple majority or a two-thirds vote of the electorate to pass. Pending resolution of the legal issue, the Controller plans to impound the revenues from the Homelessness Gross Receipts Tax.

This digest reflects a substitute ordinance introduced on March 5, 2019. The substitute ordinance clarified the timing of the waiver agreement, irrevocable gift, and tax credits described below.

Amendments to Current Law

To permit the City to appropriate and spend the revenues from the Homelessness Gross Receipts Tax before the legal issue described above is resolved, this ordinance grants taxpayers a credit against their Homelessness Gross Receipts Tax liability if they irrevocably waive any right to a refund of a specified amount of their Homelessness Gross Receipts Tax payments based on any argument that the Homelessness Gross Receipts Tax Ordinance required at least a two-thirds vote of the electorate to pass, or based on any lawsuit challenging the Homelessness Gross Receipts Tax Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Homelessness Gross Receipts Tax Ordinance or similar initiative tax measure because it was not passed by at least

a two-thirds vote of the electorate. The credit would equal 10% of amount waived. Taxpayers must enter into a form waiver agreement with the Office of the Treasurer and Tax Collector to obtain the credit.

Similarly, if a taxpayer is willing to make an irrevocable gift to the City for the City to use for the same purposes as the Homelessness Gross Receipts Tax, this ordinance would grant such taxpayers a credit against their Homelessness Gross Receipts Tax liability equal to 110% of their gift amount.

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<p>Item 4 File 19-0092</p>	<p>Department: Mayor's Office</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinance would provide businesses with a 10 percent credit on their Homelessness Gross Receipts Tax liability for a given tax year if they irrevocably waive their right to a refund of their tax payments. • The proposed ordinance would also allow businesses to make an irrevocable gift to the Our City, Our Home Fund and receive a credit on their Homelessness Gross Receipts Tax liability equal to 110 percent of their gift amount. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • In November 2018, San Francisco voters approved Proposition C, which added the Homelessness Gross Receipts Tax Ordinance to the San Francisco Business and Tax Regulations Code and imposes the Homelessness Gross Receipts Tax, an additional gross receipts tax on certain businesses in the City. • The validity of the Homelessness Gross Receipts Tax Ordinance is unclear. To validate the legality of the adoption and enforceability of Proposition C, the City filed a complaint for validation in January 2019. • Pending resolution of the legal issue, the Controller plans to impound the revenues from the Homelessness Gross Receipts Tax. Despite the unresolved legal question, the City desires to appropriate and spend revenues from the Homelessness Gross Receipts Tax, but only if taxpayers irrevocably waive any right to a refund of those revenues. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The fiscal impact of the proposed ordinance will depend on the number of businesses that take advantage of the tax liability credit opportunity, and the Homeless Gross Receipts Tax liability of those businesses. • The Controller’s Office estimates that the Homelessness Gross Receipts Tax will generate new tax revenue of approximately \$250 to \$300 million annually beginning in 2019. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approval of the proposed ordinance is a policy decision for the Board of Supervisors. 	

MANDATE STATEMENT

Charter Section 2.105 states that the Board of Supervisors shall act only by written ordinance or resolution.

BACKGROUND

In November 2018, San Francisco voters approved Proposition C with approximately 61 percent of the vote. Proposition C added the Homelessness Gross Receipts Tax Ordinance to the San Francisco Business and Tax Regulations Code and imposes the Homelessness Gross Receipts Tax, which is an additional gross receipts tax on certain businesses in the City.¹ City Administrative Code Section 10.100-164 established the Our City, Our Home Fund to receive all taxes, penalties, interest, and fees collected from the Homelessness Gross Receipts Tax. The Controller's Office estimates that the Homelessness Gross Receipts Tax will generate new tax revenue of approximately \$250 to \$300 million annually beginning in 2019.

Revenues from the Homelessness Gross Receipts Tax are dedicated to defined homelessness services and efforts to prevent homelessness, including secure permanent housing for homeless people, mental health services specifically designed for homeless people, services for people who have recently become homeless or who are at risk of becoming homeless and short-term shelter and access to hygiene programs for homeless people.

The validity of the Homelessness Gross Receipts Tax Ordinance is unclear because of a legal question about whether the tax, which was adopted through a voter initiative, required a simple majority or a two-thirds majority to pass. If it required a two-thirds majority, Proposition C, which received only 61 percent of the vote, would not have passed. To validate the legality of the adoption and enforceability of Proposition C, the City filed a complaint for validation (San Francisco Superior Court Case No. CGC-19-573230) in January 2019.

Pending resolution of the legal issue, the Controller plans to impound the revenues from the Homelessness Gross Receipts Tax, which went into effect January 1, 2019. The first estimated payment is due April 30, 2019.

Despite the unresolved legal question, the City desires to appropriate and spend revenues from the Homelessness Gross Receipts Tax for homelessness services specified by Proposition C, but only if taxpayers irrevocably waive any right to a refund of those revenues based on (a) any argument that the Homelessness Gross Receipts Tax Ordinance required at least a two-thirds majority to pass, or (b) any lawsuit that invalidates the Homelessness Gross Receipts Tax Ordinance.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would provide businesses with a 10 percent credit on their Homelessness Gross Receipts Tax liability for a given tax year if they irrevocably waive their

¹ Businesses pay a rate between 0.175 percent and 0.69 percent of gross receipts above \$50 million, depending on business type.

right to a refund of their tax payments. Businesses would qualify for the 10 percent credit in a given tax year if they enter into a waiver agreement with the City between January 1 of the following tax year and the date when the business files its original annual tax return. (In other words, to receive the 10 percent credit for tax year 2019, businesses would need to enter into the waiver agreement between January 1, 2020 and the date in 2020 when the business files its 2019 original tax return.)

The proposed ordinance would also allow businesses to make an irrevocable gift to the Our City, Our Home Fund and receive a credit on their Homelessness Gross Receipts Tax liability equal to 110 percent of their gift amount. If the amount of the credit is greater than the business’s liability in a given tax year, the unused portion of the credit may be carried forward and applied to the business’s Homelessness Gross Receipts Tax liability in future tax years.

The credit would be effective for tax year 2019 and each subsequent tax year until tax year 2024 or the tax year in which San Francisco Superior Court Case No. CGC-19-573230 is resolved, whichever is earlier.

FISCAL IMPACT

The fiscal impact of the proposed ordinance will depend on the number of businesses that take advantage of the tax liability credit opportunity, and the Homeless Gross Receipts Tax liability of those businesses.

If 100 percent of businesses take advantage of the tax credit (either by waiving their right to a refund or making a gift to the Our City, Our Home Fund) each year, the City will credit an estimated \$30 million per year, or 10 percent of the Controller’s revenue estimations of \$300 million per year, of Homelessness Gross Receipts Tax revenue back to businesses. Under this scenario, the City will have access to the remaining \$270 million of tax revenue per year. If not all businesses take advantage of the credit opportunity, the amount that the City credits back to businesses will be less than \$30 million, and the amount of revenue the City has access to, pending resolution of the legal question, will be less than \$270 million.²

POLICY CONSIDERATION

If it is determined at a future date that Proposition C is not valid or enforceable, the proposed ordinance will have allowed the City to appropriate some amount of revenue from the Homelessness Gross Receipts Tax that would otherwise have been returned to taxpaying businesses. If it is determined that Proposition C is valid and enforceable, under the proposed ordinance the City will have credited back to businesses up to ten percent of total Homelessness Gross Receipts Tax revenues that could have been spent on services.

² For example, if the businesses that enter into the waiver agreement with the City represent 20 percent of total Homelessness Gross Receipts Tax revenue, the credit issued by the City will total \$6 million (\$300 million in revenues x 20 percent of revenue x 10 percent credit) and the City will have access to \$54 million in revenue (\$300 million x 20 percent of revenue, less the \$6 million in credit).

Regardless of the outcome of the question of Proposition C's validity, the proposed ordinance may benefit the City by allowing earlier access to revenues from the Homelessness Gross Receipts Tax, pending a resolution of the legal question.

RECOMMENDATION

Approval of the proposed ordinance is a policy decision for the Board of Supervisors.

**AGREEMENT FOR WAIVER OF RIGHT TO REFUND
OF HOMELESSNESS GROSS RECEIPTS TAXES**

This Agreement for Waiver of Right to Refund of Homelessness Gross Receipts Taxes (this “Agreement”) dated as of _____, is between the City and County of San Francisco (the “City”) and _____ (Business Account Number _____) (“Filer”) and each member of Filer’s combined group engaging in business within the City, if any, as the phrase “engaging in business within the City” is defined in Business and Tax Regulations Code (“Code”) Section 6.2-12 (a list of which is attached as Exhibit A) (jointly and severally, “Taxpayer”).

This Agreement is made with reference to the following facts and circumstances:

A. In November 2018, the San Francisco electorate approved Proposition C with approximately 61% of the vote. Proposition C imposes an additional tax on certain businesses to fund services for the City’s homeless population (the “Homelessness Gross Receipts Tax”). In doing so, Proposition C amended the Code to add Article 28 – the Homelessness Gross Receipts Tax Ordinance (the “Ordinance”).

B. A question has been raised as to the validity of the Ordinance because of a legal issue about whether the Homelessness Gross Receipts Tax, adopted through a voter initiative, required a simple majority or a two-thirds vote of the electorate to pass. Pending resolution of the legal issue, the City’s Controller plans to impound the revenues from the Homelessness Gross Receipts Tax.

C. Despite the unresolved legal question, the City and Taxpayer desire to allow the City to appropriate and spend revenues from the Homelessness Gross Receipts Tax for the purposes allowed under the Ordinance. But the City is not willing to appropriate and spend these revenues unless Taxpayer irrevocably waives any right to a refund of those revenues based on

any argument that the Ordinance required at least a two-thirds vote of the electorate to pass, or any lawsuit challenging the Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Ordinance or similar initiative tax measure because it was not passed by at least a two-thirds vote of the electorate. The City wishes to spend now as much of the revenues from the Homelessness Gross Receipts Tax as it can consistent with the allowable uses under the Ordinance, to the extent that the City can rely on waivers by taxpayers.

D. To allow the City to spend Taxpayer's Homelessness Gross Receipts Tax payments now, Taxpayer is willing to provide an irrevocable waiver of a refund based on any argument that the Ordinance required at least a two-thirds vote of the electorate to pass, or any lawsuit challenging the Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Ordinance or similar initiative tax measure because it was not passed by at least a two-thirds vote of the electorate. In doing so, Taxpayer wishes to reduce its potential Homelessness Gross Receipts Tax liability by claiming the credit in Section 2805.1 of the Code.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are acknowledged by each party to this Agreement, the City and Taxpayer agree as follows:

1. Taxpayer irrevocably, fully, and unconditionally waives and releases its right to a refund (whether by return of payment, credit, offset, carryforward, or otherwise) of \$_____ of the Homelessness Gross Receipts Taxes reported on the person or combined group's originally-filed Homelessness Gross Receipts Tax return for tax year _____ (the "Subject Year"), based on either or both of the following (the "Waiver"):

a. Any argument that the Ordinance required at least a two-thirds vote of the electorate to pass; and

b. Any lawsuit challenging the Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Ordinance or similar initiative tax measure because it was not passed by at least a two-thirds vote of the electorate.

Taxpayer knowingly accepts the full range of risk encompassed by the scope of the Waiver and this Agreement, including, without limitation, that Taxpayer will not be able to claim a refund (whether by return of payment, credit, offset, carryforward, or otherwise) of any of the Homelessness Gross Receipts Taxes subject to the Waiver, based on any argument that the Ordinance required at least a two-thirds vote of the electorate to pass or any lawsuit challenging the Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Ordinance or similar initiative tax measure because it was not passed by at least a two-thirds vote of the electorate. In doing so, Taxpayer acknowledges that the Waiver and this Agreement are made with the advice of counsel and with full knowledge and understanding of the consequences and effects of the Waiver. Further, as to unknown and unsuspected claims as of the date of this Agreement, Taxpayer acknowledges that the Waiver and this Agreement are made with the full knowledge, understanding, and agreement that California Civil Code Section 1542 provides as follows, and Taxpayer specifically waives the protection afforded by such code section and any similar law of the State of California or any other jurisdiction:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

2. Taxpayer acknowledges that the City is relying on Taxpayer's agreement in paragraph 1 in agreeing to spend revenues from the Homelessness Gross Receipts Tax subject to this Agreement before there is a final court decision upholding the validity of the Ordinance. Taxpayer further recognizes that but for this Agreement the City would not be willing to make such expenditures or enter into agreements or incur other obligations encumbering such funds before such a final court decision.

3. For the Subject Year, Taxpayer agrees that, notwithstanding Section 6.22-1 of the Code or any other provision of law that would limit public disclosure, the City may make public the aggregate amount of Homelessness Gross Receipts Tax liability subject to waiver under all agreements described in Section 2805.1(b) of the Business and Tax Regulations Code of all persons and combined groups, regardless of the number of persons or combined groups that enter into such agreements.

4. In reliance on the validity of Taxpayer's Waiver in paragraph 1 of this Agreement, the City agrees that Taxpayer shall be entitled to a non-refundable credit against its Homelessness Gross Receipts Tax liability for the Subject Year equal to 10% of the amount subject to the Waiver for the Subject Year.

5. If Taxpayer does not claim the credit described in paragraph 4, Taxpayer shall remain subject to the terms of this Agreement.

6. No provision of this Agreement shall preclude the City's Office of the Treasurer and Tax Collector from conducting an audit or other investigation of Taxpayer, within the appropriate statute of limitations and subject to applicable laws, with respect to Taxpayer's Homelessness Gross Receipts Tax liability, or from issuing a deficiency determination to Taxpayer increasing Taxpayer's Homelessness Gross Receipts Tax liability.

7. No provision of this Agreement shall preclude Taxpayer from requesting, claiming, or otherwise demanding or receiving a refund of all or any portion of its Homelessness Gross Receipts Tax payments from the City on any grounds other than those described in paragraph 1.

8. This Agreement shall be effective upon execution and delivery by the parties and, after, shall be binding upon the City, Taxpayer, and Taxpayer's permitted successors and assigns. Taxpayer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which the City, through its Office of the Treasurer and Tax Collector, may give or withhold in its sole discretion.

9. This Agreement is made and entered into for the sole protection and benefit of the parties to this Agreement and their permitted successors and assigns. No other person or entity shall have or acquire any right or action based upon any provisions of this Agreement.

10. The Waiver in paragraph 1 shall survive any termination of this Agreement.

11. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

12. To be valid, this Agreement must be signed by the Filer and each member of Filer's combined group engaging in business within the City, if any. The persons signing this Agreement on behalf of Filer and each member of Filer's combined group engaging in business within the City, if any, each certifies, represents, warrants, and covenants to the City that they have the full power and authority to execute, deliver, and perform Taxpayer's obligations under this Agreement and that execution, delivery, and performance has been duly authorized by all requisite action on Taxpayer's part. This Agreement, including without limitation, the Waiver, is a legal, valid, binding, and enforceable obligation of Taxpayer.

13. Any person determined to be engaging in business within the City, as defined in Code Section 6.2-12, as a member of Taxpayer's combined group for the Subject Year after Taxpayer executes this Agreement shall be deemed to have executed this Agreement and shall be subject to its terms as if such member had executed this Agreement itself. Taxpayer hereby indemnifies the City for any refund of Homelessness Gross Receipts Taxes paid and all attorneys' fees and costs in enforcing this paragraph 13, based on any person requesting a refund in violation of this paragraph 13.

14. This Agreement may be executed in one or more counterparts, each of which shall be considered an original and all of which shall constitute one instrument.

* * *

IN WITNESS WHEREOF, the City, Filer, and each member of Filer's combined group engaging in business within the City, if any, have executed this Agreement effective as of the day and year first written above.

Filer

CITY AND COUNTY OF SAN FRANCISCO

(Name and Business Account Number)

By: _____
(Signature)

Print Name: _____

Print Title: _____

(Address)

APPROVED AS TO FORM

By: _____
(Signature)

By: _____
(Signature)

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Combined Group Member

(Name and Business Account Number)

(Address)

By: _____
(Signature)

Print Name: _____

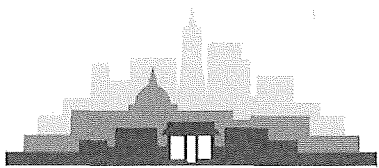
Print Title: _____

Exhibit A

Name

Business Account Number

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



SAN FRANCISCO
OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

March 14, 2019

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 190092 – 2 – Business and Tax Regulations Code - Credits For Waiver of Homelessness Gross Receipts Tax Refund and Certain Gifts

Small Business Commission Recommendation to the Board of Supervisors: **None.**

Dear Ms. Calvillo,

The Small Business Commission will not hear this substitute legislation. The Commission appreciates that this legislation was referred for their review. However, the Commission maintains the view that this legislation will not have an impact on small businesses outside of the scope of their own control.

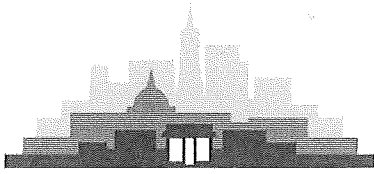
Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Regina Dick-Endrizzi", written in black ink.

Regina Dick-Endrizzi
Director, Office of Small Business

cc: Andres Power, Policy Director, Mayor's Office
Kanishka Karunaratne Cheng, Mayor's Liaison to the Board of Supervisors
Vallie Brown, Member, Board of Supervisors,
Lisa Pagan, Office of Economic and Workforce Development
Linda Wong, Clerk, Budget and Finance Committee



SAN FRANCISCO

OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

February 27, 2019

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 190092 – Business and Tax Regulations Code - Credits For Waiver of Homelessness
Gross Receipts Tax Refund and Certain Gifts

Small Business Commission Recommendation to the Board of Supervisors: **None.**

Dear Ms. Calvillo,

The Small Business Commission will not hear this item. The Commission appreciates that this legislation was referred for their review. However, where this legislation will permit corporations with revenue above \$50 million to choose to waive any right to a refund of their Homelessness Gross Receipts Tax payments through granting taxpayers a credit against their Homelessness Gross Receipts Tax Liability, the Commission does not believe that the legislation will have an impact on small businesses outside of the scope of their own control.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Regina Dick-Endrizzi", written in a cursive style.

Regina Dick-Endrizzi
Director, Office of Small Business

cc: Andres Power, Policy Director, Mayor's Office
Kanishka Karunaratne Cheng, Mayor's Liaison to the Board of Supervisors
Vallie Brown, Member, Board of Supervisors,
Lisa Pagan, Office of Economic and Workforce Development
Linda Wong, Clerk, Budget and Finance Committee

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: *ll*
bor Linda Wong, Assistant Clerk
Budget and Finance Sub-Committee

DATE: March 14, 2019

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Sub-Committee

The Board of Supervisors' Budget and Finance Sub-Committee has received the following substitute 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. 190092-2

Ordinance amending the Business and Tax Regulations Code to add a credit against a person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10% of the portion of a person or combined group's Tax liability for a tax year with respect to which the person or combined group enters into an agreement waiving its right to a refund of its Tax payments associated with any claim that the Homelessness Gross Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a majority of the electorate to pass; to add a credit against a person's Tax equal to 110% of a person's gift to support the Our City, Our Home Fund; and to authorize the Office of the Treasurer and Tax Collector to accept gifts from persons to support the Our City, Our Home Fund.

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

c: Dominica Donovan, Small Business Commission

BOARD of SUPERVISORS



City Hall
1 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: Jose Cisneros, Treasurer, Office of the Treasurer & Tax Collector
Jeff Kositsky, Director, Department of Homelessness and Supportive Housing
Ben Rosenfield, City Controller, Office of the Controller
Jon Givner, Deputy City Attorney, Office of the City Attorney

FROM: *ll*
ba Linda Wong, Assistant Clerk
Budget and Finance Sub-Committee

DATE: March 14, 2019

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Sub-Committee has received the following substitute legislation, introduced by Mayor Breed on March 5, 2019:

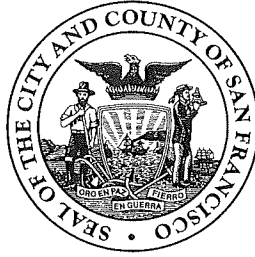
File No. 190092-2

Ordinance amending the Business and Tax Regulations Code to add a credit against a person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10% of the portion of a person or combined group's Tax liability for a tax year with respect to which the person or combined group enters into an agreement waiving its right to a refund of its Tax payments associated with any claim that the Homelessness Gross Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a majority of the electorate to pass; to add a credit against a person's Tax equal to 110% of a person's gift to support the Our City, Our Home Fund; and to authorize the Office of the Treasurer and Tax Collector to accept gifts from persons to support the Our City, Our Home Fund.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: Amanda Kahn Fried, Office of the Treasurer & Tax Collector
Abigail Stewart-Kahn, Department of Homelessness and Supportive Housing
Todd Rydstrom, Office of the Controller

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: *ll*
bor Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: February 19, 2019

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. 190092

Ordinance amending the Business and Tax Regulations Code to add a credit against a person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10% of the portion of a person or combined group's Tax liability for a tax year with respect to which the person or combined group enters into an agreement waiving its right to a refund of its Tax payments associated with any claim that the Homelessness Gross Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a majority of the electorate to pass; to add a credit against a person's Tax equal to 110% of a person's gift to support the Our City, Our Home Fund; and to authorize the Office of the Treasurer and Tax Collector to accept gifts from persons to support the Our City, Our Home Fund.

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: _____

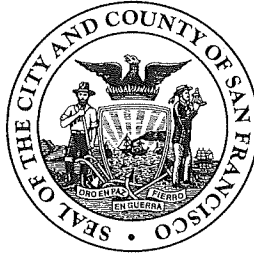
No Comment

Recommendation Attached

Chairperson, Small Business Commission

c: Dominica Donovan, Small Business Commission

BOARD of SUPERVISORS



City Hall
1 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: Jose Cisneros, Treasurer, Office of the Treasurer & Tax Collector
Jeff Kositsky, Director, Department of Homelessness and Supportive Housing
Ben Rosenfield, City Controller, Office of the Controller
Jon Givner, Deputy City Attorney, Office of the City Attorney
T. Michael Yuen, Court Executive Officer, San Francisco Superior Court

FROM: *lw* Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: February 19, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Mayor Breed on January 29, 2019:

File No. 190092

Ordinance amending the Business and Tax Regulations Code to add a credit against a person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10% of the portion of a person or combined group's Tax liability for a tax year with respect to which the person or combined group enters into an agreement waiving its right to a refund of its Tax payments associated with any claim that the Homelessness Gross Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a majority of the electorate to pass; to add a credit against a person's Tax equal to 110% of a person's gift to support the Our City, Our Home Fund; and to authorize the Office of the Treasurer and Tax Collector to accept gifts from persons to support the Our City, Our Home Fund.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: Amanda Kahn Fried, Office of the Treasurer & Tax Collector
Emily Cohen, Department of Homelessness and Supportive Housing
Todd Rydstrom, Office of the Controller



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Kanishka Karunaratne Cheng *KKC*
RE: Business and Tax Regulations Code - Credits For Waiver of
Homelessness Gross Receipts Tax Refund and Certain Gifts
DATE: March 5, 2019

Ordinance amending the Business and Tax Regulations Code to add a credit against a person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10% of the portion of a person or combined group's Tax liability for a tax year with respect to which the person or combined group enters into an agreement waiving its right to a refund of its Tax payments associated with any claim that the Homelessness Gross Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a majority of the electorate to pass; to add a credit against a person's Tax equal to 110% of a person's gift to support the Our City, Our Home Fund; and to authorize the Office of the Treasurer and Tax Collector to accept gifts from persons to support the Our City, Our Home Fund.

This legislation is intended to substitute File No. 190092.

The attached Agreement for Waiver of Right to Refund of Homelessness Gross Receipts Taxes is also intended to substitute the version on file.

Please note that Supervisor Brown is a co-sponsor of this legislation.

Should you have any questions, please contact Kanishka Karunaratne Cheng at 415-554-6696.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 MAR -5 PM 2:16
BY AK



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Kanishka Karunaratne Cheng *KKC*
RE: Business and Tax Regulations Code - Credits For Waiver of
Homelessness Gross Receipts Tax Refund and Certain Gifts
DATE: January 29, 2019

Ordinance amending the Business and Tax Regulations Code to add a credit against a person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10% of the portion of a person or combined group's Tax liability for a tax year with respect to which the person or combined group enters into an agreement waiving its right to a refund of its Tax payments associated with any claim that the Homelessness Gross Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a majority of the electorate to pass; to add a credit against a person's Tax equal to 110% of a person's gift to support the Our City, Our Home Fund; and to authorize the Office of the Treasurer and Tax Collector to accept gifts from persons to support the Our City, Our Home Fund..

Please note that Supervisor Brown is a co-sponsor of this legislation.

Should you have any questions, please contact Kanishka Karunaratne Cheng at 415-554-6696.

BY *KKC*
2019 JAN 29 PM 4:15
BOARD OF SUPERVISORS
SAN FRANCISCO