

1 [0.50% Sales Tax Increase for Health and Human Services and Public Protection]

2

3

4

Ordinance amending the San Francisco Business and Tax Regulations Code to add Article 16-A to provide support for health and human services and public protection to residents of the City and County of San Francisco by imposing a transactions (sales) and use tax at the rate of one-half of one percent (0.50%) for a period of three (3) years, to be administered by the State Board of Equalization in accordance with Parts 1.6 and 1.7 of Division 2 of the California Revenue and Taxation Code; adopting an expenditure plan; and directing submission of the tax for voter approval at the November 3, 2009 election.

12

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

13

14

15

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

16

Section 1. The San Francisco Business and Tax Regulations Code is hereby amended by adding Article 16A, Section #(s) 1650 et seq., ("Transactions and Use Tax Ordinance") to read as follows:

17

18

19

SEC. 1650. TITLE.

20

This ordinance shall be known as the ~~Emergency~~ Health and Public Safety Services Preservation Transactions and Use Tax Ordinance. The City and County of San Francisco, hereinafter shall be called "City and County." This ordinance shall be applicable in the City and County.

21

22

23

24

25

1 SEC. 1651. FINDINGS.

2 Based on the following factors, the Board of Supervisors hereby finds that an actual
3 emergency exists that requires imposing a transactions (sales) and use tax at the rate of
4 0.50% for a period of three years, to provide additional support for emergency health and
5 human services and public protection to residents of the City and County of San Francisco:

6 ——— (a) The fiscal crisis impacting the nation and the state has affected San
7 Francisco as well. The City has been hit by a sudden and precipitous drop in local revenues
8 below the adopted budget levels.

9 ——— (b) As a result of these conditions and the City's Structural Deficit, the Mayor's
10 Office has projected a General Fund deficit of \$575.6 million for Fiscal Year 2009-10, a loss of
11 roughly half of the City's discretionary spending as compared to funds available for
12 discretionary spending in Fiscal Year 2008-09. This deficit would severely harm public health
13 and human service programs in particular, since the departments delivering those programs
14 are among those most dependent on the General Fund. Unless the City can replace this
15 funding, the health, safety, and welfare of the vulnerable segments of the population will be
16 put at risk.

17 ——— (c) The City and County receive sales tax revenues, local sales tax collections
18 and a share of statewide sales taxes. Due to the current economic slowdown and the impact
19 on business and consumer spending, the City and County Controller's Office projects sales
20 tax declines in the current year of 2.0% to 5.0%, resulting in revenue shortfalls of between \$10
21 million and \$14 million. Additionally, state sales tax revenue collections are declining at a
22 more rapid rate, leading to projected health and welfare realignment revenue losses of
23 between \$16 million and \$20 million and public safety sales tax losses of between \$7 million
24 and \$9 million above the adopted budget. Total sales tax-related losses are estimated at \$33
25 million to \$43 million.

1 ——— (d) The City has already made significant cuts in government spending, including the
2 elimination or postponement of programs, lay-offs of nearly 400 City employees, and
3 elimination of over 300 vacant positions.

4 ——— (e) In response to this situation, the Board of Supervisors has called a special election
5 for June 2, 2009, to submit a number of proposed revenue measures to the voters, so that the
6 Board and the Mayor will know before the commencement of Fiscal Year 2009-10 whether the
7 voters have approved the revenue measures.

8 ——— (f) This transactions and use tax ordinance will ensure that the City is able to avoid
9 the impending deficit threatening the public health, safety, and welfare.

10 SEC. 16512. OPERATIVE DATE.

11 "Operative Date" means the first day of the first calendar quarter commencing more than 110
12 days after the adoption of this ordinance, the date of such adoption being as set forth below.

13 SEC. 16523. PURPOSE.

14 This ordinance is adopted to achieve the following, among other purposes, and directs that the
15 provisions hereof be interpreted in order to accomplish those purposes:

16 (a) To provide support and additional funding for emergency health and human services
17 and public protection for the residents of the City and County.

18 (b) To impose a retail transactions and use tax, in accordance with the provisions of Part
19 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section
20 7285.5 of Part 1.7 of Division 2, which authorizes the City and County to adopt this tax ordinance
21 which shall be operative if a (2/3 or majority) two thirds of the electors voting on the measure vote to
22 approve the imposition of the tax at an election called for that purpose.

23 (c) To adopt a retail transactions and use tax ordinance that incorporates provisions
24 identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions
25

1 are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the
2 Revenue and Taxation Code.

3 (d) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a
4 measure therefor that can be administered and collected by the State Board of Equalization in a
5 manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the
6 existing statutory and administrative procedures followed by the State Board of Equalization in
7 administering and collecting the California State Sales and Use Taxes.

8 (e) To adopt a retail transactions and use tax ordinance that can be administered in a
9 manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of
10 Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use
11 taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation
12 under the provisions of this ordinance.

13 SEC. 16534. CONTRACT WITH STATE.

14 Prior to the operative date, the City and County shall contract with the State Board of
15 Equalization to perform all functions incident to the administration and operation of this transactions
16 and use tax ordinance; provided that, if the City and County shall not have contracted with the State
17 Board of Equalization prior to the operative date, it shall nevertheless so contract, and in such a case
18 the operative date shall be the first day of the first calendar quarter following the execution of such a
19 contract.

20 SEC. 16545. TRANSACTIONS TAX RATE.

21 For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all
22 retailers in the incorporated and unincorporated territory of the City and County at the rate of 0.50%
23 of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the
24 City and County on and after the operative date of this ordinance.

1 SEC. 16556. PLACE OF SALE.

2 For the purposes of this ordinance, all retail sales are consummated at the place of business of
3 the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-
4 of-state destination or to a common carrier for delivery to an out-of-state destination. The gross
5 receipts from such sales shall include delivery charges, when such charges are subject to the state sales
6 and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent
7 place of business in the State or has more than one place of business, the place or places at which the
8 retail sales are consummated shall be determined under rules and regulations to be prescribed and
9 adopted by the State Board of Equalization.

10 SEC. 16567. USE TAX RATE.

11 An excise tax is hereby imposed on the storage, use or other consumption in the City and
12 County of tangible personal property purchased from any retailer on and after the operative date of
13 this ordinance for storage, use or other consumption in the City and County at the rate of 0.50% of the
14 sales price of the property. The sales price shall include delivery charges when such charges are
15 subject to state sales or use tax regardless of the place to which delivery is made.

16 SEC. 16578. ADOPTION OF PROVISIONS OF STATE LAW.

17 Except as otherwise provided in this ordinance and except insofar as they are inconsistent with
18 the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part
19 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted
20 and made a part of this ordinance as though fully set forth herein.

21 SEC. 16589. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF
22 USE TAXES.

23 In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

24 (a) Wherever the State of California is named or referred to as the taxing agency, the name
25 of the City and County shall be substituted therefor. However, the substitution shall not be made when:

1 (1) The word "State" is used as a part of the title of the State Controller, State
2 Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of
3 the State of California;

4 (2) The result of that substitution would require action to be taken by or against the City
5 and County or any agency, officer, or employee thereof rather than by or against the State Board of
6 Equalization, in performing the functions incident to the administration or operation of this Ordinance.

7 (3) In those sections, including, but not necessarily limited to sections referring to the
8 exterior boundaries of the State of California, where the result of the substitution would be to:

9 (A) Provide an exemption from this tax with respect to certain sales, storage,
10 use or other consumption of tangible personal property, which would not otherwise be exempt from this
11 tax while such sales, storage, use or other consumption remain subject to tax by the State under the
12 provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

13 (B) Impose this tax with respect to certain sales, storage, use or other
14 consumption of tangible personal property which would not be subject to tax by the state under the said
15 provision of that code.

16 (4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737,
17 6797 or 6828 of the Revenue and Taxation Code.

18 (b) The words "the City and County of San Francisco" shall be substituted for the words
19 "this State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the
20 definition of that phrase in Section 6203.

21 SEC. 165960. PERMIT NOT REQUIRED.

22 If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation
23 Code, an additional transactor's permit shall not be required by this ordinance.

1 SEC. 16604. EXEMPTIONS AND EXCLUSIONS.

2 (a) There shall be excluded from the measure of the transactions tax and the use tax the
3 amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or
4 county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any
5 state-administered transactions or use tax.

6 (b) There are exempted from the computation of the amount of transactions tax the gross
7 receipts from:

8 (1) Sales of tangible personal property, other than fuel or petroleum products, to
9 operators of aircraft to be used or consumed principally outside the City and County in which the sale
10 is made and directly and exclusively in the use of such aircraft as common carriers of persons or
11 property under the authority of the laws of this State, the United States, or any foreign government.

12 (2) Sales of property to be used outside the City and County which is shipped to a
13 point outside the City and County, pursuant to the contract of sale, by delivery to such point by the
14 retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such
15 point. For the purposes of this paragraph, delivery to a point outside the City and County shall be
16 satisfied:

17 (A) With respect to vehicles (other than commercial vehicles) subject to
18 registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code,
19 aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented
20 vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by
21 registration to an address outside the City and County and by a declaration under penalty of perjury,
22 signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

23 (B) With respect to commercial vehicles, by registration to a place of
24 business outside the City and County and a declaration under penalty of perjury, signed by the buyer,
25 that the vehicle will be operated from that address.

1 (3) The sale of tangible personal property if the seller is obligated to furnish
2 the property for a fixed price pursuant to a contract entered into prior to the operative date of this
3 ordinance.

4 (4) A lease of tangible personal property which is a continuing sale of such
5 property, for any period of time for which the lessor is obligated to lease the property for an amount
6 fixed by the lease prior to the operative date of this ordinance.

7 (5) For the purposes of subparagraphs (3) and (4) of this section, the sale or
8 lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease
9 for any period of time for which any party to the contract or lease has the unconditional right to
10 terminate the contract or lease upon notice, whether or not such right is exercised.

11 (c) There are exempted from the use tax imposed by this ordinance, the storage, use or
12 other consumption in the City and County of tangible personal property:

13 (1) The gross receipts from the sale of which have been subject to a
14 transactions tax under any state-administered transactions and use tax ordinance.

15 (2) Other than fuel or petroleum products purchased by operators of aircraft
16 and used or consumed by such operators directly and exclusively in the use of such aircraft as common
17 carriers of persons or property for hire or compensation under a certificate of public convenience and
18 necessity issued pursuant to the laws of this State, the United States, or any foreign government. This
19 exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and
20 Taxation Code of the State of California.

21 (3) If the purchaser is obligated to purchase the property for a fixed price
22 pursuant to a contract entered into prior to the operative date of this ordinance.

23 (4) If the possession of, or the exercise of any right or power over the
24 tangible personal property arises under a lease which is a continuing purchase of such property for
25

1 any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease
2 prior to the operative date of this ordinance.

3 (5) For the purposes of subparagraphs (3) and (4) of this section, storage,
4 use, or other consumption, or possession of, or exercise of any right or power over, tangible personal
5 property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for
6 which any party to the contract or lease has the unconditional right to terminate the contract or lease
7 upon notice, whether or not such right is exercised.

8 (6) Except as provided in subparagraph (7) of this section, a retailer
9 engaged in business in the City and County shall not be required to collect use tax from the purchaser
10 of tangible personal property, unless the retailer ships or delivers the property into the City and County
11 or participates within the City and County in making the sale of the property, including, but not limited
12 to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in
13 the City and County or through any representative, agent, canvasser, solicitor, subsidiary, or person in
14 the City and County under the authority of the retailer.

15 (7) "A retailer engaged in business in the City and County" shall also include
16 any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1
17 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with
18 Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5
19 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax
20 from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City
21 and County.

22 (d) Any person subject to use tax under this ordinance may credit against that tax any
23 transactions tax or reimbursement for transactions tax paid to a County imposing, or retailer liable for
24 a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to
25

1 the sale to the person of the property the storage, use or other consumption of which is subject to the
2 use tax.

3 SEC. 16612. AMENDMENT

4 All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2
5 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with
6 Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6
7 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this
8 ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax
9 imposed by this ordinance.

10 SEC. 16623. ENJOINING COLLECTION FORBIDDEN.

11 No injunction or writ of mandate or other legal or equitable process shall issue in any suit,
12 action or proceeding in any court against the State or the City and County, or against any officer of the
13 State or the City and County, to prevent or enjoin the collection under this ordinance, or Part 1.6 of
14 Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

15 SEC. 16634. ADOPTION OF EXPENDITURE PLAN.

16 The ~~Emergency~~ Health and Public Services Preservation Transactions and Use Tax
17 Expenditure Plan ("Expenditure Plan") attached hereto and incorporated into this ordinance by
18 reference is hereby adopted. Proceeds of the tax imposed by this ordinance shall be placed in a special
19 account and shall be spent only to implement the project components set forth in the Expenditure Plan.
20 The Expenditure Plan may be amended from time to time to further the purposes of this ordinance, to
21 add or delete a project or to take into consideration unforeseen circumstances.

22 SEC. 16645. SEVERABILITY.

23 If any provision of this ordinance or the application thereof to any person or
24 circumstance is held invalid, the remainder of the ordinance and the application of such provision to
25 other persons or circumstances shall not be affected thereby.

1 SEC. 16656. EFFECTIVE DATE.

2 This ordinance relates to the levying and collecting of the City and County transactions
3 and use taxes and shall take effect immediately.

4 SEC. 16667. TERMINATION DATE.

5 The authority to levy the tax imposed by this ordinance shall expire on December 31,
6 2012.

7 Section 2. Pursuant to Article XIIC of the Constitution of the State of California and
8 Section 7285 of the California Revenue and Taxation Code, this ordinance shall be submitted
9 to the qualified electors of the City and County of San Francisco, at the ~~June 2,~~ November 3,
10 2009 ~~special~~ municipal election. This ordinance shall become operative only if approved by
11 the qualified electors at such election.

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

15 By: _____
16 JEAN ALEXANDER
17 Deputy City Attorney
18
19
20
21
22
23
24
25