

BOARD of SUPERVISORS



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MEMORANDUM

TO: Sophia Kittler, Liaison to the Board of Supervisors, Mayor's Office
Anne Pearson, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission
Jose Cisneros, Treasurer, Office of the Treasurer and Tax Collector

FROM: Victor Young, Assistant Clerk
Board of Supervisors

A handwritten signature in cursive script that reads "Victor Young".

DATE: July 17, 2020

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
November 3, 2020 Election

On July 16, 2020, the Board of Supervisors' Budget and Finance Committee amended the following Initiative Ordinance for the November 3, 2020, Election. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 200629

Motion ordering submitted to the voters at an election to be held on November 3, 2020, an Ordinance amending the Business and Tax Regulations Code to impose an additional gross receipts tax or an administrative office tax on businesses with a greater than 100:1 ratio of the compensation of the business's highest-paid managerial employee to the median compensation paid to the business's employees based in the City; and increasing the City's appropriations limit by the amount collected under the additional tax for four years from November 3, 2020.

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) 554-7723 or email: victor.young@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: Andres Power, Mayor's Office
Rebecca Peacock, Mayor's Office
Kanishka Cheng, Mayor's Office
Patrick Ford, Ethics Commission
Amanda Fried, Office of the Treasurer and Tax Collector

1 [Initiative Ordinance - Business and Tax Regulations Code - Tax on Businesses With
2 Disproportionate Executive Pay]

3 **Motion ordering submitted to the voters at an election to be held on November 3, 2020,**
4 **an Ordinance amending the Business and Tax Regulations Code to impose an**
5 **additional gross receipts tax or an administrative office tax on businesses with a**
6 **greater than 100:1 ratio of the compensation of the business's highest-paid managerial**
7 **employee to the median compensation paid to the business's employees based in the**
8 **City; and increasing the City's appropriations limit by the amount collected under the**
9 **additional tax for four years from November 3, 2020.**

10
11 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
12 voters of the City and County of San Francisco, at an election to be held on
13 November 3, 2020.

14
15 **Ordinance amending the Business and Tax Regulations Code to impose an additional**
16 **gross receipts tax or an administrative office tax on businesses with a greater than**
17 **100:1 ratio of the compensation of the business's highest-paid managerial employee to**
18 **the median compensation paid to the business's employees based in the City; and**
19 **increasing the City's appropriations limit by the amount collected under the additional**
20 **tax for four years from November 3, 2020.**

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

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

2
3 Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this
4 ordinance shall be submitted to the qualified electors of the City and County of San Francisco
5 at the November 3, 2020, consolidated general election.
6

7 Section 2. The Business and Tax Regulations Code is hereby amended by adding
8 Article 33, consisting of Sections 3301 through 3313, to read as follows:
9

10 **ARTICLE 33: OVERPAID EXECUTIVE GROSS RECEIPTS TAX**

11
12 **SEC. 3301. SHORT TITLE.**

13 *This Article 33 shall be known as the “Overpaid Executive Gross Receipts Tax Ordinance,” and*
14 *the tax it imposes shall be known as the “Overpaid Executive Gross Receipts Tax.”*
15

16 **SEC. 3302. DEFINITIONS.**

17 *Unless otherwise defined in this Article 33, the terms used in this Article shall have the*
18 *meanings given to them in Articles 6, 12-A, and 12-A-1 of the Business and Tax Regulations Code, as*
19 *amended from time to time. For purposes of this Article, the following definitions apply.*

20 *“Compensation” means wages, salaries, commissions, bonuses, property issued or transferred*
21 *in exchange for the performance of services (including but not limited to stock options), compensation*
22 *for services to owners of pass-through entities, and any other form of remuneration paid to employees*
23 *for services.*

24 *“Executive Pay Ratio” means the ratio of the annual Compensation paid to the person or*
25 *combined group’s Highest-Paid Managerial Employee for a tax year to the median Compensation paid*

1 to the person or combined group's full-time and part-time employees based in the City for that tax year,
2 determined on a full-time equivalency and annualized basis. For purposes of this definition:

3 (a) An employee is "based in the City for [a] tax year" if the employee's total working
4 hours in the City for the person or combined group during the tax year exceeds the employee's total
5 working hours in any other local jurisdiction for the person or combined group during the tax year.

6 (b) Compensation paid to a part-time employee for the tax year shall be converted to a
7 "full-time equivalency" by multiplying the part-time employee's Compensation for the tax year by 40,
8 and dividing the result by the average number of hours the part-time employee worked per week during
9 the tax year for the person or combined group.

10 (c) Compensation paid to an employee who was employed by the person or combined
11 group for only a portion of the tax year shall be "annualized" by multiplying the employee's
12 Compensation (or, as stated, for a part-time employee, full-time equivalent Compensation) for the tax
13 year by 52, and dividing the result by the number of weeks that the employee was employed by that
14 person or combined group during the tax year.

15 "Highest-Paid Managerial Employee" means the individual employee or officer of a person or
16 combined group with managerial responsibility in a business function who received the most
17 Compensation for a tax year.

18
19 **SEC. 3303. IMPOSITION OF TAX.**

20 (a) Except as otherwise provided in this Article 33, commencing with tax years beginning on or
21 after January 1, 2022, for the privilege of engaging in business in the City, the City imposes an annual
22 Overpaid Executive Gross Receipts Tax on each person engaging in business within the City where the
23 Executive Pay Ratio for the tax year of that person or the combined group of which it is a part
24 exceeds 100:1.

1 (b) The Overpaid Executive Gross Receipts Tax shall be calculated as follows:

2 (1) 0.1% of the person or combined group's taxable gross receipts for a tax year if the
3 person or combined group has an Executive Pay Ratio for that tax year of greater than 100:1, but less
4 than or equal to 200:1;

5 (2) 0.2% of the person or combined group's taxable gross receipts for a tax year if the
6 person or combined group has an Executive Pay Ratio for that tax year of greater than 200:1, but less
7 than or equal to 300:1;

8 (3) 0.3% of the person or combined group's taxable gross receipts for a tax year if the
9 person or combined group has an Executive Pay Ratio for that tax year of greater than 300:1, but less
10 than or equal to 400:1;

11 (4) 0.4% of the person or combined group's taxable gross receipts for a tax year if the
12 person or combined group has an Executive Pay Ratio for that tax year of greater than 400:1, but less
13 than or equal to 500:1;

14 (5) 0.5% of the person or combined group's taxable gross receipts for a tax year if the
15 person or combined group has an Executive Pay Ratio for that tax year of greater than 500:1, but less
16 than or equal to 600:1; or

17 (6) 0.6% of the person or combined group's taxable gross receipts for a tax year if the
18 person or combined group has an Executive Pay Ratio for that tax year of greater than 600:1.

19 (c) For purposes of this Section 3303, "taxable gross receipts" means a person or combined
20 group's gross receipts, not excluded under Section 3304, attributable to the City. The person or
21 combined group's gross receipts that are attributable to the City shall be determined in the same
22 manner as in Article 12-A-1, as amended from time to time.

23 (d) Notwithstanding any other subsection of this Section 3303, every person engaging in
24 business within the City as an administrative office, as defined in Section 953.8 of Article 12-A-1, shall
25 pay an annual overpaid executive administrative office tax if the Executive Pay Ratio for the tax year of

1 that person or the combined group of which it is a part exceeds 100:1. This overpaid executive
2 administrative office tax shall be measured by the person's total payroll expense, as defined in
3 Section 953.8(f) of Article 12-A-1, that is attributable to the City. If a person is a member of a
4 combined group, then its tax shall be measured by the total payroll expense of the combined group
5 attributable to the City. Such person or combined group shall pay only the overpaid executive
6 administrative office tax, and not the tax imposed under other subsections of this Section 3303, but a
7 person or combined group may be liable for the administrative office tax imposed by Section 953.8 of
8 Article 12-A-1 and the homelessness administrative office tax imposed by Section 2804(d) of Article 28
9 in addition to the overpaid executive administrative office tax imposed by this subsection (d). Unless
10 specified otherwise, this overpaid executive administrative office tax shall be considered part of the
11 Overpaid Executive Gross Receipts Tax for all purposes. The overpaid executive administrative office
12 tax shall be calculated as follows:

13 (1) 0.4% of the person or combined group's total payroll expense attributable to the
14 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
15 greater than 100:1, but less than or equal to 200:1;

16 (2) 0.8% of the person or combined group's total payroll expense attributable to the
17 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
18 greater than 200:1, but less than or equal to 300:1;

19 (3) 1.2% of the person or combined group's total payroll expense attributable to the
20 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
21 greater than 300:1, but less than or equal to 400:1;

22 (4) 1.6% of the person or combined group's total payroll expense attributable to the
23 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
24 greater than 400:1, but less than or equal to 500:1;
25

1 (5) 2% of the person or combined group's total payroll expense attributable to the City
2 for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of greater
3 than 500:1, but less than or equal to 600:1; or

4 (6) 2.4% of the person or combined group's total payroll expense attributable to the
5 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
6 greater than 600:1.

7
8 **SEC. 3304. EXEMPTIONS AND EXCLUSIONS.**

9 (a) An organization that is exempt from income taxation by Chapter 4 (commencing with
10 Section 23701) of Part 11 of Division 2 of the California Revenue and Taxation Code or Subchapter F
11 (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as
12 amended, as qualified by Sections 502, 503, 504, and 508 of the Internal Revenue Code of 1986, as
13 amended, shall be exempt from taxation under this Article 33, only so long as those exemptions
14 continue to exist under state or federal law.

15 (b) For only so long as and to the extent that the City is prohibited from imposing the Overpaid
16 Executive Gross Receipts Tax, any person upon whom the City is prohibited under the Constitution or
17 laws of the State of California or the Constitution or laws of the United States from imposing the
18 Overpaid Executive Gross Receipts Tax shall be exempt from the Overpaid Executive Gross Receipts
19 Tax.

20 (c) For purposes of this Article 33, gross receipts shall not include receipts that are excluded
21 from gross receipts for purposes of the gross receipts tax imposed by Article 12-A-1.

22 (d) A person or combined group exempt from the gross receipts tax as a small business
23 enterprise under Section 954.1 of Article 12-A-1 shall also be exempt from taxation under this
24 Article 33. But the exemption in this subsection (d) of Section 3304 shall not apply to persons subject
25 to the overpaid executive administrative office tax in subsection (d) of Section 3303.

1 **SEC. 3305. COMBINED RETURNS.**

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

5 (b) If a person is subject to the Overpaid Executive Gross Receipts Tax, but is not required to
6 file a gross receipts tax return under Article 12-A-1, such person or combined group's Overpaid
7 Executive Gross Receipts Tax return shall be filed at the same time and in the same manner as if such
8 person or combined group were required to file a gross receipts tax return under Article 12-A-1.

9 (c) For purposes of this Article 33, a lessor of residential real estate is treated as a separate
10 person with respect to each individual building in which it leases residential real estate units,
11 notwithstanding Section 6.2-15 of Article 6, as amended from time to time, or subsection (a) of this
12 Section 3305. This subsection (c) applies only to leasing residential real estate units within a building,
13 and not to any business activity related to other space, either within the same building or other
14 buildings, which is not residential real estate. The Tax Collector is authorized to determine what
15 constitutes a separate building and the number of units in a building.

16
17 **SEC. 3306. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.**

18 The Tax Collector may, in the Tax Collector's reasonable discretion, independently establish a
19 person or combined group's gross receipts within the City and establish or reallocate gross receipts
20 among related entities so as to fairly reflect the gross receipts within the City of all persons and
21 combined groups.

1 **SEC. 3307. CONSTRUCTION AND SCOPE OF THE OVERPAID EXECUTIVE GROSS**
2 **RECEIPTS TAX ORDINANCE.**

3 *(a) This Article 33 is intended to authorize application of the Overpaid Executive Gross*
4 *Receipts Tax in the broadest manner consistent with its provisions and with the California Constitution,*
5 *the United States Constitution, and any other applicable provision of federal or state law.*

6 *(b) The Overpaid Executive Gross Receipts Tax imposed by this Article 33 is in addition to all*
7 *other City taxes, including the gross receipts tax imposed by Article 12-A-1, as amended from time to*
8 *time. Accordingly, by way of example and not limitation, persons subject to both the Overpaid*
9 *Executive Gross Receipts Tax and the gross receipts tax shall pay both taxes. Persons exempt from*
10 *either the gross receipts tax or the Overpaid Executive Gross Receipts Tax, but not both, shall pay the*
11 *tax from which they are not exempt.*

12
13 **SEC. 3308. ADMINISTRATION OF THE OVERPAID EXECUTIVE GROSS RECEIPTS TAX**
14 **ORDINANCE.**

15 *Except as otherwise provided under this Article 33, the Overpaid Executive Gross Receipts Tax*
16 *Ordinance shall be administered pursuant to Article 6 of the Business and Tax Regulations Code, as*
17 *amended from time to time, including all penalties and other charges imposed by that Article.*

18
19 **SEC. 3309. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.**

20 *The Overpaid Executive Gross Receipts Tax is a general tax. Proceeds from the tax shall be*
21 *deposited in the City's general fund and may be expended for any City purposes.*

22
23 **SEC. 3310. AMENDMENT OF ORDINANCE.**

24 *The Board of Supervisors may amend or repeal this Article 33 by ordinance without a vote of*
25 *the people except as limited by Article XIII C of the California Constitution.*

1 **SEC. 3311. EFFECT OF STATE AND FEDERAL AUTHORIZATION.**

2 To the extent that the City's authorization to impose or to collect any tax imposed under this
3 Article 33 is expanded or limited as a result of changes in state or federal statutes, regulations, or other
4 laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be
5 required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with
6 those changes, and the Tax Collector shall collect them to the full extent of the City's authorization up
7 to the full amount and rate of the taxes imposed under this Article.

8
9 **SEC. 3312. SEVERABILITY.**

10 (a) Except as provided in subsection (b), if any section, subsection, sentence, clause, phrase, or
11 word of this Article 33, or any application thereof to any person or circumstance, is held to be invalid
12 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the
13 validity of the remaining portions or applications of this Article. The People of the City and County of
14 San Francisco hereby declare that, except as provided in subsection (b), they would have adopted this
15 Article and each and every section, subsection, sentence, clause, phrase, and word not declared invalid
16 or unconstitutional without regard to whether any other portion of this Article or application thereof
17 would be subsequently declared invalid or unconstitutional.

18 (b) If the imposition of the Overpaid Executive Gross Receipts Tax in Section 3303 is held in its
19 entirety to be facially invalid or unconstitutional in a final court determination, the remainder of this
20 Article 33 shall be void and of no force and effect, and the City Attorney shall cause it to be removed
21 from the Business and Tax Regulations Code.

1 **SEC. 3313. SAVINGS CLAUSE.**

2 No section, clause, part, or provision of this Article 33 shall be construed as requiring the
3 payment of any tax that would be in violation of the Constitution or laws of the United States or of the
4 Constitution or laws of the State of California.

5
6 Section 3. Appropriations Limit Increase. Pursuant to California Constitution
7 Article XIII B and applicable laws, for four years from November 3, 2020, the appropriations
8 limit for the City shall be increased by the aggregate sum collected by the levy of the tax
9 imposed under this ordinance.

10
11 Section 4. Effective and Operative Dates.

12 (a) The effective date of this ordinance shall be ten days after the date the official vote
13 count is declared by the Board of Supervisors.

14 (b) This ordinance shall become operative on January 1, 2022.

15
16
17 APPROVED AS TO FORM:

18 DENNIS J. HERRERA, City Attorney

19
20 By: /s/ MOE JAMIL
21 MOE JAMIL
22 Deputy City Attorney

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LEGISLATIVE DIGEST
(Amended in Committee July 16, 2020)

[Initiative Ordinance - Business and Tax Regulations Code - Tax on Businesses With Disproportionate Executive Pay]

Motion ordering submitted to the voters at an election to be held on November 3, 2020, an Ordinance amending the Business and Tax Regulations Code to impose an additional gross receipts tax or an administrative office tax on businesses with a greater than 100:1 ratio of the compensation of the business's highest-paid managerial employee to the median compensation paid to the business's employees based in the City; and increasing the City's appropriations limit by the amount collected under the additional tax for four years from November 3, 2020.

Existing Law

The City currently imposes several taxes on businesses engaging in business in the City:

- Article 12 generally imposes a registration fee on all businesses engaged in any business in the City other than as an administrative office equal to between \$75 and \$35,000 (adjusted for inflation), depending on the type of business and the amount of gross receipts attributable to the City. Article 12 generally imposes a registration fee on businesses engaged in business as an administrative office equal to between \$15,000 and \$35,000 (adjusted for inflation), depending on the payroll expense of the business attributable to the City. These fees are deposited into the General Fund.
- Articles 12-A and 12-A-1 generally impose additional taxes on all businesses engaged in any business in the City other than as an administrative office equal to 0.075% to 0.65% of the business's gross receipts attributable to the City, depending on the type of business and amount of gross receipts attributable to the City, plus 0.38% of the business's payroll expense attributable to the City. In lieu of these taxes, Article 12-A-1 imposes a tax on all businesses engaged in business as an administrative office equal to 1.4% of the business's payroll expense attributable to the City. These taxes are deposited into the General Fund.
- Article 21 generally imposes an additional tax on all business engaged in business in the City that receive gross receipts from the lease of commercial space in properties in the City, with rates between 1% to 3.5% of the gross receipts from the lease of that commercial space, depending on the type of property. This tax is dedicated 15% to the General Fund and 85% to fund early care and education for young children.
- Article 28 generally imposes an additional tax on all businesses engaged in any business in the City other than as an administrative office equal to between 0.175% and 0.69% of the business's gross receipts attributable to the City in excess of

\$50 million, depending on the type of business. In lieu of this tax, Article 28 imposes a tax on all businesses engaged in business as an administrative office equal to 1.5% of the business's payroll expense attributable to the City. This tax is dedicated to fund services for homeless people and to prevent homelessness.

- Commencing in 2021, Article 30 will impose an additional tax on all businesses engaged in cannabis business activities in the City equal to 1% to 5% of the gross receipts from those cannabis business activities in excess of \$500,000, depending on the type of cannabis business activities and the amount of gross receipts from those activities attributable to the City. This tax will be deposited into the General Fund.

Amendments to Current Law

Effective in 2022, this ordinance would create an additional tax that would generally apply to all businesses engaged in any business in the City where the compensation of the business's highest-paid managerial employee to the median compensation paid to the business's employees based in the City (the "Executive Pay Ratio") exceeds 100:1. For businesses engaged in any business other than as an administrative office the tax rates would be a percentage of the business's gross receipts attributable to the City, depending on the Executive Pay Ratio of the business, as follows:

Executive Pay Ratio	Tax Rate
More Than 100:1 but Less Than or Equal to 200:1	0.1%
More Than 200:1 but Less Than or Equal to 300:1	0.2%
More Than 300:1 but Less Than or Equal to 400:1	0.3%
More Than 400:1 but Less Than or Equal to 500:1	0.4%
More Than 500:1 but Less Than or Equal to 600:1	0.5%
More Than 600:1	0.6%

For businesses engaged in business as an administrative office, the tax rates would be a percentage of the business's payroll expense attributable to the City, depending on the Executive Pay Ratio of the business, as follows:

Executive Pay Ratio	Tax Rate
More Than 100:1 but Less Than or Equal to 200:1	0.4%
More Than 200:1 but Less Than or Equal to 300:1	0.8%
More Than 300:1 but Less Than or Equal to 400:1	1.2%
More Than 400:1 but Less Than or Equal to 500:1	1.6%
More Than 500:1 but Less Than or Equal to 600:1	2.0%
More Than 600:1	2.4%

The additional tax would be a general tax. Proceeds from the tax would be deposited in the City's general fund to be expended for any City purposes.

This ordinance would increase the City's appropriations limit under Article XIII B by the amounts collected from the additional tax for four years from November 3, 2020.

Background Information

This legislative digest reflects amendments made in committee on July 16, 2020, which limited a business's highest-paid employee in the calculation of the Executive Pay Ratio to the individual or officer of a person or combined group with managerial responsibility in a business function who received the most compensation for a tax year. As originally introduced, the highest paid employee for this purpose was not limited to individuals "with managerial responsibility in a business function." The amendments made in committee on July 16, 2020 also eliminated additional tax rate tiers for businesses with Executive Pay Ratios of more than 700:1 but less than or equal to 800:1, more than 800:1 but less than or equal to 900:1, and more than 1000:1.

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