

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

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

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

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

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

21 SEC. 1650. TITLE.

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

1 SEC. 1651. FINDINGS.

2 Based on the following factors, the Board of Supervisors hereby finds that an actual emergency
3 exists that requires imposing a transactions (sales) and use tax at the rate of 0.50% for a period of
4 three years, to provide additional support for emergency health and human services and public
5 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 Francisco as well. The
7 City has been hit by a sudden and precipitous drop in local revenues below the adopted budget levels.

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

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

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

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

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

7 SEC. 1652. OPERATIVE DATE.

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

10 SEC. 1653. PURPOSE.

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

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

15 (b) To impose a retail transactions and use tax, in accordance with the provisions of Part
16 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section
17 7285.5 of Part 1.7 of Division 2, which authorizes the City and County to adopt this tax ordinance
18 which shall be operative if a (2/3 or majority) of the electors voting on the measure vote to approve the
19 imposition of the tax at an election called for that purpose.

20 (c) To adopt a retail transactions and use tax ordinance that incorporates provisions
21 identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions
22 are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the
23 Revenue and Taxation Code.

24 (d) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a
25 measure therefor that can be administered and collected by the State Board of Equalization in a

1 manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the
2 existing statutory and administrative procedures followed by the State Board of Equalization in
3 administering and collecting the California State Sales and Use Taxes.

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

9 SEC. 1654. CONTRACT WITH STATE.

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

16 SEC. 1655. TRANSACTIONS TAX RATE.

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

21 SEC. 1656. PLACE OF SALE.

22 For the purposes of this ordinance, all retail sales are consummated at the place of business of
23 the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-
24 of-state destination or to a common carrier for delivery to an out-of-state destination. The gross
25 receipts from such sales shall include delivery charges, when such charges are subject to the state sales

1 and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent
2 place of business in the State or has more than one place of business, the place or places at which the
3 retail sales are consummated shall be determined under rules and regulations to be prescribed and
4 adopted by the State Board of Equalization.

5 SEC. 1657. USE TAX RATE.

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

11 SEC. 1658. ADOPTION OF PROVISIONS OF STATE LAW.

12 Except as otherwise provided in this ordinance and except insofar as they are inconsistent with
13 the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part
14 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted
15 and made a part of this ordinance as though fully set forth herein.

16 SEC. 1659. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE
17 TAXES.

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

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

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

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

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

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

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

13 (4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737,
14 6797 or 6828 of the Revenue and Taxation Code.

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

18 SEC. 1660. PERMIT NOT REQUIRED.

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

21 SEC. 1661. EXEMPTIONS AND EXCLUSIONS.

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

1 **(b)** There are exempted from the computation of the amount of transactions tax the gross
2 receipts from:

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

7 **(2)** Sales of property to be used outside the City and County which is shipped to a
8 point outside the City and County, pursuant to the contract of sale, by delivery to such point by the
9 retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such
10 point. For the purposes of this paragraph, delivery to a point outside the City and County shall be
11 satisfied:

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

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

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

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

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

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

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

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

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

20 (4) If the possession of, or the exercise of any right or power over the tangible
21 personal property arises under a lease which is a continuing purchase of such property for any period
22 of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the
23 operative date of this ordinance.

24 (5) For the purposes of subparagraphs (3) and (4) of this section, storage, use, or
25 other consumption, or possession of, or exercise of any right or power over, tangible personal property

1 shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any
2 party to the contract or lease has the unconditional right to terminate the contract or lease upon notice,
3 whether or not such right is exercised.

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

11 (7) "A retailer engaged in business in the City and County" shall also include any
12 retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing
13 with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section
14 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5
15 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax
16 from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City
17 and County.

18 (d) Any person subject to use tax under this ordinance may credit against that tax any
19 transactions tax or reimbursement for transactions tax paid to a County imposing, or retailer liable for
20 a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to
21 the sale to the person of the property the storage, use or other consumption of which is subject to the
22 use tax.

23 SEC. 1662. AMENDMENT

24 All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the
25 Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part

1 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and
2 Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this
3 ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax
4 imposed by this ordinance.

5 SEC. 1663. ENJOINING COLLECTION FORBIDDEN.

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

10 SEC. 1664. ADOPTION OF EXPENDITURE PLAN.

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

17 SEC. 1665. SEVERABILITY. If any provision of this ordinance or the application thereof to
18 any person or circumstance is held invalid, the remainder of the ordinance and the application of such
19 provision to other persons or circumstances shall not be affected thereby.

20 SEC. 1666. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the
21 City and County transactions and use taxes and shall take effect immediately.

22 SEC. 1667. TERMINATION DATE. The authority to levy the tax imposed by this ordinance
23 shall expire on December 31, 2012.

24 Section 2. Pursuant to Article XIIC of the Constitution of the State of California and
25 Section 7285 of the California Revenue and Taxation Code, this ordinance shall be submitted

1 to the qualified electors of the City and County of San Francisco, at the June 2, 2009 special
2 municipal election. This ordinance shall become operative only if approved by the qualified
3 electors at such election.

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5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

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8 By: _____
9 JEAN ALEXANDER
10 Deputy City Attorney

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