

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Maguire, Interim Executive Director, Municipal Transportation Agency

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: November 5, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on October 29, 2019:

File No. 191107

Ordinance amending the Business and Tax Regulations Code to extend through FY2020-2021 the temporary suspension of the application of the business registration and fee requirements to transportation network company drivers and taxi drivers.

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: erica.major@sfgov.org.

c: Kate Breen, Municipal Transportation Agency
Janet Martinsen, Municipal Transportation Agency
Joel Ramos, Municipal Transportation Agency

1 [Business and Tax Regulations Code - Extending Temporary Suspension of Business
2 Registration and Fee for Transportation Network Company Drivers and Taxi Drivers]

3 **Ordinance amending the Business and Tax Regulations Code to extend through**
4 **FY2020-2021 the temporary suspension of the application of the business registration**
5 **and fee requirements to transportation network company drivers and taxi drivers.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

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

14 Section 1. Background, Purpose, and Findings.

15 (a) The California Constitution gives charter cities, including San Francisco, the power
16 to “make and enforce all ordinances and regulations in respect to municipal affairs, subject
17 only to restrictions and limitations” contained in their own charters. (Cal. Const., art. XI, § 5,
18 subd. (a).) This constitutional power of charter cities to regulate their own municipal affairs
19 without interference from the Legislature has long been held to encompass the power to
20 license and tax local businesses for revenue purposes.

21 (b) In 2017, the Legislature enacted Senate Bill 182 (“SB 182”), the effect of which is
22 to largely immunize automobile drivers who drive for online ride-hailing entities known as
23 transportation network companies (“TNCs”) from local business license requirements. (Cal.
24 Bus. & Prof. Code §§ 16550-16550.2.) Under SB 182, a city – purportedly including a charter
25 city – must allow such a driver to conduct business freely within its borders without obtaining

1 any locally-issued business license, and without paying any business license tax, unless that
2 driver is “domiciled” in that city.

3 (c) On February 8, 2018, the City filed a lawsuit in San Francisco Superior Court
4 challenging the application of SB 182 to San Francisco, as an unlawful violation of the City’s
5 power to regulate its own municipal affairs as guaranteed by the California Constitution. *City*
6 *and County of San Francisco v. State of California* (S.F. Sup. Ct. No. CPF-18-516041). But,
7 in deference to state law and the judicial process, pending the resolution of this litigation, the
8 City intends to ensure that it is not in violation of SB 182.

9 (d) In addition to making the City’s business registration and fee requirements very
10 difficult to administer, SB 182, as applied in San Francisco, would lead to anomalous and
11 unfair results. TNC drivers domiciled outside of the City but providing services in the City
12 would be exempt from the City’s business registration and fee requirements, but (1) TNC
13 drivers domiciled in the City and providing identical services in the City would have to register
14 and pay, and (2) taxi drivers providing very similar services in the City would have to register
15 and pay, regardless of where they were domiciled. To avoid such unfair results, it is in the
16 City’s best interests to temporarily suspend the application of the business registration and fee
17 requirements for all TNC drivers and taxi drivers, whose only business activity in the City is
18 TNC driving or taxi driving, even though this will significantly reduce the City’s business
19 registration fee revenues.

20 (e) Accordingly, in April 2018, the City enacted Ordinance 93-18, which instituted the
21 temporary suspension for fiscal years ending on or before June 30, 2020. The suspension
22 was intended to remain in place through the resolution of the City’s litigation challenging
23 SB 182.

24 (f) On October 18, 2019, the City filed a motion for summary judgment in the City’s
25 litigation challenging SB 182, and a hearing on this motion is currently scheduled for

1 February 4, 2020. Because the litigation challenging SB 182 is ongoing, and because the
2 fees for business registration certificates for the fiscal year ending June 30, 2021, are due by
3 June 1, 2020, this ordinance extends the temporary suspension for an additional year.

4 (g) In applying SB 182 and temporarily suspending the business registration and fee
5 requirements for TNC drivers and taxi drivers, the City is not conceding the validity of SB 182
6 in whole or in part, as applied to the City or as applied elsewhere.

7
8 Section 2. Article 12 of the Business and Tax Regulations Code is hereby amended by
9 revising Section 853, to read as follows:

10
11 **SEC. 853. REGISTRATION CERTIFICATE – REQUIRED.**

12 (a) Except as provided in subsections (d) and (e), no person may engage in business
13 within the City unless the person has obtained a current registration certificate pursuant to this
14 Article 12. Every person engaging in business within the City shall conspicuously display a
15 current registration certificate on the business premises, regardless of whether such person is
16 subject to tax pursuant to the provisions of the Business and Tax Regulations Code.

17 (b) Any organization having a formally recognized exemption from income taxation
18 pursuant to Section 501(c), 501(d), or 401(a) of the Internal Revenue Code of 1986, as
19 amended, as qualified by Sections 502, 503, 504, and 508 of Title 26 of the Internal Revenue
20 Code of 1986, as amended, and engaging in business within the City shall obtain a
21 registration certificate.

22 (c) Failure to obtain a registration certificate shall not absolve any person from
23 payment of any tax imposed or license required by the City.

1 (d) A person receiving rental income in connection with the operation of any of the
2 following shall not, by reason of that fact alone, be required to obtain a registration certificate
3 pursuant to this Article 12:

4 (1) a cooperative housing corporation, as defined in Section 216(b) of the
5 Internal Revenue Code of 1986, as amended;

6 (2) one residential structure consisting of fewer than four units; or

7 (3) one residential condominium.

8 (e) The requirements to obtain a registration certificate and pay a fee under this
9 Article 12 shall be suspended for any driver for a transportation network company and for any
10 taxi driver for registration years 2018-2019, ~~and 2019-2020~~, and 2020-2021. Additionally, the
11 requirements to obtain a registration certificate and pay a fee under this Article 12 shall be
12 suspended for any driver for a transportation network company and for any taxi driver
13 commencing business in the City on or after January 1, 2018, for registration year 2017-2018.
14 The suspensions in this subsection (e) are further qualified and defined solely for purposes of
15 this subsection (e) as follows:

16 (1) The suspensions apply only to drivers whose business activity in the City is
17 limited to transportation network company driving and/or taxi driving.

18 (2) "Transportation network company" has the same meaning as in
19 Section 5431(c) of the California Public Utilities Code.

20 (3) "Taxi" has the same meaning as in Section 1102 of Article 1100 of the
21 Transportation Code.

22 (4) The Board of Supervisors may at any time, by ordinance, extend or
23 terminate the suspensions.

1 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

7
8 Section 4. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

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

15 By:


16 SCOTT M. REIBER
Chief Tax Attorney

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Extending Temporary Suspension of Business Registration and Fee for Transportation Network Company Drivers and Taxi Drivers]

Ordinance amending the Business and Tax Regulations Code to extend through FY2020-2021 the temporary suspension of the application of the business registration and fee requirements to transportation network company drivers and taxi drivers.

Existing Law

In general, the City requires each business operating within the City, including taxi drivers and persons who drive for ride-hailing entities known as transportation network companies (“TNCs”) that are independent contractors, to obtain a registration certificate and pay an annual registration fee. In April 2018, the Board of Supervisors passed Ordinance 93-18, which temporarily suspended these requirements for all TNC drivers and taxi drivers whose only business activity in the City is TNC driving or tax driving for registration years 2018-2019 and 2019-2020, and for registration year 2017-2018 for such TNC drivers and taxi drivers who commenced business in the City on or after January 1, 2018.

Amendments to Current Law

This ordinance would extend the temporary suspension described above to registration year 2020-2021.

Background Information

In 2017, the Legislature enacted Senate Bill 182 (“SB 182”), the effect of which is to largely immunize automobile drivers who drive for TNCs from local business license requirements. SB 182 requires a city, purportedly including a charter city, to allow such a driver to conduct business within its borders without obtaining any locally-issued business license or paying business license tax, unless that driver lives in that city. On February 8, 2018, the City filed a lawsuit in San Francisco Superior Court challenging the validity of SB 182. To ensure that drivers that live in the City are not treated less favorably than drivers that live outside the City, Ordinance 93-18 temporarily suspended the business registration and fee requirements for all TNC drivers pending the resolution of the City’s litigation challenging the validity of SB 182. Ordinance 93-18 also temporarily suspended the business registration and fee requirements for taxi drivers so that they are not treated less favorably than TNC drivers that live outside the City with respect to the City’s business registration and fee requirements.

On October 18, 2019, the City filed a motion for summary judgment in its lawsuit challenging the validity of SB 182. A hearing on that motion is currently scheduled for February 4, 2020.

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