

File No. 180373

Committee Item No. 16

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date July 19, 2018

Board of Supervisors Meeting

Date _____

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Completed by: Linda Wong Date July 13, 2018
 Completed by: Linda Wong Date _____

1 [Initiative Ordinance - Business and Tax Regulations Code - Gross Receipts Tax on
2 Transportation Network Company Services, Private Transit Vehicle Services, and
3 Autonomous Vehicle Passenger Services; Economic Nexus]

4 **Motion ordering submitted to the voters at an election to be held on November 6, 2018**
5 **an ordinance amending the Business and Tax Regulations Code to add a new gross**
6 **receipts tax category for transportation network company services, private transit**
7 **vehicle services, and autonomous vehicle passenger services; revise the application of**
8 **the gross receipts tax for persons engaged in multiple business activities; and expand**
9 **the activities that subject a person to certain business taxes by including persons with**
10 **more than \$500,000 in annual gross receipts in the City; and increasing the City's**
11 **appropriations limit each year by the increase in the amount of those business taxes**
12 **collected compared to the prior year for four years from November 6, 2018.**

13
14 **MOVED, That the Board of Supervisors hereby submits the following ordinance to the**
15 **voters of the City and County of San Francisco, at an election to be held on November 6,**
16 **2018.**

17
18 **Ordinance amending the Business and Tax Regulations Code to add a new gross**
19 **receipts tax category for transportation network company services, private transit**
20 **vehicle services, and autonomous vehicle passenger services; revise the application of**
21 **the gross receipts tax for persons engaged in multiple business activities; and expand**
22 **the activities that subject a person to certain business taxes by including persons with**
23 **more than \$500,000 in annual gross receipts in the City; and increasing the City's**
24 **appropriations limit each year by the increase in the amount of those business taxes**
25 **collected compared to the prior year for four years from November 6, 2018.**

1 NOTE: **Unchanged Code text and uncodified text** are in plain font.
2 **Additions to Codes** are in *single-underline italics Times New Roman font*.
3 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
4 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
5 parts of tables.

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

7 Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this
8 ordinance shall be submitted to the qualified electors of the City and County of San Francisco
9 at the November 6, 2018, consolidated general election.

10 Section 2. Purpose and Findings. The People of the City and County of San Francisco
11 declare their purpose and findings in enacting this ordinance as follows:

12 (a) Promoting and maintaining the City's economic competitiveness requires a high
13 level of investment in the City's infrastructure and operations.

14 (b) The gross receipts tax provides a significant source of the City's revenue for
15 general purposes of the City.

16 (c) As a charter city and to raise revenue for general purposes of the City, the City
17 desires to exercise its sovereign right of taxation under the California Constitution to the
18 maximum extent permissible.

19 (d) Transportation service industries utilizing emerging and new technologies need to
20 pay their fair share of taxes to the City.

21 (e) The addition of a new gross receipts tax category for transportation network
22 company services, private transit vehicle services, and autonomous vehicle passenger
23 services reflects emerging and new technologies that are supplementing or replacing previous
24 business models and recognizes the need to generate revenue to maintain a high quality of
25 life and continued economic growth in the City.

1 (f) On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair*,
2 *Inc.* overturned long-standing precedent and held that a person no longer needs to have
3 physical presence in a taxing jurisdiction to be subject to that jurisdiction's tax. Substantial
4 sales in a jurisdiction is sufficient to subject the seller to tax, even if the seller is not physically
5 present in that jurisdiction. In *Wayfair*, the Court recognized that modern commerce does not
6 align with the outdated physical presence rule. The Court also noted that the physical
7 presence rule has prevented jurisdictions from collecting their share of lawful taxes. The
8 expansion of activities that subject a person to certain business taxes by including persons
9 with more than \$500,000 in annual gross receipts in the City reflects, and is intended to
10 generate revenue from, the modern economy.

11
12 Section 3. The Business and Tax Regulations Code is hereby amended by revising
13 Section 6.2-12 of Article 6, to read as follows:

14
15 **SEC. 6.2-12. NEXUS: "ENGAGING IN BUSINESS WITHIN THE CITY."**

16 The taxes imposed by Article 12-A (Payroll Expense Tax Ordinance), *and* Article 12-A-1
17 (Gross Receipts Tax Ordinance), *and Article 21 (Early Care and Education Commercial Rents Tax*
18 *Ordinance)*, and the registration fee imposed by Article 12 (Business Registration Ordinance)
19 shall apply to any person engaging in business within the City unless exempted therefrom
20 under ~~such~~*said* Articles. A person is "engaging in business within the City," within the meaning
21 of this Article 6, if that person meets one or more of the following conditions:

22 (a) The person maintains a fixed place of business within the City; or

23 (b) An employee, representative, or agent of the person maintains a fixed place of
24 business within the City for the benefit or partial benefit of the person; or
25

1 (c) The person or one or more of the person's employees, representatives, or agents
2 owns, rents, leases, or hires real or personal property within the City for business purposes for
3 the benefit or partial benefit of the person; or

4 (d) The person or one or more of the person's employees, representatives, or agents
5 regularly maintains a stock of tangible personal property within the City, for sale in the
6 ordinary course of the person's business; or

7 (e) The person or one or more of the person's employees, representatives, or agents
8 employs or loans capital on property within the City for the benefit or partial benefit of the
9 person; or

10 (f) The person or one or more of the person's employees, representatives, or agents
11 solicits business within the City for all or part of any seven days during a tax year; or

12 (g) The person or one or more of the person's employees, representatives, or agents
13 performs work or renders services within the City for all or part of any seven days during a tax
14 year; or

15 (h) The person or one or more of the person's employees, representatives, or agents
16 utilizes the streets within the City in connection with the operation of motor vehicles for
17 business purposes for all or part of any seven days during a tax year; or

18 (i) The person or one or more of the person's employees, representatives, or agents
19 exercises corporate or franchise powers within the City for the benefit or partial benefit of the
20 person; or

21 (j) The person or one or more of the person's employees, representatives, or agents
22 liquidates a business when the liquidators thereof hold themselves out to the public as
23 conducting such business; or:-

1 (k) The person has more than \$500,000 in total gross receipts, as the term "gross receipts" is
2 used in Article 12-A-1 of the Business and Tax Regulations Code, in the City during the tax year, using
3 the rules for assigning gross receipts under Section 956.1 of Article 12-A-1.

4
5 Section 4. The Business and Tax Regulations Code is hereby amended by adding
6 Section 953.7.5 to Article 12-A-1 and revising Sections 953, 953.9, and 956, to read as
7 follows:

8
9 **SEC. 953. IMPOSITION OF GROSS RECEIPTS TAX.**

10 (a) Except as otherwise provided under this Article 12-A-1, the City imposes and every
11 person engaging in business within the City shall pay an annual gross receipts tax measured
12 by the person's gross receipts from all taxable business activities attributable to the City.
13 A person's liability for the gross receipts tax shall be calculated according to Sections 953.1
14 through 953.7.5.

15 (b) The gross receipts tax is a privilege tax imposed upon persons engaging in
16 business within the City for the privilege of engaging in a business or occupation in the City.
17 The gross receipts tax is imposed for general governmental purposes. Proceeds from the tax
18 shall be deposited in the City's general fund and may be expended for any purposes of the
19 City.

20 (c) The voters intend by adopting this measure to authorize application of the gross
21 receipts tax in the broadest manner consistent with the provisions of this Article 12-A-1 and the
22 requirements of the California Constitution, the United States Constitution, and any other
23 applicable provision of federal and state law.

24 (d) The gross receipts tax imposed under this Article 12-A-1 is in addition to the payroll
25 expense tax imposed under Article 12-A. Persons not otherwise exempt from the gross

1 receipts tax or payroll expense tax shall pay both taxes. Persons exempt from either the
2 gross receipts tax or payroll expense tax, but not both, shall pay the tax from which they are
3 not exempt.

4 (e) Except for subsection (d) of this Section 953, the tax on Administrative Office
5 Business Activities imposed by Section 953.8 is intended as a complementary tax to the gross
6 receipts tax, and shall be considered a gross receipts tax for purposes of this Article 12-A-1.

7 (f) For a five-year period beginning in 2015, the Treasurer, Controller, and Chief
8 Economist shall jointly prepare an annual report to the Mayor and Board of Supervisors on the
9 implementation of the measure. The report shall include projections of collections of the gross
10 receipts tax, compare these projections to those anticipated in preparation of the measure,
11 and outline impacts of the measure on San Francisco's economy and business community.
12 The report may recommend policy, administrative, or technical changes for the consideration
13 of the Mayor and Board of Supervisors that further the goals established in the measure.

14
15 **SEC. 953.7.5. GROSS RECEIPTS TAX APPLICABLE TO TRANSPORTATION NETWORK**
16 **COMPANY SERVICES, PRIVATE TRANSIT VEHICLE SERVICES, AND AUTONOMOUS**
17 **VEHICLE PASSENGER SERVICES.**

18 (a) Notwithstanding Sections 953.1 through 953.7, inclusive, the base gross receipts tax rate
19 provided by this Section 953.7.5 shall apply to the business activities of transportation network
20 company services, private transit vehicle services, and autonomous vehicle passenger services. The
21 base tax rate provided by this Section 953.7.5 is:

22 .625% (e.g., \$6.25 per \$1,000) for taxable gross receipts between \$0 and \$1,000,000

23 .705% (e.g., \$7.05 per \$1,000) for taxable gross receipts between \$1,000,000.01 and

24 \$2,500,000

1 .87% (e.g., \$8.70 per \$1,000) for taxable gross receipts between \$2,500,000.01 and
2 \$25,000,000

3 .975% (e.g., \$9.75 per \$1,000) for taxable gross receipts between \$25,000,000.01 and
4 \$50,000,000

5 1% (e.g., \$10.00 per \$1,000) for taxable gross receipts over \$50,000,000

6 (b) Persons or combined groups with more than \$50,000,000 in total gross receipts, before any
7 allocation or apportionment, derived from the business activities of transportation network company
8 services, private transit vehicle services, and/or autonomous vehicle passenger services shall not be
9 subject to the administrative office tax under Section 953.8, even if they are engaging in business within
10 the City as an administrative office, as defined in Section 953.8(b), and shall be subject to tax under
11 Sections 953.1 through 953.7.5, as applicable, instead.

12 (c) For purposes of this Section 953.7.5, the following definitions shall apply:

13 "Autonomous vehicle passenger services" means any transportation of passengers offered to
14 the public for compensation using any vehicle, with or without a driver, equipped with and into which
15 has been integrated technology that has the capability to drive a vehicle without the active physical
16 control or monitoring by a human operator.

17 "Private transit vehicle services" means any transportation provided by a private transit
18 vehicle, as that term is defined in Section 1202 of the Transportation Code.

19 "Transportation network company services" means prearranged transportation services, within
20 and outside California, for compensation using any means whatsoever, including but not limited to an
21 online-enabled application or platform or any offline method, to connect passengers with drivers using
22 a personal vehicle, as those terms are defined and used in Section 5431 of the California Public
23 Utilities Code but disregarding references to "California," "this state," and the "commission."

1 (d) The amount of gross receipts from transportation network company services activities and
2 autonomous vehicle passenger services subject to the gross receipts tax shall be one-half of the amount
3 determined under Section 956.1 plus one-half of the amount determined under Section 956.2.

4 (e) The amount of gross receipts from private transit vehicle services activities subject to the
5 gross receipts tax shall be the total amount determined under Section 956.1.

6 (f) As indicated in Section 953(b), the proceeds from the tax collected under this Section
7 953.7.5 can be spent for unrestricted general revenue purposes.

8
9 **SEC. 953.9. PERSONS OR COMBINED GROUPS ENGAGED IN MULTIPLE BUSINESS**
10 **ACTIVITIES.**

11 If a person, or a combined group as described in Section 956.3, engages in business
12 activities described in more than one of Sections 953.1 through 953.7.5, inclusive, of this
13 Article 12-A-1, the rate or rates of gross receipts tax to be applied to that person or group, and
14 the method for determining gross receipts in the City, shall be determined as follows:

15 (a) Tax Years Beginning On or After January 1, 2019. If a person or combined group's total
16 gross receipts, before any allocation or apportionment, derived from business activities described in
17 any of Sections 953.1 through 953.7.5, inclusive, are less than the separate activity threshold, then the
18 gross receipts of any such activities may, at the option of the person or combined group, be combined
19 for all purposes related to computing the gross receipts tax with the gross receipts of that person or
20 combined group derived from business activities described in whichever of Sections 953.1 through
21 953.7.5, inclusive, generated the highest amount of gross receipts for the person or combined group.
22 This subsection (a) is not applicable if the person or combined group did not derive total gross receipts
23 from business activities described in any of Sections 953.1 through 953.7.5, inclusive, that were equal
24 to or higher than the separate activity threshold. For tax year 2019, the separate activity threshold
25 shall be \$10,000. The Tax Collector may increase the separate activity threshold for a particular tax

1 year by specifying a new separate activity threshold prior to the beginning of the tax year if the Tax
2 Collector determines that doing so would improve filing simplicity without significantly reducing tax
3 revenues. If the Tax Collector does not set a new separate activity threshold prior to the beginning of
4 any tax year, the separate activity threshold for that tax year shall be \$10,000, even if the separate
5 activity threshold was higher during the prior tax year. This subsection (a) applies to tax years
6 beginning on or after January 1, 2019.

7 (ab) **Tax Years Beginning Before January 1, 2019.** If more than 80% percent of a person or
8 combined group's gross receipts, determined in accordance with Section 956, are derived
9 from business activities described in only one of Sections 953.1 through 953.7, inclusive, then
10 the rules of that applicable Section apply to all of its gross receipts derived from all business
11 activities. This subsection (b) applies to tax years beginning before January 1, 2019.

12 (bc) If, after any application of subsection (a) or (b) of this Section 953.9, a person or
13 combined group's business activities in the City are still described in more than one of
14 Sections 953.1 through 953.7.5, inclusive, ~~and subsection (a) of this Section 953.9 does not apply,~~
15 then such person or combined group shall separately compute the gross receipts tax for each
16 set of business activities, after any application of subsection (a) or (b) of this Section 953.9, as
17 provided in the Section applicable to that particular set of business activities, modified as
18 follows:

19 ~~(1) if the set of business activities described in any of Sections 953.1 through 953.75,~~
20 ~~inclusive, generates less than 20 percent of the total gross receipts of the person or group, then the~~
21 ~~receipts and payroll of any such set of activities may be combined for all purposes related to computing~~
22 ~~the gross receipts tax with whichever set of that person's or group's activities are taxed at the highest~~
23 ~~rate;~~

24 ~~(2)~~ the small business exemption provided in Section 954.1 shall apply only if
25 the sum of receipts within the City from all sets of business activities does not exceed

1 \$1,000,000 in total, adjusted annually in accordance with the increase in the Consumer Price Index:
2 All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the
3 United States Bureau of Labor Statistics, or any successor to that index, as of December 31 of the
4 preceding year, beginning with December 31, 2014;

5 (32) the progressive rates described in Sections 953.1 through 953.7.5 apply on
6 an aggregate basis for businesses with multiple sets of activities;

7 (43) the applicable rate for each set of business activities shall be determined in
8 numbered order of the Sections describing each set of business activities; i.e., the gross
9 receipts and tax for business activities described in Section 953.1 should be determined first,
10 Section 953.2 second, and so on;

11 (54) the rate(s) applicable to any set of activities after the first shall be
12 determined by adding together the gross receipts determined for all previous sets of activities
13 and applying the rate scale commencing with the total gross receipts so determined; and

14 (65) the gross receipts tax liability for the person or combined group shall be the
15 sum of the liabilities for each set of business activities.

16
17 **SEC. 956. ALLOCATION AND APPORTIONMENT FOR ALL PERSONS DERIVING**
18 **GROSS RECEIPTS FROM BUSINESS ACTIVITIES BOTH WITHIN AND OUTSIDE THE**
19 **CITY.**

20 All persons deriving gross receipts from business activities both within and outside the
21 City shall allocate and/or apportion their gross receipts to the City, using the rules set forth in
22 Sections 956.1 and 956.2, in the manner directed in Sections 953.1 through 953.7.5, inclusive,
23 and in Section 953.9 of this Article.

1 Section 5. In the event that an ordinance is enacted prior to November 6, 2018,
2 amending Section 6.2-12 of Article 6 of the Business and Tax Regulations Code to expand its
3 application to taxes imposed by Article 21 (Early Care and Education Commercial Rents Tax
4 Ordinance) of the Business and Tax Regulations Code, such amendments to Section 6.2-12
5 of Article 6 shall be null and void in their entirety, and the amendments made to Section 6.2-
6 12 of Article 6 by this ordinance shall take effect in their entirety.

7
8 Section 6. Appropriations Limit Increase. Pursuant to California Constitution
9 Article XIII B and applicable laws, for four years from November 6, 2018, the appropriations
10 limit for the City shall be increased each year by the increase in the sum of the amounts
11 collected by the levy of the taxes imposed under Articles 10, 10B, 12, 12-A, and 12-A-1 of the
12 Business and Tax Regulations Code in the current fiscal year compared with the prior fiscal
13 year.

14
15 Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word
16 of this ordinance, or any application thereof to any person or circumstance, is held to be
17 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
18 shall not affect the validity of the remaining portions or applications of the ordinance. The
19 People of the City and County of San Francisco hereby declare that they would have passed
20 this ordinance and each and every section, subsection, sentence, clause, phrase, and word
21 not declared invalid or unconstitutional without regard to whether any other portion of this
22 ordinance or application thereof would be subsequently declared invalid or unconstitutional.


1 Section 8. No Conflict with Federal or State Law. Nothing in this ordinance shall be
2 interpreted or applied so as to create any requirement, power, or duty in conflict with any
3 federal or state law.
4

5 Section 9. Scope of Ordinance. In enacting this ordinance, the People of the City and
6 County of San Francisco intend to amend only those words, phrases, paragraphs,
7 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other
8 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions
9 or deletions, in accordance with the "Note" that appears under the official title of the
10 ordinance.
11

12 Section 10. Effective and Operative Dates. The effective date of this ordinance shall
13 be ten days after the date the official vote count is declared by the Board of Supervisors. This
14 ordinance shall become operative on January 1, 2019.
15

16 APPROVED AS TO FORM:

17 DENNIS J. HERRERA, City Attorney
18

19 By: 
20 KERNE H. O. MATSUBARA
Deputy City Attorney

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23
24
25

LEGISLATIVE DIGEST

(Amended in Committee - Third Draft – 7/12/18)

[Initiative Ordinance - Business and Tax Regulations Code - Gross Receipts Tax on Transportation Network Company Services, Private Transit Vehicle Services, and Autonomous Vehicle Passenger Services; Economic Nexus]

Motion ordering submitted to the voters at an election to be held on November 6, 2018 an ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services, private transit vehicle services, and autonomous vehicle passenger services; revise the application of the gross receipts tax for persons engaged in multiple business activities; and expand the activities that subject a person to certain business taxes by including persons with more than \$500,000 in annual gross receipts in the City; and increasing the City's appropriations limit each year by the increase in the amount of those business taxes collected compared to the prior year for four years from November 6, 2018.

Existing Law

Persons engaged in business in the City, including transportation network companies ("TNCs"), companies providing private transit vehicle ("PTV") services, and providers of autonomous vehicle ("AV") passenger services, currently pay a gross receipts tax to the City. Rates vary by line of business and the amount of the person's taxable gross receipts, and range from 0.075% to 0.65%. If a business conducts multiple lines of business that cross multiple rate schedules, special rules apply depending on whether a business activity accounts for more than 80% of the business's total gross receipts (the "80-20 Rule"), and whether a business activity accounts for less than 20% of the business's total gross receipts (the "20% Rule").

Persons are subject to certain business taxes, including but not limited to business registration, payroll expense, and gross receipts taxes, if they are engaging in business within the City. Persons are considered to be engaging in business in the City if they meet at least one of ten conditions, including maintaining a fixed place of business within the City or soliciting business or providing services in the City for all or part of any seven days during the tax year.

Amendments to Current Law

Effective January 1, 2019, this ordinance would increase the gross receipts tax for TNC services, PTV services, and AV passenger services, by adding a new industry category for such services. The gross receipts tax rates for this industry category would be:

- .625% for taxable gross receipts between \$0 and \$1,000,000;

- .705% for taxable gross receipts between \$1,000,000.01 and \$2,500,000;
- .87% for taxable gross receipts between \$2,500,000.01 and \$25,000,000;
- .975% for taxable gross receipts between \$25,000,000.01 and \$50,000,000; and
- 1% for taxable gross receipts above \$50,000,000.

The existing gross receipts tax rules and procedures, as amended by this ordinance, would apply to taxpayers in this new industry category. The gross receipts tax from this new industry category may be used for the City's general purposes.

Also effective January 1, 2019, this ordinance would replace the 80-20 Rule and the 20% Rule with a *de minimis* rule, by which taxpayers may combine the gross receipts from any business activity that generates less than \$10,000 in total gross receipts with the gross receipts that generate the highest amount of the taxpayer's total gross receipts. The Tax Collector would have the authority to raise the \$10,000 threshold prior to the beginning of a tax year, if the Tax Collector determines that doing so would improve filing simplicity without significantly reducing tax revenues.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.* held that a person no longer needs to have physical presence in a taxing jurisdiction to be subject to that jurisdiction's tax. This ordinance would expand the conditions under which persons are subject to certain business taxes in the City, by also including persons with annual gross receipts in the City exceeding \$500,000, irrespective of physical presence.

This ordinance would increase the City's appropriations limit under Article XIII B each fiscal year by the increase in the amount of those business taxes collected compared to the prior fiscal year, for four years from November 6, 2018.

Background Information

This legislative digest reflects amendments made in committee on May 17, 2018. The amendments added AV passenger services to the new industry category, modified the definition of TNC services, and made other, non-substantive changes.

This legislative digest also reflects amendments made in committee on July 12, 2018. The amendments added a fifth rate tier for the new industry category, expanded the conditions that will subject persons to certain business taxes, removed the proposed elimination of the Central Market Street and Tenderloin Area exclusion, increased the Article XIII B appropriations limit, and made other, non-substantive changes.

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LEGISLATIVE DIGEST

(Amended in Committee - Third Draft – 7/12/18)

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Existing Law

Persons engaged in business in the City, including transportation network companies ("TNCs"), companies providing private transit vehicle ("PTV") services, and providers of autonomous vehicle ("AV") passenger services, currently pay a gross receipts tax to the City. Rates vary by line of business and the amount of the person's taxable gross receipts, and range from 0.075% to 0.65%. If a business conducts multiple lines of business that cross multiple rate schedules, special rules apply depending on whether a business activity accounts for more than 80% of the business's total gross receipts (the "80-20 Rule"), and whether a business activity accounts for less than 20% of the business's total gross receipts (the "20% Rule").

Persons are subject to certain business taxes, including but not limited to business registration, payroll expense, and gross receipts taxes, if they are engaging in business within the City. Persons are considered to be engaging in business in the City if they meet at least one of ten conditions, including maintaining a fixed place of business within the City or soliciting business or providing services in the City for all or part of any seven days during the tax year.

Amendments to Current Law

Effective January 1, 2019, this ordinance would increase the gross receipts tax for TNC services, PTV services, and AV passenger services, by adding a new industry category for such services. The gross receipts tax rates for this industry category would be:

- .625% for taxable gross receipts between \$0 and \$1,000,000;

- .705% for taxable gross receipts between \$1,000,000.01 and \$2,500,000;
- .87% for taxable gross receipts between \$2,500,000.01 and \$25,000,000;
- .975% for taxable gross receipts between \$25,000,000.01 and \$50,000,000; and
- 1% for taxable gross receipts above \$50,000,000.

The existing gross receipts tax rules and procedures, as amended by this ordinance, would apply to taxpayers in this new industry category. The gross receipts tax from this new industry category may be used for the City's general purposes.

Also effective January 1, 2019, this ordinance would replace the 80-20 Rule and the 20% Rule with a *de minimis* rule, by which taxpayers may combine the gross receipts from any business activity that generates less than \$10,000 in total gross receipts with the gross receipts that generate the highest amount of the taxpayer's total gross receipts. The Tax Collector would have the authority to raise the \$10,000 threshold prior to the beginning of a tax year, if the Tax Collector determines that doing so would improve filing simplicity without significantly reducing tax revenues.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.* held that a person no longer needs to have physical presence in a taxing jurisdiction to be subject to that jurisdiction's tax. This ordinance would expand the conditions under which persons are subject to certain business taxes in the City, by also including persons with annual gross receipts in the City exceeding \$500,000, irrespective of physical presence.

This ordinance would increase the City's appropriations limit under Article XIII B each fiscal year by the increase in the amount of those business taxes collected compared to the prior fiscal year, for four years from November 6, 2018.

Background Information

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OFFICE OF THE CONTROLLER
CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield
Controller

Todd Rydstrom
Deputy Controller

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

July 3, 2018

RE: File 180373 - Ordinance amending the Business Tax & Regulations Code – Gross receipts tax on transportation network company services, private transit vehicle services, and autonomous vehicle passenger services

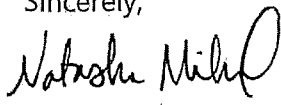
Dear Ms. Calvillo,

Should this ordinance be approved, in my opinion, it would result in a tax revenue increase to the City of an estimated \$15-20 million annually, beginning in fiscal year 2020-21. If recent trends in this emerging sector continue, tax revenue will likely grow more rapidly than other City revenues. The tax is a general tax and proceeds would be deposited into the General Fund.

The ordinance would amend the City's Business Tax and Regulations Code to create a new tax schedule applying to transportation network company services, private transit vehicle services, and autonomous vehicle passenger services of 0.625 percent to 0.975 percent of taxable gross receipts beginning on January 1, 2019. The proposed new schedule has higher rates than each of the seven schedules that now exist, and would result in a tax increase for the affected businesses.

Effective January 1, 2019, the ordinance amends the application of gross receipts tax for persons engaged in multiple business activities. The ordinance would also change the expiration date of the payroll expense tax exclusion and gross receipts tax limit for certain businesses in the Central Market and Tenderloin Area from May 20, 2019 to December 31, 2018.

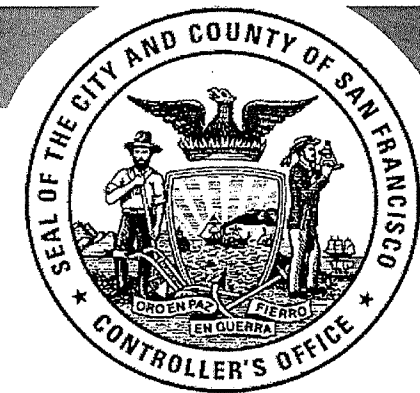
Sincerely,

for 
Ben Rosenfield
Controller

Note: This analysis reflects our understanding of the proposal as of the date shown. At times further information is provided to us which may result in revisions being made to this analysis before the final Controller's statement appears in the Voter Information

Gross Receipts Tax on Transportation Network Company and Private Transit Vehicle Services:

Economic Impact Report



CITY & COUNTY OF SAN FRANCISCO

Office of the Controller

Office of Economic Analysis

Item #180373

05.17.2018

180373

Introduction

- The proposed legislation would place a business tax measure on the November, 2018 ballot in San Francisco. All local tax increases in California must be approved by the voters. In this case, the measure would require a 50% + 1 majority to pass.
- The tax would amend the City's Gross Receipts tax by creating new category of business activity, Transportation Network Services and Private Transit Vehicle Services. Businesses in this category would pay a higher tax rate than they currently do.
- The legislation would also bring forward the expiration of the Central Market and Tenderloin Area Payroll Tax Exclusion that was enacted in 2011, change the taxation rules for businesses operating in more than one industry category, and raise the appropriation limit.
- The Office of Economic Analysis (OEA) has prepared this report after determining that the proposed tax increase might have a material impact on the City's economy. The other provisions of the legislation would not have a significant impact, and are not considered in this report.

Definitions

- The proposed tax would apply to companies doing business in San Francisco, and providing Transportation Network Company Services, or Private Transit Vehicle Services.
- *Transportation Network Company Services* refers to the use of an online-enabled application or platform to connect passengers within drivers using a personal vehicle. This definition is based on the definition of Transportation Network Company (TNC) in the California Public Utilities Code.
- *Private Transit Vehicle Services* means any services provided by a Private Transit Vehicle, which is defined in the City's Transportation Code. Essentially, it is a private, passenger-carrying, road-going vehicle that provides transit services to the public while charging individual fares, which is not regulated by the California Public Utilities Commission (as TNCs are), not a taxi or ambulance, and accepts passengers on a non-pre-arranged basis.

San Francisco Gross Receipts

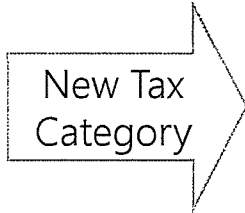
- A State or local government may not tax all of a business's gross receipts, but only the amount that can be fairly apportioned to the jurisdiction.
- San Francisco's Gross Receipts Tax uses three ways to apportion a business's total gross receipts. Different rules apply to different industries:
 - Payroll: the percentage of total gross receipts that is taxable by the City is equal to the percentage of its total payroll that is based in the city.
 - Sales: only sales from within San Francisco are taxable by the City.
 - Sales + Payroll: half of the taxable receipts are based on the Sales method, and half based on the Payroll method.
- In the proposed legislation, Private Transit Vehicle Services would use the Sales method. For Transportation Network Company Services, the Sales + Payroll method would be used.

Gross Receipts Tax Rates

- The City's Gross Receipts Tax levies different rates for businesses in different industries. Within a given industry, higher rates are charged at higher gross receipts tiers.
- Based on the definitions in the proposed legislation, it is likely that many of the affected businesses are currently paying taxes as Information and/or Transportation. Under the proposed tax, they would be reclassified.
- Consequently, their tax rates will rise at each tier by 0.5%, as shown on the next page. At the highest tier, for gross receipts above \$25 million, the tax rate would rise from 0.475% to 0.975%.

Current and Proposed Tax Rates

	Gross Receipts Tier			
	\$0-1M	\$1-2.5M	\$2.5-\$25M	\$25M+
Retail Trade, Wholesale Trade, Certain Services	0.075%	0.100%	0.135%	0.160%
Manufacturing, Transportation/Warehousing, Information, Biotechnology, Clean Technology, Food Services	0.125%	0.205%	0.370%	0.475%
Accommodations, Utilities, Arts/Entertainment/Recreation	0.300%	0.325%	0.325%	0.400%
Private Education/Health Services, Administrative/Support Services, Miscellaneous Business Activities	0.525%	0.550%	0.600%	0.650%
Construction	0.300%	0.350%	0.400%	0.450%
Financial Services, Insurance, Professional/Scientific/Technical Services	0.400%	0.460%	0.510%	0.560%
Real Estate/Rental/Leasing Services	0.285%	0.285%	0.300%	0.300%
Transportation Network Company/Private Transit Vehicle Services	0.625%	0.705%	0.870%	0.975%



Economic Impact Factors

- On one hand, the proposed tax would raise the cost to affected businesses of operating and generating gross receipts in San Francisco. Because San Francisco gross receipts are generated by maintaining payroll and incurring sales in the city, as well as overall business growth, the proposed tax would create a disincentive to locate jobs and do business in the city.
- To the extent that affected businesses reduce employment and operations in San Francisco, this would generate negative multiplier effects in the city's economy, and tend to contract it.
- As a General Tax, the revenue from the proposed tax would be deposited in the General Fund for any government purpose. The additional local government spending would generate positive multiplier effects throughout the local economy, creating an economic stimulus.
- The net economic impact of the proposed tax results from the relative strength of these positive and negative multiplier effects.

Revenue Estimates

- TNCs and Private Transit Vehicle services revenues cannot be determined from standard economic statistics. Because of this, the revenue estimate in this report is subject to considerable uncertainty.
- However, Uber and Lyft are large businesses in San Francisco which are known to be regulated as Transportation Network Companies as defined by the CPUC, and thus would be subject to the tax.
- Based on the current state of the industry, Uber and Lyft would likely be the source of the vast majority of the tax's new revenue.
- Based on publicly-reported information from these business activities, we estimate the proposed tax would generate \$32 million in revenue each year. However, because of the uncertainty, actual revenues could vary substantially from this estimate.
- As global companies headquarters in the city, both companies reportedly have a higher share of their payroll in the city than sales. Given the proposed apportionment rules discussed earlier, this means their employment base in the city would have a major impact on their tax obligation.

General Fund Spending

- San Francisco's \$5.1 billion General Fund can be broken down by uses as follows, according to the FY 2017-18 adopted budget:
 - Personnel 45.4%
 - Non-Personnel Operating Costs 15.8%
 - Aid Assistance 7.4%
 - Grants 6.4%
 - Transfers from General Fund 20.8%
 - Capital & Equipment 4.3%
- Excluding transfers, and accounting for 50% of City employees who live outside of San Francisco, a \$32 million increase to the General Fund would generate approximately \$9 million in direct economic benefits from employee compensation in San Francisco, and \$14 million in additional spending on Social Services, Construction, and Professional Services.

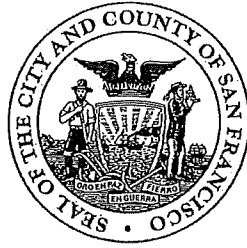
Economic Impact Assessment

- Using REMI, we modeled the economic costs of the tax against the benefits of the increased spending through the City's General Fund.
- Overall, on average over a 20-year period, the impact was slightly negative, with an average loss of 150 jobs. About 70 jobs are projected to be lost in the Information sector, with remainder distributed across other sectors. The Health Care and Social Services sector is projected to add jobs, given the City's General Fund support of those activities.
- To put these figures into context, the tax would result in about a 0.1% to 0.2% average reduction in employment and value added for the Information sector as a whole, with much smaller impacts on the other sectors of the local economy. Of course, the impacts on the individual companies affected by the tax would be greater.

Conclusions

- Our analysis suggests the economic impact of the tax is negative, but small in the context of the overall city economy, with the contracting effects of limiting employment and compensation in the Information sector slightly outweighing the benefits of increased spending.
- Relatively few businesses are likely to be affected. Only one business, Uber, would likely account for the vast majority of the tax revenue, at least at present.
- Future tax revenue will be sensitive to the overall trends of an emerging industry. Growth has been rapid in recent years, and with continued growth, revenue could far exceed the estimate in this report. On the hand, changes in technology or regulation could make the categories in the proposed tax less relevant, leading to less-than-expected revenue in the future.
- Furthermore, the tax burden of large TNCs under the proposed tax would be highly sensitive to where their employees work. If businesses react to the tax by relocating more jobs out of San Francisco than anticipated, the City could experience a greater negative economic impact, and an erosion of its business tax base.

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

May 24, 2018

File No. 180373-2

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear Ms. Gibson:

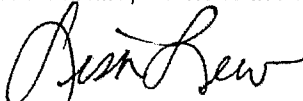
On May 17, 2018, Supervisor Peskin amended legislation for the following proposed Initiative Ordinance for the November 6, 2018, Election:

File No. 180373-2

Motion ordering submitted to the voters at an election to be held on November 6, 2018 an Ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services, private transit vehicle services, and autonomous vehicle passenger services, revise the application of the gross receipts tax for persons engaged in multiple business activities, and eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain persons in the Central Market Street and Tenderloin Area; and increasing the City's appropriations limit by the amount collected under the new gross receipts tax category for four years from November 6, 2018.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

for By: 
Linda Wong, Assistant Clerk
Budget and Finance Sub-Committee

Attachment

c: Joy Navarrete, Environmental Planner
Laura Lynch, Environmental Planner

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Joy Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org, c=US
Date: 2018.06.01 14:13:44 -0700

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

April 19, 2018

File No. 180373

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear Ms. Gibson:

On April 10, 2018, Supervisor Peskin introduced legislation for the following proposed Initiative Ordinance for the November 6, 2018, Election:

File No. 180373

Motion ordering submitted to the voters at an election to be held on November 6, 2018, an Ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services and private transit vehicle services, revise the application of the gross receipts tax for persons engaged in multiple business activities, and eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain persons in the Central Market Street and Tenderloin Area; and increasing the City's appropriations limit by the amount collected under the new gross receipts tax category for four years from November 6, 2018.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

Linda Wong
for By: Linda Wong, Assistant Clerk
Budget and Finance Sub-Committee

Attachment

c: Joy Navarrete, Environmental Planner
Laura Lynch, Environmental Planner

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Joy Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org, c=US
Date: 2018.04.30 16:11:17 -0700

Wong, Linda (BOS)

From: Navarrete, Joy (CPC)
Sent: Monday, April 30, 2018 4:12 PM
To: Lew, Lisa (BOS)
Cc: Lynch, Laura (CPC); Wong, Linda (BOS)
Subject: RE: BOS Referral: File No. 180373 - Initiative Ordinance - Business and Tax Regulations Code - Gross Receipts Tax on Transportation Network Company Services and Private Transit Vehicle Services
Attachments: 180373 CA CEQA.pdf

Here's 180373

Joy Navarrete. Principal Environmental Planner
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103
P. 415-575-9040 F. 415-558-6409
www.sfplanning.org

From: Lew, Lisa (BOS)
Sent: Thursday, April 19, 2018 8:44 AM
To: Gibson, Lisa (CPC)
Cc: Navarrete, Joy (CPC); Lynch, Laura (CPC); Wong, Linda (BOS)
Subject: BOS Referral: File No. 180373 - Initiative Ordinance - Business and Tax Regulations Code - Gross Receipts Tax on Transportation Network Company Services and Private Transit Vehicle Services

Hello,

The following proposed legislation is being transmitted to you for environmental review:

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Sent on behalf of Linda Wong, Budget and Finance Sub-Committee. Please respond directly to Linda Wong.

Regards,

Lisa Lew
Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
P 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

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

May 24, 2018

File No. 180373-2

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear Ms. Gibson:

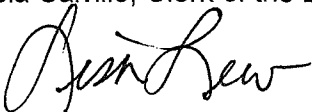
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Angela Calvillo, Clerk of the Board

for 
By: Linda Wong, Assistant Clerk
Budget and Finance Sub-Committee

Attachment

c: Joy Navarrete, Environmental Planner
Laura Lynch, Environmental Planner


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: Ben Rosenfield, City Controller, Office of the Controller

FROM:  Linda Wong, Assistant Clerk, Budget and Finance Sub-Committee
Board of Supervisors

DATE: May 24, 2018

SUBJECT: AMENDED INITIATIVE ORDINANCE INTRODUCED
November 6, 2018 Election

The Board of Supervisors' Budget and Finance Sub-Committee has received the following amended Initiative Ordinance for the November 6, 2018, Election, introduced by Supervisor Peskin on May 17, 2018. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 180373-2

Motion ordering submitted to the voters at an election to be held on November 6, 2018 an Ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services, private transit vehicle services, and autonomous vehicle passenger services, revise the application of the gross receipts tax for persons engaged in multiple business activities, and eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain persons in the Central Market Street and Tenderloin Area; and increasing the City's appropriations limit by the amount collected under the new gross receipts tax category for four years from November 6, 2018.

Please review and prepare a financial analysis of the proposed measure prior to the first Budget and Finance Sub-Committee hearing.

If you have any questions or concerns, please call me at (415) 554-7719 or email: linda.wong@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: Todd Rydstrom, Deputy City Controller
Peg Stevenson, City Performance Director

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

DATE: May 24, 2018

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

The Board of Supervisors' Budget and Finance Sub-Committee has received the following amended 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. 180373-2

Motion ordering submitted to the voters at an election to be held on November 6, 2018 an Ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services, private transit vehicle services, and autonomous vehicle passenger services, revise the application of the gross receipts tax for persons engaged in multiple business activities, and eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain persons in the Central Market Street and Tenderloin Area; and increasing the City's appropriations limit by the amount collected under the new gross receipts tax category for four years from November 6, 2018.

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


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: Andres Power, Liaison to the Board of Supervisors, Mayor's Office
Jon Givner, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission
Naomi Kelly, City Administrator, Office of the City Administrator
Jose Cisneros, Treasurer, Office of the Treasurer & Tax Collector

FROM:  Linda Wong, Assistant Clerk, Budget and Finance Sub-Committee
Board of Supervisors

DATE: May 24, 2018

SUBJECT: AMENDED INITIATIVE ORDINANCE INTRODUCED
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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) 554-7719 or email: linda.wong@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: Shahde Tavakoli, Mayor's Office
 Kyle Kundert, Ethics Commission
 Lynn Khaw, Office of the City Administrator
 Lihmeei Leu, Office of the City Administrator
 Amanda Kahn Fried, Office of the Treasurer & Tax Collector


BOARD of SUPERVISORS



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Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO:  Ben Rosenfield, City Controller, Office of the Controller

FROM:  Linda Wong, Assistant Clerk, Budget and Finance Sub-Committee
Board of Supervisors

DATE: April 19, 2018

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
November 6, 2018 Election

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c: Todd Rydstrom, Deputy City Controller
Peg Stevenson, City Performance Director

BOARD of SUPERVISORS



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TDD/TTY No. 554-5227

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Small Business Commission, City Hall, Room 448

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

DATE: April 19, 2018

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RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

- No Comment
- Recommendation Attached

Chairperson, Small Business Commission

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
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MEMORANDUM

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Jon Givner, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission
Naomi Kelly, City Administrator, Office of the City Administrator
Jose Cisneros, Treasurer, Office of the Treasurer & Tax Collector

FROM: *ll*
for Linda Wong, Assistant Clerk, Budget and Finance Sub-Committee
Board of Supervisors

DATE: April 19, 2018

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c: Shahde Tavakoli, Mayor's Office
Kyle Kundert, Ethics Commission
Lynn Khaw, Office of the City Administrator
Lihmeei Leu, Office of the City Administrator
Amanda Kahn Fried, Office of the Treasurer & Tax Collector

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2018 APR 10 PM 4:30
Time stamp
or meeting date

BY AK

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Supervisor Peskin

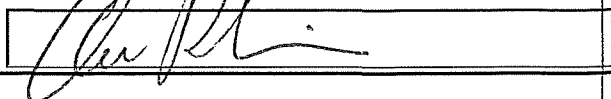
Subject:

[Initiative Ordinance - Business and Tax Regulations Code - Gross Receipts Tax on Transportation Network Company Services and Private Transit Vehicle Services]

The text is listed:

Motion ordering submitted to the voters at an election to be held on November 6, 2018 an ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services and private transit vehicle services, revise the application of the gross receipts tax for persons engaged in multiple business activities, and eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain persons in the Central Market Street and Tenderloin Area; and increasing the City's appropriations limit by the amount collected under the new gross receipts tax category for four years from November 6, 2018.

Signature of Sponsoring Supervisor:



For Clerk's Use Only