


BOARD of SUPERVISORS



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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: July 18, 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 July 12, 2018. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 180373-3

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.

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
 Patrick Ford, 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

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:-
24
25

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 953.7.5,
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 Section~~s~~ 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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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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