

1 [Business and Tax Regulations Code - Repealing Article 3 Regarding Transient Merchants]

2
3 **Ordinance amending the Business and Tax Regulations Code to repeal Article 3, which**
4 **contains a license requirement and tax on transient merchants, both of which have**
5 **been suspended.**

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. The purpose of this ordinance is to repeal Article 3 of the Business and Tax
15 Regulations Code. By Ordinance 117-00, effective in June 2000, the Board of Supervisors
16 amended Article 3 to add Section 258, which suspended the operation of Article 3 in its
17 entirety. The suspension has continued uninterrupted since June 2000.

18 Section 2. The Business and Tax Regulations Code is hereby amended by deleting
19 Article 3, consisting of Sections 250, 251, 251.1, 252, 253, 254, 255, 256, 257, and 258, as
20 follows:

21
22 **~~ARTICLE 3: TRANSIENT MERCHANTS~~**

23 **~~SEC. 250. TRANSIENT MERCHANTS LICENSE REQUIRED.~~**

24 *~~Except as otherwise provided in Section 258 of this Article, it shall be unlawful for a transient~~*
25 *~~merchant as defined in Section 251 of this Article to engage in such business within the City and~~*

1 *County of San Francisco without obtaining a license therefor in compliance with the provisions of this*
2 *Article.*

3 *The provisions of the Article may be enforced by the issuance of citations under Section 6.19-1,*
4 *and following, of Article 6 of Part III of the San Francisco Municipal Code.*

5
6 ***SEC. 251. "TRANSIENT MERCHANT" DEFINED.***

7 *For the purposes of this Article, a "transient merchant" is defined as any person, firm or*
8 *corporation, whether as owner, agent, consignee or employee, whether a resident of the City or not,*
9 *who engages in a temporary business of selling and delivering goods, wares and merchandise, other*
10 *than food or food products, within said City and County, and who, in furtherance of such purpose,*
11 *hires, leases, uses or occupies any building, structure, shop, tent, railroad boxcar, boat, or room in any*
12 *hotel, motel, auto court, lodginghouse or apartment, within the City, for the exhibition and sale of such*
13 *goods, wares and merchandise provided that such definition shall not be construed to include any*
14 *person, firm or corporation who while occupying such location does not sell from stock, but exhibits*
15 *samples only for the purpose of securing orders for future delivery, and further shall not include sales*
16 *at public auction regulated by the provisions of the Police Code and Part III of the San Francisco*
17 *Municipal Code, nor sale of Christmas trees or pumpkins. For purposes of this Article 3, the term*
18 *"temporary business" shall mean a business conducted for less than seven (7) days in any calendar*
19 *year. Any business conducted for seven (7) days or more in any calendar year must obtain a business*
20 *tax registration certificate in accordance with the provisions of Part III of the San Francisco Municipal*
21 *Code, to the extent applicable, including without limitation Section 1003 of Article 12-B.*

22
23 ***SEC. 251.1. NOTIFICATION OF TRANSIENT MERCHANT ACTIVITY TO TAX COLLECTOR.***

24 *(a) Every person, firm or corporation engaged in the business of renting or leasing out any*
25 *building, structure, shop, tent, railroad boxcar, boat, room in any hotel, motel, auto court,*

1 ~~lodginghouse, or apartment, within the City and County who knowingly rents such property or any~~
2 ~~portion thereof to a transient merchant (as defined in Section 251 of this article) shall notify the Tax~~
3 ~~Collector within 10 days prior to the exhibition and sale of goods, wares and merchandise for which~~
4 ~~the transient merchant has engaged this space, or within 10 days of registration to rent space to~~
5 ~~conduct commercial activity as a transient merchant in any case where the registration occurs less than~~
6 ~~10 days prior to the use of the rented space, that such activity is scheduled to take place, including the~~
7 ~~name, local and permanent address of the merchant and the nature of the items to be sold. For~~
8 ~~purposes of this section, "transient merchant" shall not include an exhibitor at a conference or~~
9 ~~convention, the primary purpose of which is other than the direct sale of goods, wares or merchandise.~~

10 ~~(b) The Tax Collector may seek such court orders as may be necessary to obtain information~~
11 ~~on rentals to transient merchants required to be disclosed hereby.~~

12 ~~(c) The Tax Collector may establish rules and regulations for the administration of the~~
13 ~~purposes of this section, including the form on which transient merchant information is to be provided~~
14 ~~to the Tax Collector. Before issuing or amending any rules or regulations, the Tax Collector shall~~
15 ~~provide a 30-day public comment period by providing published notice in an official newspaper of~~
16 ~~general circulation in the City and County of the intent to issue or amend the rules or regulations.~~

17 ~~(d) One year after this ordinance goes into effect the Tax Collector shall report to the Board of~~
18 ~~Supervisors on the implementation and enforcement of this ordinance, and shall present any~~
19 ~~recommendations for changes to the ordinance that would be beneficial and appropriate.~~

20
21 **~~SEC. 252. APPLICATION FOR LICENSE.~~**

22 ~~All persons required to apply for a license under this Article, whether an individual, firm or~~
23 ~~corporation, shall file a written application, signed by the applicant if an individual, by all partners if a~~
24 ~~partnership, and by a duly authorized officer if a corporation, with the Tax Collector, showing:~~

1 (a) ~~The name or names of the person or persons having the management and supervision of~~
2 ~~applicant's business during the time that it is proposed that it will be carried on in the City and County;~~
3 ~~the local address of such person or persons while engaged in such business; the permanent address of~~
4 ~~such person or persons; the capacity in which such person or persons will act (that is, whether~~
5 ~~proprietor, agent or otherwise); the name and address of the person, firm or corporation for whose~~
6 ~~account the business will be carried on, if any; and if a corporation, under the laws of what state the~~
7 ~~same is incorporated;~~

8 (b) ~~The place or places in the City where it is proposed to carry on applicant's business, and~~
9 ~~the length of time during which it is proposed that said business shall be conducted;~~

10 (c) ~~A statement of the nature, character and quality of the goods, wares or merchandise to be~~
11 ~~sold or offered for sale by applicant in the City, the invoice value and quality of such goods, wares and~~
12 ~~merchandise, where goods, wares or merchandise are manufactured or produced, and where such~~
13 ~~goods, wares or merchandise are located at the time the application is filed;~~

14 (d) ~~Such other information as the Tax Collection requires in order to properly administer and~~
15 ~~enforce the provisions of this Article.~~

16
17 **~~SEC. 253. LICENSE FEES.~~**

18 (a) ~~Except as provided in paragraph (b) below, licenses under this Article shall be issued on a~~
19 ~~quarterly basis and the licensee shall pay a minimum quarterly fee of \$500 at the time the license is~~
20 ~~applied for and before it is issued and thereafter, and in addition thereto, a fee based on gross sales,~~
21 ~~which shall be at the rate of 10 percent of the gross receipts in excess of \$5,000 from sales made during~~
22 ~~the quarter.~~

23 (b) ~~During the suspension period, as defined in paragraph (c) of Section 258 of this Article,~~
24 ~~the licensee shall pay a flat quarterly fee of \$150 at the time the license is applied for and, thereafter,~~
25 ~~shall not be required to pay the fee based on gross sales described in paragraph (a) above.~~

1 **~~SEC. 254. REPORTS AND PAYMENT OF ADDITIONAL LICENSE FEES.~~**

2 ~~(a) Except as otherwise provided in paragraph (b) below, every person, firm or corporation~~
3 ~~that is conducting a temporary business as a transient merchant shall file with the Tax Collector a~~
4 ~~report at the end of the quarterly license period or within three days of the last day of doing business in~~
5 ~~the City and County as a transient merchant, showing the amount of gross receipts during the quarter~~
6 ~~for which the license was issued, and shall at the same time pay the additional fees, if any, based on 10~~
7 ~~percent of gross receipts in excess of \$5,000 from sales during that quarter.~~

8 ~~The Tax Collector, or any officer or employee of the City and County authorized by him, may~~
9 ~~examine the books, papers, records and equipment of any licensed transient merchant doing business in~~
10 ~~the City and County to verify the accuracy of any return made, or if no return is made, to ascertain and~~
11 ~~determine the amount required to be paid under the provisions of this Article.~~

12 ~~Every transient merchant doing business in this City and County shall keep such records,~~
13 ~~receipts, invoices and other pertinent papers in such form as the Tax Collector may require.~~

14 ~~(b) During the suspension period, as defined in paragraph (c) of Section 258 of this Article, no~~
15 ~~transient merchant shall be required to file with the Tax Collector the report nor pay the additional fees~~
16 ~~described in paragraph (a) above.~~

17
18 **~~SEC. 255. BOND.~~**

19 ~~Every transient merchant as defined in Section 251 of this Article that is required to obtain a~~
20 ~~license under Section 250 of this Article shall file with the Tax Collector a bond in the sum of \$5,000~~
21 ~~before any license shall be issued, which shall run to the City and County of San Francisco and to any~~
22 ~~person, firm or corporation who shall sustain any injury or loss covered by the bond. Such bond shall~~
23 ~~be executed by the applicant as principal, and by a corporation or association which is licensed by the~~
24 ~~Insurance Commissioner of this State to transact the business of fidelity and surety insurance, as~~
25 ~~surety.~~

1 *The bond shall be conditioned that the applicant shall comply fully with all the provisions of the*
2 *ordinances of the City and County and laws of the State of California regulating and concerning the*
3 *sales of goods, wares and merchandise and will pay all judgments rendered against said applicant for*
4 *any violation of said ordinances or statutes, or any of them, together with all judgments and costs that*
5 *may be recovered against applicant by any person or persons for damage growing out of any*
6 *misrepresentation or deception practiced on any person transacting such business with such applicant,*
7 *whether said misrepresentations or deceptions were made or practiced by the owners or by their*
8 *agents, servants or employees, either at the time of making the sale or through any advertisement of*
9 *any character whatsoever printed or circulated with reference to the goods, wares and merchandise*
10 *sold, or any part thereof.*

11 *The City and County may bring an action upon the bond for the recovery of any damage*
12 *sustained by it, and also any person, firm or corporation who sustains any injury or loss covered by the*
13 *bond may, in addition to any other remedy that he may have, bring an action in his own name upon the*
14 *bond for the recovery of any damage sustained by him; provided, however, that no such action may be*
15 *brought and maintained after the expiration of one year from and after the date the alleged act*
16 *complained or occurred.*

17 *The aggregate liability of the surety for any and all claims which may arise under such bond*
18 *shall in no event exceed the amount of the penalty of such bond regardless of the length of time it shall*
19 *remain in force or the number of renewal licenses issued thereunder.*

20
21 ***SEC. 256. POSTING OF LICENSE.***

22 *The Tax Collector shall issue to each qualified applicant a license to operate as a transient*
23 *merchant and the license shall be posted conspicuously in the place of business named therein. In the*
24 *event the applicant desires to do business in more than one place within the City, separate licenses may*
25 *be issued for each place of business and shall be posted conspicuously in each place of business.*

1 **~~SEC. 257. PENALTY.~~**

2 ~~(a) Except as otherwise provided in paragraph (b) below, any person violating any of the~~
3 ~~provisions of this Article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be~~
4 ~~punished by a fine of not more than \$500 or by imprisonment in the County Jail for not more than six~~
5 ~~months, or by both such fine and imprisonment.~~

6 ~~(b) During the suspension period, as defined in paragraph (c) of Section 258 of this Article,~~
7 ~~paragraph (a) above shall not apply to transient merchants.~~

8
9 **~~SEC. 258. SUSPENSION OF LICENSING AND OTHER REQUIREMENTS.~~**

10 ~~(a) Notwithstanding the other provisions of this Article, no transient merchant shall be~~
11 ~~required to (i) apply for a license under Section 252, (ii) obtain a license under Section 250, or (iii) file~~
12 ~~a bond under Section 255, during the suspension period provided in subsection (b).~~

13 ~~(b) The suspension period shall be that period commencing on the effective date of this~~
14 ~~ordinance and ending thirty (30) days after its repeal.~~

15
16 Section 3. Effective Date. This ordinance shall become effective 30 days after
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
19 of Supervisors overrides the Mayor’s veto of the ordinance.

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21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 Scott M. Reiber
25 Deputy City Attorney

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