

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

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

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

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

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

20 SEC. 1650. TITLE.

21 *This ordinance shall be known as the Emergency Health and Public Safety Services*  
22 *Preservation Transactions and Use Tax Ordinance. The City and County of San Francisco, hereinafter*  
23 *shall be called "City and County." This ordinance shall be applicable in the City and County.*  
24  
25

1           SEC. 1651. FINDINGS.

2           Based on the following factors, the Board of Supervisors hereby finds that an actual emergency  
3 exists that requires imposing a transactions (sales) and use tax at the rate of 0.50% for a period of  
4 three years, to provide ~~additional~~ support for emergency health and human services and public  
5 protection to residents of the City and County of San Francisco:

6           (a) The fiscal crisis impacting the nation and the state has affected San Francisco as well. The  
7 City has been hit by a sudden and precipitous drop in local revenues below the adopted budget levels.

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

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

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

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

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

7 SEC. 1652. OPERATIVE DATE.

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

10 SEC. 1653. PURPOSE.

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

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

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

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

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

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

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

9 SEC. 1654. CONTRACT WITH STATE.

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

16 SEC. 1655. TRANSACTIONS TAX RATE.

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

21 SEC. 1656. PLACE OF SALE.

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

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

5 SEC. 1657. USE TAX RATE.

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

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

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

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

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

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

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

24 (2) The result of that substitution would require action to be taken by or against the City  
25 and County or any agency, officer, or employee thereof rather than by or against the State

1 Board of Equalization, in performing the functions incident to the administration or operation  
2 of this Ordinance.

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

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

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

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

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

18 SEC. 1660. PERMIT NOT REQUIRED.

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

21 SEC. 1661. EXEMPTIONS AND EXCLUSIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1                   (5) For the purposes of subparagraphs (3) and (4) of this section, storage,  
2                   use, or other consumption, or possession of, or exercise of any right or power over, tangible  
3                   personal property shall be deemed not to be obligated pursuant to a contract or lease for any  
4                   period of time for which any party to the contract or lease has the unconditional right to  
5                   terminate the contract or lease upon notice, whether or not such right is exercised.

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

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

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

1           SEC. 1662. AMENDMENT

2           All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2  
3 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with  
4 Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6  
5 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this  
6 ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax  
7 imposed by this ordinance.

8           SEC. 1663. ENJOINING COLLECTION FORBIDDEN.

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

13           SEC. 1664. ADOPTION OF EXPENDITURE PLAN.

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

20           SEC. 1665. SEVERABILITY.

21           If any provision of this ordinance or the application thereof to any person or  
22 circumstance is held invalid, the remainder of the ordinance and the application of such provision to  
23 other persons or circumstances shall not be affected thereby.

24           SEC. 1666. EFFECTIVE DATE.

1                    This ordinance relates to the levying and collecting of the City and County transactions  
2 and use taxes and shall take effect immediately.

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4  
5                    SEC. 1667. TERMINATION DATE.

6                    The authority to levy the tax imposed by this ordinance shall expire on December 31,  
7 2012.

8                    Section 2. Pursuant to Article XIIC of the Constitution of the State of California and  
9 Section 7285 of the California Revenue and Taxation Code, this ordinance shall be submitted  
10 to the qualified electors of the City and County of San Francisco, at the June 2, 2009 special  
11 municipal election. This ordinance shall become operative only if approved by the qualified  
12 electors at such election.

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

16 By: \_\_\_\_\_  
17        JEAN ALEXANDER  
18        Deputy City Attorney