

1 [San Francisco Special Tax Financing Law.]

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3 **Ordinance to amend the San Francisco Administrative Code Special Tax Financing**
4 **Law, constituting Article 43.10, to authorize water conservation and water pollution**
5 **control equipment and improvements as facilities eligible for funding through the**
6 **formation of special tax districts, the imposition of special taxes, and the issuance of**
7 **bonds secured by special tax funds and related technical amendments.**

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9 Note: Additions are single-underline italics Times New Roman;
10 deletions are ~~strikethrough italics Times New Roman~~.
11 Board amendment additions are double underlined.
12 Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. FINDINGS.

15 The Board of Supervisors of the City and County of San Francisco hereby finds,
16 determines and declares:

17 A. Global warming and persistent droughts pose a serious threat to the
18 economic well-being, public health, natural resources, and the environment of the City, and
19 that action taken by the City to reduce emissions of greenhouse gases will have far reaching
20 effects by encouraging its citizens and other cities and counties and the State of California,
21 among others, to pursue similar actions.

22 B. The City has a strong tradition of environmental leadership and desires to
23 be at the forefront of state, national and international efforts to reduce emissions of
24 greenhouse gases, and in furtherance of these efforts to reduce emissions of greenhouse
25 gases, the Board of Supervisors hereby declares that a public purpose will be served by using
special tax districts to finance the installation of energy efficiency and renewable energy
capital improvements to residential, commercial, industrial, or other property.

1 C. The Board of Supervisors further finds and declares that growing
2 population, climate change, and the need to protect and grow the City's economy while
3 protecting and restoring fish and wildlife habitats makes it essential that the City and County
4 manage its water resources as efficiently as possible.

5 D. Article X, Section 2 of the California Constitution declares: "It is hereby
6 declared that because of the conditions prevailing in this State the general welfare requires
7 that the water resources of the State be put to beneficial use to the fullest extent of which they
8 are capable, and that the waste or unreasonable use or unreasonable method of use of water
9 be prevented, and that the conservation of such waters is to be exercised with a view to the
10 reasonable and beneficial use thereof in the interest of the people and for the public welfare."

11 E. The Board of Supervisors has passed Ordinance Nos. 76-09 and 77-09
12 to adopt new rules for the installation and/or retrofitting of privately-owned water conservation
13 devices to better "allow San Francisco's economy and population to prosper without placing
14 additional demands on this valuable resource."

15 F. Reduced water use through conservation provides significant energy and
16 environmental benefits, and can help protect water quality, improve streamflows, and reduce
17 greenhouse gas emissions.

18 G. The City continues to pursue the improved operation of its stormwater
19 and wastewater management systems to better safeguard bodies of water within and in
20 proximity to the City.

21 H. Although many of these potential improvements to the City's stormwater
22 and wastewater management systems focus on public infrastructure, there are also
23 improvements to privately-owned property that would assist in the efficient and effective
24 operation of the City's water treatment and management systems.

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1 I. There are many water conservation practices that produce significant
2 energy and other resource savings that should be encouraged as a matter of state policy,
3 and the Board of Supervisors declares that a public purpose will be served by using special
4 taxes to finance the installation of water conservation and pollution control improvements that
5 are attached to residential, commercial, industrial, or other property.

6 Section 2. The San Francisco Administrative Code is hereby amended by amending
7 Chapter 43, to read as follows:

8 SEC. 43.10.1. TITLE.

9 This Article may be cited as the Special Tax Financing Law.

10 SEC. 43.10.2. PURPOSE.

11 This Article provides an alternative method of financing certain public and private
12 capital facilities and municipal services.

13 SEC. 43.10.3. FULL AUTHORITY.

14 This Article is full authority for the City to undertake the matters specified herein.

15 SEC. 43.10.4. ADDITIONAL AUTHORITY.

16 This Article is adopted pursuant to Section 1.01 of the Charter of the City. In
17 proceedings had pursuant to this Article, which are a municipal affair, any general laws
18 referred to in this Article are deemed a part of this Article. The provisions of this Article shall
19 not affect or limit any other provisions of law authorizing or providing for the furnishing of
20 public and private capital facilities or services, or the raising of revenue for these purposes.
21 The City and County may use the provisions of this Article instead of or in conjunction with
22 any other method of financing a part or all of the cost of providing the authorized kinds of
23 public and private capital facilities and municipal services.

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1 SEC. 43.10.5. ACTIONS AND DETERMINATIONS.

2 The Board of Supervisors may take any actions or make any determinations which it
3 determines are necessary or convenient to carry out the purposes of this Article and which are
4 not otherwise prohibited by law.

5 SEC. 43.10.6. COMPLIANCE WITH ARTICLE.

6 Any proceedings taken or special taxes levied pursuant to this Article shall not be held
7 invalid for failure to comply with the provisions of this Article provided such failure is not a
8 constitutional defect.

9 SEC. 43.10.7. NECESSARY OR CONVENIENT PROCEDURE AUTHORIZED.

10 Any procedure not expressly set forth in this Article but deemed necessary or
11 convenient to carry out any of its purposes is authorized.

12 SEC. 43.10.8. NONEXCLUSIVENESS OF REMEDIES.

13 The remedies provided in this Article for the enforcement of any levy pursuant to this
14 Article are not exclusive, and additional remedies may be provided at any time.

15 SEC. 43.10.9. INCORPORATION OF THE MELLO-ROOS COMMUNITY FACILITIES
16 ACT OF 1982.

17 The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, commencing with
18 Section 53311 of Part 1, Division 2, Title 5 of the California Government Code) (the "Act"), as
19 amended from time to time, is incorporated in and made a part of this Article. Except as
20 otherwise provided by this Article, the purposes, mode and manner of levying and collecting
21 special taxes and the issuance of bonds secured by special taxes shall be as prescribed in
22 the Act.

23 SEC. 43.10.10. ADMINISTRATIVE APPEALS PROCEDURES.

24 The Board of Supervisors may provide by separate resolution such appeals procedures
25 as it may deem appropriate to facilitate the levy and enforcement of the special taxes. Such

1 procedures may provide for the appeal of confirmed special taxes to an official of the City
2 responsible for the collection of the special taxes and grounds upon and times within which
3 such appeals must be made. There shall be no appeal to the Board of Supervisors from the
4 decision of the appointed official or other official of the City. The taking of an administrative
5 appeal under this Article shall be a precondition to bringing any action under Section 43.10.11
6 of this Article.

7 SEC. 43.10.11. LIMITATION OF ACTIONS.

8 Except as provided in Section 43.10.17, the validity of any special tax levied under this
9 Article shall not be contested in any action or proceeding unless the action or proceeding is
10 commenced within 30 days after the effective date of any ordinance or resolution providing for
11 the levy of such special tax. Thereafter, a special tax may be contested only for the purpose of
12 challenging the accuracy of computation of the special tax. Any appeal from a final judgment
13 in the action or proceeding shall be perfected within 30 days after the entry of judgment.

14 Except as provided in Section 43.10.18, the validity of any bonds issued under this Article shall not
15 be contested in any action or proceeding unless the action or proceeding is commenced
16 within 30 days after the effective date of any ordinance or resolution authorizing the issuance
17 of such bonds. Any appeal from a final judgment in the action or proceeding shall be perfected
18 within 30 days after the entry of judgment.

19 SEC. 43.10.12. DEFINITIONS.

20 Unless the context otherwise requires, the terms defined in this Article shall have the
21 following meanings. Defined terms used in this Article but not defined in this Article have the
22 meaning given them in the Act.

23 (a) "Act" means the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5,
24 commencing with Section 53311 of Part 1, Division 2, Title 5 of the California Government
25 Code), as amended from time to time,

1 (b) "Board of Supervisors" means the Board of Supervisors of the City and County of
2 San Francisco.

3 (c) "City" means the City and County of San Francisco.

4 (d) "Services" means, in addition to the "Services" defined in Section 53317 of the
5 Act, operation and maintenance of any improvements that may be financed under this Article
6 or the Act, and any related studies, testing or monitoring.

7 TITLE 2 - PROVISIONS RELATING TO FORMATION OF DISTRICTS

8 SEC. 43.10.13. NAME AND NATURE OF DISTRICTS.

9 The name of any district created under this Article shall be substantially as follows:

10 "City and County of San Francisco Special Tax District No. _____ ()."

11 SEC. 43.10.14. ELECTIONS.

12 For purposes of any election herein, unless otherwise waived by unanimous action of
13 all qualified electors, the time for the conduct of the election shall be not less than 30 nor more
14 than 120 days from the adoption of the Resolution of Formation or other resolution ordering
15 such election. For purposes of any such election, the Clerk of the Board of Supervisors shall
16 be the election official responsible for conducting and canvassing such election.

17 In order to reduce the procedural burdens on the City and County and its property owners, this
18 Article establishes certain procedures by which one or more property owners may vote in favor of
19 special taxes, bonded indebtedness, an appropriations limit, and annexation to a district by unanimous
20 approval. The Board of Supervisors hereby finds and declares that any unanimous approval constitutes
21 the vote of the qualified elector in favor of the matters addressed in the unanimous approval for
22 purposes of the California Constitution, including, but not limited to Articles XIII A and XIII C.

23 SEC. 43.10.15. AUTHORIZED FACILITIES.

24 In addition to the facilities that may be financed under the Act, special taxes may be
25 levied and bonds may be issued to finance or refinance the acquisition, installation and

1 improvement of energy efficiency, water conservation, water pollution control, and renewable
2 energy equipment with an estimated useful life of five years or longer and/or energy efficiency,
3 water conservation, water pollution control, and renewable energy improvements that are
4 attached to or on real property and in buildings, whether such real property or buildings are
5 privately or publicly owned. ~~Work on privately owned buildings and on privately owned real~~
6 ~~property may only be financed by a special tax if all of the votes cast levying the special tax are in favor~~
7 ~~of levying the special tax, or with the prior written consent of all of the owners of each property that~~
8 ~~may be subject to the special tax, in which case the prior written consent shall be deemed a unanimous~~
9 ~~consent to the special tax and any associated bonded indebtedness.~~ Energy efficiency, water
10 conservation, water pollution control and renewable energy improvements may only be installed on a
11 privately owned building and on privately owned real property with the prior written consent of the
12 owner or owners of the building or real property.

13 SEC. 43.10.16. AUTHORIZED SERVICES.

14 It is hereby specifically provided that in proceedings under this Article to finance
15 Services, the limitations set forth in the penultimate paragraph of Section 53313 shall not
16 apply.

17 SEC. 43.10.17. ALTERNATE PROCEDURE FOR FORMING SPECIAL TAX
18 DISTRICTS.

19 (a) As an alternate and independent procedure for forming a special tax district, the
20 Board of Supervisors may form a special tax district that initially consists solely of territory
21 proposed for annexation to the special tax district in the future, with the condition that a parcel
22 or parcels within that territory may be annexed to the special tax district and subjected to the
23 special tax only with the unanimous approval of the owner or owners of such parcel or parcels
24 at the time that such parcel or those parcels are annexed. In such case, the Board of
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1 Supervisors shall follow the procedures set forth in the Act for the formation of a community
2 facilities district, with the following exceptions:

3 (i) The Board of Supervisors shall not ~~have~~ be obligated to specify the rate or rates
4 of special tax in the resolution of intention or the resolution of formation, provided that both of
5 the following are met:

6 (A) the resolution of intention and the resolution of formation include a
7 statement that the rate shall be established in an amount required to finance or refinance the
8 authorized improvements and to pay the district's administrative expenses, and

9 (B) the maximum rate of special tax applicable to a parcel or parcels shall
10 be specified in the unanimous approval described in this Section relating to such parcel or
11 parcels.

12 (ii) In lieu of approval pursuant to an election held in accordance with the
13 procedures set forth in this Article and in Sections 53326, 53327, 53327.5 and 53328 of the
14 Act, the appropriations limit for the special tax district, the applicable rate, method of
15 apportionment and manner of collection of special tax and the authorization to incur bonded
16 indebtedness for the special tax district ~~shall~~may be specified and approved by the unanimous
17 approval of the owner or owners of each parcel or parcels at the time that such parcel or
18 parcels are annexed to the special tax district. No additional hearings or procedures are
19 required, and a unanimous approval shall be deemed to constitute a unanimous vote in favor
20 of the appropriations limit for the special tax district, the authorization to levy the special tax on
21 such parcel or parcels and the authorization to incur bonded indebtedness for the special tax
22 district.

23 (iii) This subsection establishes the applicable protest provisions in the event
24 the City forms a special tax district pursuant to the procedures set forth in this Section. If
25 50 percent or more of the registered voters, or six registered voters, whichever is more,

1 residing within the territory proposed to be annexed to the special tax district in the future, or if
2 the owners of one-half or more of the area of land proposed to be annexed in the future and
3 not exempt from the special tax, file written protests against establishment of the special tax
4 district, and protests are not withdrawn so as to reduce the protests to less than a majority, no
5 further proceedings to form the special tax district shall be undertaken for a period of one year
6 from the date of decision of the Board of Supervisors on the issues discussed at the hearing.
7 If the majority protests of the registered voters or of the landowners are only against the
8 furnishing of a specified type or types of facilities or services within the district, or against
9 levying a specified special tax, those types of facilities or services or the specified special tax
10 shall be eliminated from the resolution of formation.

11 (iv) The Board of Supervisors shall not record a notice of special tax lien
12 against any parcel or parcels in the special tax district until such time as the owner or owners
13 of such parcel or parcels have given their unanimous approval of such parcel or parcels'
14 annexation to the special tax district, at which time the notice of special tax lien shall be
15 recorded against such parcel or parcels as set forth in Section 53328.3 of the Act.

16 (b) Notwithstanding the provisions of Section 53340 of the Act, after adoption of the
17 resolution of formation for a special tax district described in subdivision (a) hereof, the Board
18 of Supervisors may, by ordinance, provide for the levy of the special taxes on parcels that will
19 annex to the special tax district at the rate or rates to be approved by unanimous approval of
20 the owner or owners of each parcel or parcels to be annexed to the special tax district and for
21 apportionment and collection of the special taxes in the manner specified in the resolution of
22 formation. No further ordinance shall be required even though no parcels may then have
23 annexed to the special tax district.

24 (c) Notwithstanding the provisions of Section 53359 of the Act and Section 43.10.11 of
25 this Article, the City may bring an action to determine the validity of any special taxes levied pursuant

1 to this Article and authorized pursuant to the procedures set forth in this Section 43.10.17 pursuant to
2 Chapter 9 (commencing with Section 860) of Division 5 of Title 10 of Part 2 of the Code of Civil
3 Procedure. Notwithstanding Section 53359 of the Act and Section 43.10.11 of this Article, if an action
4 is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure to determine
5 the validity of any special taxes levied against a parcel pursuant to this Article and authorized pursuant
6 to the procedures set forth in this section, the action shall be brought pursuant to Chapter 9
7 (commencing with Section 860) of Division 5 of Title 10 of Part 2 of the Code of Civil Procedure, but
8 shall, notwithstanding the time limits specified in Section 860 of the Code of Civil Procedure, be
9 commenced within 15 days after the date on which the notice of special tax lien is recorded against the
10 parcel. Any appeal from a judgment in any action or proceeding described in this subdivision shall be
11 commenced within 30 days after entry of judgment.~~an action to determine the validity of any special~~
12 ~~taxes levied pursuant to this Article and authorized pursuant to the procedures set forth in this Section~~
13 ~~shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code~~
14 ~~of Civil Procedure but shall, notwithstanding the time limits specified in Section 860 of the Code of~~
15 ~~Civil Procedure, be commenced within 30 days after the adoption of the resolution of formation if the~~
16 ~~action is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure. Any~~
17 ~~appeal from a judgment in that action or proceeding shall be commenced within 30 days after entry of~~
18 ~~judgment.~~

19 (d) With respect to a special tax district formed pursuant to the alternate and independent
20 procedure set forth in this Section 43.10.17, nothing in this Section shall prohibit the City from
21 obtaining the approval of the qualified electors with respect to a particular parcel or parcels as to the
22 annexation of such parcels to the special tax district, the appropriations limit for the special tax
23 district, the applicable rate, method of apportionment and manner of collection of special tax and the
24 authorization to incur bonded indebtedness for the special tax district pursuant to any other procedure
25 authorized by the Act.

1 TITLE 3 - PROVISIONS RELATING TO BONDS

2 SEC. 43.10.18. ALTERNATE PROCEDURE FOR APPROVING ISSUANCE OF
3 BONDS.

4 (a) As an alternate and independent procedure for conducting an election on the
5 proposition to authorize bonded indebtedness for a special tax district formed pursuant to
6 Section 43.10.17, and in lieu of the procedure set forth in this Article and in Sections 53353.5,
7 53354 and 53355 of the Act, the proposition to authorize bonded indebtedness may be
8 approved by the owner or owners of a parcel or parcels of property at the time that the parcel
9 or parcels are annexed to the special tax district pursuant to the unanimous approval
10 described in 43.10.17. No additional hearings or procedures are required, and such
11 unanimous approval shall be deemed to constitute a unanimous vote in favor of such
12 proposition.

13 (b) Notwithstanding the provisions of Section 53359 of the Act and Section 43.10.11 of this
14 Article, the City may bring an action, pursuant to Chapter 9 (commencing with Section 860) of Division
15 5 of Title 10 of Part 2 of the Code of Civil Procedure, to determine the validity of any bonds issued
16 pursuant to this Article and authorized pursuant to the procedures set forth in this Section 43.10.18.
17 Notwithstanding the provisions of Section 53359 of the Act and Section 43.10.11 of this Article, if an
18 action is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure to
19 determine the validity of any bonds issued pursuant to this Article and authorized pursuant to the
20 procedures set forth in this Section 43.10.18, the action shall be brought pursuant to Chapter 9
21 (commencing with Section 860) of Division 5 of Title 10 of Part 2 of the Code of Civil Procedure but
22 shall, notwithstanding the time limits specified in Section 860 of the Code of Civil Procedure, be
23 commenced within 30 days after the effective date of the resolution described in Section 53351 of the
24 Act. Any appeal from a judgment in any action or proceeding described in this subdivision shall be
25 commenced within 30 days after entry of judgment.~~Notwithstanding the provisions of Section 43.10.11,~~

1 ~~an action to determine the validity of any bonds issued pursuant to this Article and authorized pursuant~~
2 ~~to the procedures set forth in this Section 43.10.18 shall be brought pursuant to Chapter 9~~
3 ~~(commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure but shall,~~
4 ~~notwithstanding the time limits specified in Section 860 of the Code of Civil Procedure, be commenced~~
5 ~~within 30 days after the effective date of the resolution described in Section 53351 if the action is~~
6 ~~brought by an interested person pursuant to Section 863 of the Code of Civil Procedure. Any appeal~~
7 ~~from a judgment in that action or proceeding shall be commenced within 30 days after entry of~~
8 ~~judgment.~~

9 (c) With respect to a special tax district formed pursuant to Section 43.10.17, nothing in this
10 Section shall prohibit the City from obtaining the approval of the qualified electors with respect to a
11 particular parcel or parcels as to the authorization to incur bonded indebtedness for the special tax
12 district pursuant to any other procedure authorized by the Act.

13 **SEC. 43.10.19. IMPROVEMENT AREAS**

14 In connection with formation of a special tax district and annexation of a parcel or
15 parcels to the special tax district pursuant to the alternate and independent procedure set
16 forth in Section 43.10.17 and the conduct of an election on the proposition to authorize
17 bonded indebtedness pursuant to the alternate and independent procedure set forth in
18 Section 43.10.18, the City may, without additional hearings or procedures, designate a parcel
19 or parcels as an improvement area within the Special Tax District. Such improvement area
20 shall be known as "Improvement Area No. _____" of "Special Tax District _____." After the
21 designation of a parcel or parcels as an improvement area, all proceedings for approval of the
22 appropriations limit, the rate, method of apportionment and manner of collection of special tax
23 and the authorization to incur bonded indebtedness for such parcel or parcels shall apply only
24 to the improvement area.

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1 SEC. 43.10.20 REFUNDING BONDS: USE OF SAVINGS.

2 Bonds may be issued under this Article to refund any outstanding special tax bonds *or*
3 *other indebtedness payable from special taxes*, whether fixed lien bonds or any other improvement
4 or special tax bonds, including ad valorem assessment or revenue bonds. Any savings
5 achieved through the issuance of refunding bonds may be used by the City in any manner
6 that it determines to be in the best financial interests of the City.

7 ~~SEC. 43.10.20~~43.10.21. *AUTHORITY TO ADVANCE FUNDS.*

8 *In connection with the issuance of bonds pursuant to this Article, the Board may determine and*
9 *may declare in the resolution authorizing the issuance of the bonds that it will obligate itself to advance*
10 *available surplus funds in the amount of any delinquent special taxes as an advance recoverable upon*
11 *payment of delinquent special taxes. For purposes of this section, "available surplus funds" shall mean*
12 *any surplus moneys held by the City at the end of each fiscal year in excess of the amounts required to*
13 *pay lawful municipal obligations of the City for that fiscal year, all as determined by the Board of*
14 *Supervisors in its sole discretion, whose determination shall be final and binding.*

15 TITLE 4 - SUPPLEMENTAL PROVISIONS

16 ~~SEC. 43.10.20~~43.10.22. LIBERAL CONSTRUCTION.

17 This chapter is to be liberally construed.

18 ~~SEC. 43.10.21~~43.10.23. OMISSIONS DO NOT IMPACT VALIDITY.

19 Any proceedings taken or special tax levied pursuant to this Article shall not be held
20 invalid for failure to comply with the provisions of this Article provided such failure is not a
21 constitutional defect.

22 ~~SEC. 43.10.22~~43.10.24. ARTICLE CONTROLLING.

23 To the extent that the provisions of this Article are inconsistent with the provisions of
24 any general statute or special act or parts thereof the provisions of this Article shall be
25 deemed controlling.

1 SEC. ~~43.10.23~~43.10.25. SEVERABILITY.

2 If any provisions of this Article or the application thereof to any person or circumstance
3 is held invalid, such invalidity shall not affect any other provision or application of this Article
4 which can be given effect without the invalid provision or application, and to this end the
5 provisions of this Article are declared to be severable. The Board of Supervisors hereby
6 declares that it would have adopted and passed this Article and each section, subsection,
7 sentence, clause, phrase and word hereof, irrespective of the fact that any one or more of the
8 other sections, subsections, sentences, clauses, phrases or words hereof be declared invalid
9 or unconstitutional.

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11 APPROVED AS TO FORM:

12 DENNIS J. HERRERA
13 City Attorney

14 By: _____
15 MARK D. BLAKE
16 Deputy City Attorney

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