

1 [Transactions and Use Tax.]

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3 **Ordinance (i) amending the Business and Tax Regulations Code to add Article 16-A to**  
4 **impose a transactions and use tax at the rate of one-quarter of one percent (0.25%) in**  
5 **accordance with Parts 1.6 and 1.7 of Division 2 of the California Revenue and Taxation**  
6 **Code, (ii) directing submission of the tax for voter approval at the November 2, 2004**  
7 **election and setting forth the ballot question therefor.**

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

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

13 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended  
14 by adding Article 16-A (Transactions and Use Tax Ordinance), to read as follows:

15  
16 *Article 16-A*

17 *Transactions and Use Tax*

18 *SEC 1620. TITLE. This ordinance shall be known as the "San Francisco Transactions and*  
19 *Use Tax Ordinance." The City and County of San Francisco hereinafter shall be called "City and*  
20 *County." This ordinance shall be applicable in the City and County.*

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22 *SEC 1621. OPERATIVE DATE. "Operative Date" means the first day of the first calendar*  
23 *quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption*  
24 *being as set forth below.*

1           SEC 1622. PURPOSE. (a) This ordinance is adopted to achieve the following, among other  
2 purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

3           1. To impose a retail transactions and use tax in accordance with the provisions of  
4 Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and  
5 Section 7285 of Part 1.7 of Division 2 which authorizes the City and County to adopt this tax  
6 ordinance which shall be operative if a majority of the electors voting on the measure vote to  
7 approve the imposition of the tax at an election called for that purpose.

8           2. To adopt a retail transactions and use tax ordinance that incorporates provisions  
9 identical to those of the Sales and Use Tax Law of the State of California insofar as those  
10 provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of  
11 Division 2 of the Revenue and Taxation Code.

12           3. To adopt a retail transactions and use tax ordinance that imposes a tax and  
13 provides a measure therefor that can be administered and collected by the State Board of  
14 Equalization in a manner that adapts itself as fully as practicable to, and requires the least  
15 possible deviation from, the existing statutory and administrative procedures followed by the  
16 State Board of Equalization in administering and collecting the California State Sales and Use  
17 Taxes.

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

23           (b) The transactions and use tax imposed under this ordinance is imposed for general  
24 governmental purposes; proceeds from the tax shall be deposited in the general fund of the City and  
25 County and may be expended for any purposes of the City and County.

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2           SEC. 1623. CONTRACT WITH STATE. Prior to the operative date, the City and County shall  
3 contract with the State Board of Equalization to perform all functions incident to the administration  
4 and operation of this transactions and use tax ordinance; provided, that if the City and County shall  
5 not have contracted with the State Board of Equalization prior to the operative date, it shall  
6 nevertheless so contract and in such a case the operative date shall be the first day of the first calendar  
7 quarter following the execution of such a contract.

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9           SEC. 1624. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal  
10 property at retail, a tax is hereby imposed upon all retailers in the City and County at the rate of 0.25%  
11 of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the  
12 City and County on and after the operative date of this ordinance.

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14           SEC. 1625. PLACE OF SALE. For the purposes of this ordinance, all retail sales are  
15 consummated at the place of business of the retailer unless the tangible personal property sold is  
16 delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery  
17 to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when  
18 such charges are subject to the state sales and use tax, regardless of the place to which delivery is  
19 made. In the event a retailer has no permanent place of business in the State or has more than one  
20 place of business, the place or places at which the retail sales are consummated shall be determined  
21 under rules and regulations to be prescribed and adopted by the State Board of Equalization.

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23           SEC 1626. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other  
24 consumption in the City and County of tangible personal property purchased from any retailer on and  
25 after the operative date of this ordinance for storage, use or other consumption in the City and County

1 at the rate of 0.25% of the sales price of the property. The sales price shall include delivery charges  
2 when such charges are subject to state sales or use tax regardless of the place to which delivery is  
3 made.

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5 SEC 1627. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in  
6 this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2  
7 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of  
8 Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as  
9 though fully set forth herein.

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11 SEC 1628. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE  
12 TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

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

15 1. The word "State" is used as a part of the title of the State Controller, State  
16 Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the  
17 Constitution of the State of California;

18 2. The result of that substitution would require action to be taken by or against the  
19 City and County or any agency, officer, or employee thereof rather than by or against the State  
20 Board of Equalization, in performing the functions incident to the administration or operation  
21 of this ordinance.

22 3. In those sections, including, but not necessarily limited to sections referring to  
23 the exterior boundaries of the State of California, where the result of the substitution would be  
24 to:

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

6                   B. Impose this tax with respect to certain sales, storage, use or other  
7 consumption of tangible personal property which would not be subject to tax by the  
8 State of California under the provisions of such code.

9                   4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737,  
10 6797 or 6828 of the Revenue and Taxation Code.

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

14  
15                   SEC. 1629. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under  
16 Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required  
17 by this ordinance.

18  
19                   SEC. 1630. EXEMPTIONS AND EXCLUSIONS. (a) There shall be excluded from the  
20 measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the  
21 State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform  
22 Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

23                   (b) There are exempted from the computation of the amount of transactions tax the gross  
24 receipts from:

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

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

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

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

21          3. The sale of tangible personal property if the seller is obligated to furnish the  
22          property for a fixed price pursuant to a contract entered into prior to the operative date of this  
23          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 lease of  
5 tangible personal property shall be deemed not to be obligated pursuant to a contract or lease  
6 for any period of time for which any party to the contract or lease has the unconditional right to  
7 terminate the contract or lease upon notice, whether or not such right is exercised.

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

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

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

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

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

24           5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or  
25 other consumption, or possession of, or exercise of any right or power over, tangible personal

1 property shall be deemed not to be obligated pursuant to a contract or lease for any period of  
2 time for which any party to the contract or lease has the unconditional right to terminate the  
3 contract or lease upon notice, whether or not such right is exercised.

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

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

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

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24 SEC. 1631. AMENDMENTS. All amendments subsequent to the effective date of this ordinance  
25 to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are

1 not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all  
2 amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall  
3 automatically become a part of this ordinance, provided however, that no such amendment shall  
4 operate so as to affect the rate of tax imposed by this ordinance.

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6 SEC. 1632. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or  
7 other legal or equitable process shall issue in any suit, action or proceeding in any court against the  
8 State of California or the City and County, or against any officer of the State of California or the City  
9 and County, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the  
10 Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

11  
12 SEC. 1633. SEVERABILITY. If any provision of this ordinance or the application thereof to  
13 any person or circumstance is held invalid, the remainder of the ordinance and the application of such  
14 provision to other persons or circumstances shall not be affected thereby.

15  
16 Section 2. Pursuant to Article XIIC of the Constitution of the State of California and  
17 Section 7285 of the California Revenue and Taxation Code, this ordinance shall be submitted  
18 to the qualified electors of the City and County of San Francisco, at the November 2, 2004  
19 general municipal election. This ordinance shall become operative only if approved by the  
20 qualified electors at such election.

21  
22 Section 3. Section 510 of the San Francisco Elections Code shall not apply to the  
23 ballot question for the San Francisco Transactions and Use Tax Ordinance set forth in Section  
24 1 of this ordinance and submitted for voter approval at the November 2, 2004 general  
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1 municipal election. The ballot question for the San Francisco Transactions and Use Tax

2 Ordinance at such election shall read as follows:

3 Shall the City increase its sales tax on retail sales by ¼ of 1%, except for sales exempt  
4 under state law?

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7 APPROVED AS TO FORM:  
8 DENNIS J. HERRERA, City Attorney

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10 By: \_\_\_\_\_  
11 Dorji Roberts  
12 Deputy City Attorney

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