

1 [Waiver of Permit, License, and Business Registration Fees for Certain Small Businesses]

2

3 **Ordinance amending the program established in Ordinance No. 143-21 waiving certain**

4 **first-year permit, license, and business registration fees for certain businesses,**

5 **retroactive to November 1, 2021, to (1) extend the program through June 30, 2023,**

6 **(2) increase the gross receipts permissible for a business to qualify for the tax and fee**

7 **waiver from \$2,000,000 to \$5,000,000, (3) remove the requirement that the business be**

8 **located on the ground floor, (4) expand the business types covered by the waiver from**

9 **commercial businesses in certain Planning Code categories to all commercial**

10 **businesses; (45) extend the period for refunds to the later of one year from the date of**

11 **payment or June 30, 2023, (56) revise the procedures for challenging Tax Collector**

12 **determinations that a business improperly claimed a waiver under this ordinance;**

13 **(67) increase the gross receipts above which the waiver would be retroactively revoked**

14 **from \$10,000,000 to \$15,000,000 in the calendar year of, or in any calendar year during**

15 **the three full calendar years following, the date the business commenced business**

16 **within San Francisco or opened a new business location for commercial use; and**

17 **(78) make other administrative and reporting changes.**

18

19 **NOTE: Unchanged Code text and uncodified text are in plain Arial font.**

20 **Additions to Codes are in *single-underline italics Times New Roman font.***

21 **Deletions to Codes are in *strikethrough italics Times New Roman font.***

22 **Board amendment additions are in double-underlined Arial font.**

23 **Board amendment deletions are in ~~strikethrough Arial font.~~**

24 **Asterisks (* * * *) indicate the omission of unchanged Code**

25 **subsections or parts of tables.**

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

2
3 Section 1. Summary of Amendments to “First Year Free” Program.

4 Ordinance No. 143-21 (Board of Supervisors File No. 210741) established the “First
5 Year Free” program, which waived most initial registration fees, initial license fees, and permit
6 fees for certain new businesses and businesses with new locations through October 31, 2022.
7 To qualify, new businesses were required to have \$2,000,000 or less in estimated
8 San Francisco gross receipts for the calendar year in which the business commenced within
9 the City, and existing businesses with new locations were required to have reported
10 \$2,000,000 or less in annual San Francisco gross receipts or estimated San Francisco gross
11 receipts on their most recently filed gross receipts tax return, application for a registration
12 certificate, or renewal of a registration certificate. The “First Year Free” program was limited
13 to businesses with locations for certain ground-floor commercial uses. If a business originally
14 subject to waiver had more than \$10,000,000 in San Francisco gross receipts in the calendar
15 year of, or in any calendar year during the three full-year calendar years following, the date
16 the business commenced business in San Francisco or opened a new qualified business
17 location in San Francisco, the waiver was subject to retroactive revocation and the business
18 was required to remit to the City all waived amounts.

19 This ordinance amends Ordinance No. 143-21 to extend the “First Year Free” program
20 through June 30, 2023, including extending the period within which a business that paid
21 waived fees may request a refund to the extent such period would have expired prior to
22 June 30, 2023. It also expands that program retroactively to November 1, 2021, by:
23 (1) increasing from \$2,000,000 to \$5,000,000 the maximum San Francisco gross receipts
24 permissible for a business to qualify for the tax and fee waiver; (2) removing the requirement
25 that the business be located on the ground floor; (3) expanding the business types that qualify

1 for the waiver from businesses that fall under certain Planning Code categories to include all
2 commercial businesses; and (34) increasing the San Francisco gross receipts above which
3 the waiver would be retroactively revoked from \$10,000,000 to \$15,000,000 in the calendar
4 year of, or in any calendar year during the three full-year calendar years following, the date
5 the business commenced business within San Francisco or opened a new qualified business
6 location in San Francisco. Finally, it revises the procedures for challenging Tax Collector
7 determinations that a business improperly claimed a waiver under this ordinance, and makes
8 other administrative and reporting changes.

9

10 Section 2. Amendments to “First Year Free” Program.

11 This ordinance amends the following provisions of Ordinance No. 143-21:

12 Section 1(d)

13 Section 1(f)

14 Section 2: definition of Commercial Use

15 Section 2: definition of License Fees

16 Section 2: definition of Permit Fees

17 Section 2: definition of Qualified Business With New Location

18 Section 2: definition of Qualified New Business

19 Section 3(a)

20 Section 3(b)

21 Section 3(c)(3)

22 Section 3(d)(1)

23 Section 3(d)(2)

24 Section 3(d)(3)

25 Section 4

1 Section 6.

2 Ordinance No. 143-21 is hereby amended as follows:

3 (a) Subsection (d) of Section 1 currently provides: “Prior to the pandemic,
4 neighborhoods across the City were already seeing a proliferation of vacant storefronts. To
5 ensure vibrant commercial corridors, the City must focus not only on sustaining existing
6 businesses but also on addressing vacancies. In order to lower the barriers that new
7 businesses face before they open their doors, San Francisco voters passed Proposition H in
8 November 2020, a package of commercial permit streamlining changes, and pending
9 legislation would expand those streamlining changes. To further lower those barriers,
10 complement the permit process changes, remove the financial barrier that City fees create for
11 prospective small business owners, and support a full and fast recovery of the City’s
12 commercial corridors and small businesses, this ordinance will waive certain City first-year
13 permit, initial license, and initial business registration fees for many new small businesses and
14 certain first-year permit and initial license fees for many small businesses that open a new
15 ground floor location.”

16 Subsection (d) of Section 1 is hereby replaced in its entirety to provide: “Prior to the
17 pandemic, neighborhoods across the City were already seeing a proliferation of vacant
18 storefronts. To ensure vibrant commercial corridors, the City must focus not only on
19 sustaining existing businesses but also on addressing vacancies. In order to lower the
20 barriers that new businesses face before they open their doors, San Francisco voters passed
21 Proposition H in November 2020, a package of commercial permit streamlining changes, and
22 subsequent legislation expanded those streamlining changes. To further lower those barriers,
23 complement the permit process changes, remove the financial barrier that City fees create for
24 prospective small business owners, and support a full and fast recovery of the City’s
25 commercial corridors and small businesses, this ordinance will waive certain City first-year

1 permit, initial license, and initial business registration fees for many new small businesses and
2 certain first-year permit and initial license fees for many small businesses that open a new
3 location.”

4 (b) Subsection (f) of Section 1 currently provides: “The Board of Supervisors finds that
5 it is reasonable to waive first-year permit, license, and business registration fees for certain
6 small businesses whose business location is for ground floor commercial use and not Formula
7 Retail uses. The Board of Supervisors further finds that while small businesses with one or
8 few locations have been especially impacted by the economic downturn, Formula Retail
9 businesses, in general, are better positioned to navigate the economic downturn due to the
10 fact that Formula Retail establishments have multiple locations.”

11 Subsection (f) of Section 1 is hereby replaced in its entirety to provide: “The Board of
12 Supervisors finds that it is reasonable and in the public interest to waive first-year permit,
13 license, and business registration fees for certain small businesses whose business location
14 is for commercial use and not Formula Retail uses. ~~The Board of Supervisors further finds
15 that while small businesses with one or few locations have been especially impacted by the
16 economic downturn, Formula Retail businesses, in general, are better positioned to navigate
17 the economic downturn due to the fact that Formula Retail establishments have multiple
18 locations.”~~

19 (c) The definition of “Commercial Use” in Section 2 currently provides: “Commercial
20 Use’ means any of the following uses: Sales and Services, Retail; Entertainment, Arts and
21 Recreation Use; or Social Service or Philanthropic Facility, as those terms are defined in
22 Section 102 of the Planning Code; or COVID-19 Relief and Recovery use as defined in
23 Section 205.7(b) of the Planning Code. ‘Commercial Use’ shall not include any Formula
24 Retail use as defined in Section 303.1(b) of the Planning Code. For purposes of this
25 Section 2, references to the Planning Code are to that Code as of November 1, 2021.”

1 The definition of “Commercial Use” in Section 2 is hereby replaced in its entirety to
2 provide: ““Commercial Use’ means any non-residential use.”

3 (ed) The definition of “License Fees” in Section 2 currently provides: “License Fees’
4 means all license fees payable to the City, including but not limited to fees payable to the City
5 under Sections 76.1 and 76.2 of Article 2 of the Business and Tax Regulations Code, relating
6 to the operation of a business at a location that is for ground floor Commercial Use, and not
7 including fees for licenses under Chapter 94A of the Administrative Code, as may be
8 amended from time to time.”

9 The definition of “License Fees” in Section 2 is hereby replaced in its entirety to
10 provide: “License Fees’ means all license fees payable to the City, including but not limited to
11 fees payable to the City under Sections 76.1 and 76.2 of Article 2 of the Business and Tax
12 Regulations Code, relating to the operation of a business at a location that is for Commercial
13 Use, and not including fees for licenses under Chapter 94A of the Administrative Code, as
14 may be amended from time to time.”

15 (de) The definition of “Permit Fees” in Section 2 currently provides: “Permit Fees’
16 means the fees payable to the City upon application for and issuance of any permit, including
17 but not limited to permits subject to Article 1 of the Business and Tax Regulations Code, for
18 the establishment, modification, and/or operation of a ground floor Commercial Use, and not
19 including fees for permits under Chapter 94A of the Administrative Code, as may be amended
20 from time to time.”

21 The definition of “Permit Fees” in Section 2 is hereby replaced in its entirety to provide:
22 “Permit Fees’ means the fees payable to the City upon application for and issuance of any
23 permit, including but not limited to permits subject to Article 1 of the Business and Tax
24 Regulations Code, for the establishment, modification, and/or operation of a Commercial Use,
25

1 and not including fees for permits under Chapter 94A of the Administrative Code, as may be
2 amended from time to time.”

3 (ef) The definition of “Qualified Business With New Location” in Section 2 currently
4 provides: “‘Qualified Business With New Location’ means a Person that (a) commenced
5 business within the City before November 1, 2021 and holds a valid Business Registration
6 Certificate, (b) commences business at a new business location that is for ground floor
7 Commercial Use on or after November 1, 2021 and on or before October 31, 2022, as
8 reported to the Tax Collector, and (c) reported \$2,000,000 or less in annual San Francisco
9 Gross Receipts or estimated San Francisco Gross Receipts on its most recently filed Gross
10 Receipts Tax Return, application for a Registration Certificate, or renewal of a Registration
11 Certificate.”

12 The definition of “Qualified Business With New Location” in Section 2 is hereby
13 replaced in its entirety to provide: “‘Qualified Business With New Location’ means a Person
14 that (a) commenced business within the City before November 1, 2021 and holds a valid
15 Business Registration Certificate, (b) commences business at a new business location that is
16 for Commercial Use on or after November 1, 2021 and on or before June 30, 2023, as
17 reported to the Tax Collector, and (c) reported \$5,000,000 or less in annual San Francisco
18 Gross Receipts or estimated San Francisco Gross Receipts on its most recently filed Gross
19 Receipts Tax Return, application for a Registration Certificate, or renewal of a Registration
20 Certificate.”

21 (fg) The definition of “Qualified New Business” in Section 2 currently provides:
22 “‘Qualified New Business’ means a Person that (1) applies for a Business Registration
23 Certificate in accordance with Section 856 of Article 12 of the Business and Tax Regulations
24 Code indicating its date of commencing business within the City on or after November 1, 2021
25 and on or before October 31, 2022, (2) has \$2,000,000 or less in estimated San Francisco

1 Gross Receipts for the calendar year in which the Person commences business within the
2 City, and (3) has a registered business location that is for ground floor Commercial Use as
3 reported on the Person’s application for a Business Registration Certificate.”

4 The definition of “Qualified New Business” in Section 2 is hereby replaced in its entirety
5 to provide: “‘Qualified New Business’ means a Person that (1) applies for a Business
6 Registration Certificate in accordance with Section 856 of Article 12 of the Business and Tax
7 Regulations Code indicating its date of commencing business within the City on or after
8 November 1, 2021 and on or before June 30, 2023, (2) has \$5,000,000 or less in estimated
9 San Francisco Gross Receipts for the calendar year in which the Person commences
10 business within the City, and (3) has a registered business location that is for Commercial Use
11 as reported on the Person’s application for a Business Registration Certificate or any update
12 to that registration information provided to the Tax Collector.”

13 (gh) Subsection (a) of Section 3 currently provides: “All Permit Fees, initial License
14 Fees, and the initial Business Registration Fee shall be waived for each Qualified New
15 Business. The waiver in this Section 3(a) shall apply to applications for a permit, initial
16 license, or initial Business Registration Certificate filed by the Qualified New Business on or
17 after November 1, 2021 and on or before October 31, 2022. The waiver in this Section 3(a)
18 shall not apply to (1) any fees for the renewal of a license or Business Registration Certificate,
19 and (2) any fees collected by the City on behalf of any federal, state, or other local
20 government or agency.”

21 Subsection (a) of Section 3 is hereby replaced in its entirety to provide: “All Permit
22 Fees, initial License Fees, and the initial Business Registration Fee shall be waived for each
23 Qualified New Business. The waiver in this Section 3(a) shall apply to applications for a
24 permit, initial license, or initial Business Registration Certificate filed by the Qualified New
25 Business on or after November 1, 2021 and on or before June 30, 2023. The waiver in this

1 Section 3(a) shall not apply to (1) any fees for the renewal of a license or Business
2 Registration Certificate, and (2) any fees collected by the City on behalf of any federal, state,
3 or other local government or agency.”

4 (h) Subsection (b) of Section 3 currently provides: “All Permit Fees and initial License
5 Fees shall be waived for each Qualified Business With New Location. The waiver in this
6 Section 3(b) shall apply to applications for a permit or initial license filed by the Qualified
7 Business With New Location on or after November 1, 2021 and on or before
8 October 31, 2022, and shall apply only to Permit Fees and initial License Fees with respect to
9 the new business location that is for ground floor Commercial Use opened by that Qualified
10 Business With New Location on or after November 1, 2021 and on or before
11 October 31, 2022. The waiver in this Section 3(b) shall not apply to (1) any fees for the
12 renewal of a license, and (2) any fees collected by the City on behalf of any federal, state, or
13 other local government or agency.”

14 Subsection (b) of Section 3 is hereby replaced in its entirety to provide: “All Permit
15 Fees and initial License Fees shall be waived for each Qualified Business With New Location.
16 The waiver in this Section 3(b) shall apply to applications for a permit or initial license filed by
17 the Qualified Business With New Location on or after November 1, 2021 and on or before
18 June 30, 2023, and shall apply only to Permit Fees and initial License Fees with respect to the
19 new business location that is for Commercial Use opened by that Qualified Business With
20 New Location on or after November 1, 2021 and on or before June 30, 2023. The waiver in
21 this Section 3(b) shall not apply to (1) any fees for the renewal of a license, and (2) any fees
22 collected by the City on behalf of any federal, state, or other local government or agency.”

23 (i) Subsection (c)(3) of Section 3 currently provides: “All Tax Collector determinations
24 under this Section 3(c) shall be final and are immediately due and payable to the Office of the
25 Treasurer and Tax Collector. Any Person that wishes to challenge a Tax Collector

1 determination under this Section 3(c) must pay the taxes, penalties, and interest due and file a
2 claim for refund with the Controller under Government Code Section 900 *et seq.*”

3 Subsection (c)(3) of Section 3 is hereby replaced in its entirety to provide: “All Tax
4 Collector determinations under this Section 3(c) shall be final and are immediately due and
5 payable to the Office of the Treasurer and Tax Collector. Any Person that wishes to challenge
6 a Tax Collector determination under this Section 3(c) must pay the Permit Fees, License
7 Fees, Business Registration Fees, penalties, and interest due, and file a claim for refund with
8 the Controller under California Government Code Sections 900 *et seq.*”

9 (jk) Subsection (d)(1) of Section 3 currently provides: “If a Qualified Business has
10 more than \$10,000,000 in San Francisco Gross Receipts in the calendar year of, or in any
11 Tax Year during the three full-year Tax Years following, the date the Qualified Business
12 commenced business within San Francisco or opened a new business location for ground
13 floor Commercial Use, as applicable, any waiver under Section 3(a) or Section 3(b) of this
14 ordinance shall be revoked retroactively for that Qualified Business.”

15 Subsection (d)(1) of Section 3 is hereby replaced in its entirety to provide: “If a
16 Qualified Business has more than \$15,000,000 in San Francisco Gross Receipts in the
17 calendar year of, or in any Tax Year during the three full-year Tax Years following, the date
18 the Qualified Business commenced business within San Francisco or opened a new business
19 location for Commercial Use, as applicable, any waiver under Section 3(a) or Section 3(b) of
20 this ordinance shall be revoked retroactively for that Qualified Business.”

21 (kl) Subsection (d)(2) of Section 3 currently provides: “The Tax Collector shall issue a
22 determination that the Qualified Business exceeded the \$10,000,000 threshold in
23 Section (3)(d)(1) of this ordinance, which determination may be based on the Qualified
24 Business’s Gross Receipts Tax Return or any other information in the Tax Collector’s
25 possession or that may come into the Tax Collector’s possession. Such notice shall be

1 issued under the rules in Section 6.11-2(b) and (c) of the Business and Tax Regulations
2 Code.”

3 Subsection (d)(2) of Section 3 is hereby replaced in its entirety to provide: “The Tax
4 Collector shall issue a determination that the Qualified Business exceeded the \$15,000,000
5 threshold in Section (3)(d)(1) of this ordinance, which determination may be based on the
6 Qualified Business’s Gross Receipts Tax Return or any other information in the Tax
7 Collector’s possession or that may come into the Tax Collector’s possession. Such notice
8 shall be issued under the rules in Section 6.11-2(b) and (c) of the Business and Tax
9 Regulations Code.”

10 (~~tm~~) Subsection (d)(3) of Section 3 currently provides: “Except in the case of fraud, or
11 in the case of an intent to evade this ordinance, the Business and Tax Regulations Code, or
12 rules and regulations issued or promulgated by the Tax Collector, or in the case of failure to
13 file a Gross Receipts Tax Return for the Tax Year in which the Qualified Business exceeded
14 the \$10,000,000 threshold, in all of which cases there is no statute of limitations, every Tax
15 Collector determination under this Section 3(d) shall be served within three years after the
16 date that a Gross Receipts Tax Return was due for the Tax Year in which the Qualified
17 Business exceeded the \$10,000,000 threshold or three years after that return was filed for
18 that period, whichever is later. The Qualified Business may agree in writing to extend this
19 three-year period for service of a notice of determination.”

20 Subsection (d)(3) of Section 3 is hereby replaced in its entirety to provide: “Except in
21 the case of fraud, or in the case of an intent to evade this ordinance, the Business and Tax
22 Regulations Code, or rules and regulations issued or promulgated by the Tax Collector, or in
23 the case of failure to file a Gross Receipts Tax Return for the Tax Year in which the Qualified
24 Business exceeded the \$15,000,000 threshold, in all of which cases there is no statute of
25 limitations, every Tax Collector determination under this Section 3(d) shall be served within

1 three years after the date that a Gross Receipts Tax Return was due for the Tax Year in which
2 the Qualified Business exceeded the \$15,000,000 threshold or three years after that return
3 was filed for that period, whichever is later. The Qualified Business may agree in writing to
4 extend this three-year period for service of a notice of determination.”

5 (~~mn~~) Section 4 currently provides: “Any fee waived under Section 3(a) or Section 3(b)
6 of this ordinance that has been collected by the City shall be refunded, without interest, upon
7 request of the payer of the fee. Any refund request under this Section 4 must be filed in
8 writing with the Tax Collector within one year of payment of the fee.”

9 Section 4 is hereby replaced in its entirety to provide: “Any fee waived under
10 Section 3(a) or Section 3(b) of this ordinance that has been collected by the City shall be
11 refunded, without interest, upon request of the payer of the fee. Any refund request under this
12 Section 4 must be filed in writing with the Tax Collector within the later of June 30, 2023, and
13 one year of payment of the fee.”

14 (~~no~~) Section 6 currently provides: “The Tax Collector shall collect information on the
15 number of Qualified Businesses by supervisorial district that received a waiver of one or more
16 fees under Section 3(a) and Section 3(b) of this ordinance, the business activity codes under
17 the North American Industry Classification System of those Qualified Businesses by
18 supervisorial district, and the fees and total amounts waived in the aggregate. The Tax
19 Collector shall submit a report to the Board of Supervisors no later than April 15, 2022 on the
20 information collected for the four month period, November 1, 2021 through
21 February 28, 2022.”

22 Section 6 is hereby replaced in its entirety to read: “The Tax Collector shall collect
23 information on the number of Qualified Businesses by supervisorial district that received a
24 waiver of one or more fees under Section 3(a) and Section 3(b) of this ordinance, the
25 business activity codes under the North American Industry Classification System of those

1 Qualified Businesses by supervisorial district, and the fees and total amounts waived in the
2 aggregate. The Tax Collector shall submit reports to the Board of Supervisors no later than
3 April 15, 2022 on the information collected for the four-month period, November 1, 2021
4 through February 28, 2022, and no later than May 1, 2023 on the information collected for the
5 17-month period, November 1, 2021 through March 31, 2023.”

6
7 Section 3. Severability.

8 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
9 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
10 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
11 remaining portions or applications of this ordinance. The Board of Supervisors hereby
12 declares that it would have passed this ordinance and each and every section, subsection,
13 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to
14 whether any other portion of this ordinance or application thereof would be subsequently
15 declared invalid or unconstitutional.

16
17 Section 4. Effective Date. This ordinance shall become effective 30 days after
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
20 of Supervisors overrides the Mayor’s veto of the ordinance.

21
22 Section 5. The Clerk of the Board of Supervisors shall place a copy of this ordinance in
23 File Number 210741. In addition, the Clerk shall make a notation on the entry for Ordinance
24
25

1 No. 143-21 on the Board of Supervisor's website designating legislation passed, to indicate
2 that Ordinance No. 143-21 has been amended by this ordinance.

3

4 APPROVED AS TO FORM:
5 DAVID CHIU, City Attorney

6 By: /s/ Scott M. Reiber
7 SCOTT M. REIBER
8 Chief Tax Attorney

9 n:\legana\as2022\2300020\01632815.docx

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25