

BOARD of SUPERVISORS



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MEMORANDUM

TO: Jose Cisneros, Treasurer, Office of the Treasurer and Tax Collector

FROM: Brent Jalipa, Assistant Clerk, Budget and Finance Committee

DATE: November 28, 2022

SUBJECT: PROPOSED ORDINANCE INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed Ordinance, introduced by Supervisor Aaron Peskin on November 15, 2022:

File No. 221162

Ordinance amending the Business and Tax Regulations Code to extend through Fiscal Year 2027-2028 the temporary suspension of the application of the business registration and fee requirements to transportation network company drivers and taxi drivers.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: Amanda Kahn Fried, Office of the Treasurer and Tax Collector

1 [Business and Tax Regulations Code - Extending Temporary Suspension of Business
2 Registration and Fee for Transportation Network Company Drivers and Taxi Drivers]

3 **Ordinance amending the Business and Tax Regulations Code to extend through Fiscal**
4 **Year 2027-2028 the temporary suspension of the application of the business**
5 **registration and fee requirements to transportation network company drivers and taxi**
6 **drivers.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

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

15 Section 1. Background, Purpose, and Findings.

16 (a) In 2017, the Legislature enacted Senate Bill 182 (“SB 182”), the effect of which is
17 to largely immunize automobile drivers who drive for online ride-hailing entities known as
18 transportation network companies (“TNCs”) from local business license requirements. (Cal.
19 Bus. & Prof. Code §§ 16550-16550.2.) Under SB 182, a city must allow such a driver to
20 conduct business freely within its borders without obtaining any locally-issued business
21 license, and without paying any business license tax, unless that driver is “domiciled” in that
22 city. In June 2022, the San Francisco Superior Court upheld the application of SB 182 to
23 San Francisco in *City and County of San Francisco v. State of California* (S.F. Sup. Ct. No.
24 CPF-18-516041) (the “SB 182 Litigation”).

25 (b) In addition to making the City’s business registration and fee requirements very
difficult to administer, SB 182, as applied in San Francisco, would lead to anomalous and

1 unfair results. TNC drivers domiciled outside of the City but providing services in the City
2 would be exempt from the City's business registration and fee requirements, but (1) TNC
3 drivers domiciled in the City and providing identical services in the City would have to register
4 and pay, and (2) taxi drivers providing very similar services in the City would have to register
5 and pay, regardless of where they were domiciled.

6 (c) Accordingly, in April 2018, the City enacted Ordinance No. 93-18, which
7 temporarily suspended the application of the City's business registration and fee requirements
8 to TNC drivers and taxi drivers for fiscal years ending on or before June 30, 2020. The Board
9 of Supervisors continued that temporary suspension each year during the pendency of the
10 SB 182 Litigation. See Ordinance Nos. 298-19, 43-21, and 59-22. At present, the suspension
11 lasts through June 30, 2023.

12 (d) Although the San Francisco Superior Court has now upheld the application of
13 SB 182 to the City, the City now desires to extend the temporary suspension for an additional
14 five years, through and including June 30, 2028, to avoid the anomalous and unfair results
15 described above.

16
17 Section 2. Article 12 of the Business and Tax Regulations Code is hereby amended by
18 revising Section 853, to read as follows:

19
20 **SEC. 853. REGISTRATION CERTIFICATE – REQUIRED.**

21 (a) Except as provided in subsections (d) and (e), no person may engage in business
22 within the City unless the person has obtained a current registration certificate pursuant to this
23 Article 12. Every person engaging in business within the City shall conspicuously display a
24 current registration certificate on the business premises, regardless of whether such person is
25 subject to tax pursuant to the provisions of the Business and Tax Regulations Code.

1 (b) Any organization having a formally recognized exemption from income taxation
2 pursuant to Section 501(c), 501(d), or 401(a) of the Internal Revenue Code of 1986, as
3 amended, as qualified by Sections 502, 503, 504, and 508 of Title 26 of the Internal Revenue
4 Code of 1986, as amended, and engaging in business within the City shall obtain a
5 registration certificate.

6 (c) Failure to obtain a registration certificate shall not absolve any person from
7 payment of any tax imposed or license required by the City.

8 (d) A person receiving rental income in connection with the operation of any of the
9 following shall not, by reason of that fact alone, be required to obtain a registration certificate
10 pursuant to this Article 12:

11 (1) a cooperative housing corporation, as defined in Section 216(b) of the
12 Internal Revenue Code of 1986, as amended;

13 (2) one residential structure consisting of fewer than four units; or

14 (3) one residential condominium.

15 (e) The requirements to obtain a registration certificate and pay a fee under this
16 Article 12 shall be suspended for any driver for a transportation network company and for any
17 taxi driver for registration years 2018-2019 through and including 2027-2028, ~~2019-2020, 2020-~~
18 ~~2021, 2021-2022, and 2022-2023~~. Additionally, the requirements to obtain a registration
19 certificate and pay a fee under this Article 12 shall be suspended for any driver for a
20 transportation network company and for any taxi driver commencing business in the City on or
21 after January 1, 2018, for registration year 2017-2018. The suspensions in this subsection (e)
22 are further qualified and defined solely for purposes of this subsection (e) as follows:

23 (1) The suspensions apply only to drivers whose business activity in the City is
24 limited to transportation network company driving and/or taxi driving.

1 (2) "Transportation network company" has the same meaning as in
2 Section 5431(c) of the California Public Utilities Code.

3 (3) "Taxi" has the same meaning as in Section 1102 of Article 1100 of the
4 Transportation Code.

5 (4) The Board of Supervisors may at any time, by ordinance, extend or
6 terminate the suspensions.

7
8 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
9 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
10 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
11 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
12 additions, and Board amendment deletions in accordance with the "Note" that appears under
13 the official title of the ordinance.

14
15 Section 4. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor's veto of the ordinance.

19
20 APPROVED AS TO FORM:
21 DAVID CHIU, City Attorney

22 By: /s/ Scott M. Reiber
23 SCOTT M. REIBER
24 Chief Tax Attorney

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Extending Temporary Suspension of Business Registration and Fee for Transportation Network Company Drivers and Taxi Drivers]

Ordinance amending the Business and Tax Regulations Code to extend through Fiscal Year 2027-2028 the temporary suspension of the application of the business registration and fee requirements to transportation network company drivers and taxi drivers.

Existing Law

In general, the City requires each business operating within the City, including taxi drivers and persons who drive for ride-hailing entities known as transportation network companies (“TNCs”) that are independent contractors, to obtain a registration certificate and pay an annual registration fee. In April 2018, the Board of Supervisors passed Ordinance 93-18, which temporarily suspended these requirements for all TNC drivers and taxi drivers whose only business activity in the City is TNC driving or taxi driving for registration years 2018-2019 and 2019-2020, and for registration year 2017-2018 for such TNC drivers and taxi drivers who commenced business in the City on or after January 1, 2018. Ordinance 298-19 extended the temporary suspension to registration year 2020-2021, Ordinance 43-21 extended the temporary suspension to registration year 2021-2022, and Ordinance 59-22 extended the temporary suspension to registration year 2022-2023.

Amendments to Current Law

This ordinance would extend the temporary suspension described above through and including registration year 2027-2028.

Background Information

In 2017, the Legislature enacted Senate Bill 182 (“SB 182”), the effect of which is to largely immunize automobile drivers who drive for TNCs from local business license requirements. Under SB 182 a city must allow such a driver to conduct business within its borders without obtaining any locally-issued business license, and without paying any business license tax, unless that driver lives in that city. In June 2022, the San Francisco Superior Court upheld the application of SB 182 to San Francisco in *City and County of San Francisco v. State of California* (S.F. Sup. Ct. No. CPF-18-516041) (the “SB 182 Litigation”).

To ensure that drivers that lived in the City were not treated less favorably than drivers that lived outside the City, Ordinance 93-18 temporarily suspended the business registration and fee requirements for all TNC drivers pending the resolution of the SB 182 litigation. Ordinance 93-18 also temporarily suspended the business registration and fee requirements for taxi drivers so that they were not treated less favorably than TNC drivers that lived outside

FILE NO. 221162

the City with respect to the City's business registration and fee requirements. Ordinances 298-19, 43-21, and 59-22 extended these temporary suspensions through registration year 2022-2023.

Although the San Francisco Superior Court has now upheld the application of SB 182 to the City, this ordinance would extend the temporary suspension for an additional five years, through and including June 30, 2028, to avoid the anomalous and unfair results described above.

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Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Supervisor Peskin

Subject:

[Business and Tax Regulations Code - Extending Temporary Suspension of Business Registration and Fee for Transportation Network Company Drivers and Taxi Drivers]

The text is listed:

Ordinance amending the Business and Tax Regulations Code to extend through fiscal year 2027-2028 the temporary suspension of the application of the business registration and fee requirements to transportation network company drivers and taxi drivers.

Signature of Sponsoring Supervisor: []

For Clerk's Use Only