

[Business and Tax Regulations Code - 0.50% Sales Tax Increase to Fund Public Safety Programs and Services to Children and Seniors]

**Ordinance amending the San Francisco Business and Tax Regulations Code by adding Article 16-A to provide funds for public safety programs and services to children and senior citizens in the City and County of San Francisco by imposing a transactions (sales) and use tax at the rate of one-half of one percent (0.50%) for a period of ten years, to be administered by the State Board of Equalization in accordance with Parts 1.6 and 1.7 of Division 2 of the California Revenue and Taxation Code; adopting an expenditure plan; and directing submission of the tax for voter approval at the November 8, 2011, Municipal Election.**

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

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

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

**SEC. 1650. TITLE.**

*This ordinance shall be known as the Safe Communities Transactions and Use Tax Ordinance.*  
*The City and County of San Francisco, hereinafter shall be called "City and County." This ordinance shall be applicable in the City and County.*

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1     **SEC. 1651. OPERATIVE DATE.**

2             *"Operative Date" means the first day of the first calendar quarter commencing more than 110*  
3 *days after the adoption of this ordinance, as provided in Cal Rev & Tax Code § 7265.*

4     **SEC. 1652. CONDITIONS TO OPERABILITY OF THE TAX INCREASE IMPOSED BY THIS**  
5 **ORDINANCE.**

6             *(a) The Safe Communities Transactions and Use Tax imposed by this ordinance shall*  
7 *become operative only if on or before November 30, 2011: (i) the state legislature or the state voters*  
8 *do not extend or reimpose the temporary 1% increase in the state sales and use tax rate from April 1,*  
9 *2009 until July 1, 2011 under Assembly Bill 3 (3rd Ex. Sess.) (Stats. 2009-10, Ch. 18) (the "temporary*  
10 *state tax"), or impose the same or a substantially similar state tax at the same rate or a higher rate and*  
11 *for the same purpose (a "substantially similar state tax"), for a term of at least 1 year, through July 1,*  
12 *2012, and (ii) as a result of such failure to extend or reimpose the temporary state tax or impose a*  
13 *substantially similar state tax, the state sales and use tax rate, inclusive of the Bradley-Burns Uniform*  
14 *Sales and Use Tax rate, is then no more than 7.25%. If either such condition is not satisfied on or*  
15 *before November 30, 2011, then the Safe Communities Transactions and Use Tax shall not become*  
16 *operative and this ordinance shall expire by operation of law.*

17             *(b) If the Safe Communities Transactions and Use Tax becomes operative under*  
18 *subparagraph (a), but on or before January 1, 2013 (i) the state legislature or the state voters approve*  
19 *the extension or reimposition of the temporary state tax or impose a substantially similar state tax for a*  
20 *period of at least 1 calendar year, and (ii) as a result the state sales and use tax rate, inclusive of the*  
21 *Bradley-Burns Uniform Sales and Use Tax rate, is at least 8.25% or a combination of the state tax rate,*  
22 *the Bradley-Burns Uniform Sales and Use Tax rate and the rate of a Substantially Similar Tax equals*  
23 *at least 8.25%, then the Safe Communities Transactions and Use Tax will expire by operation of law as*  
24 *follows: (1) Promptly following satisfaction of the conditions described in clauses (i) and (ii) above,*  
25 *the Board of Supervisors shall adopt and transmit to the State Board of Equalization an ordinance*

1 requesting that it cease collecting the Safe Communities Transactions and Use Tax on the day before  
2 the state tax becomes operative or,(2) if that is not feasible, at the earliest date administratively  
3 possible. The Safe Communities Transactions and Use Tax shall expire by operation of law and cease  
4 to be collected on the date the State Board of Equalization is able to cease collecting it in accordance  
5 with this paragraph. On such date as the Safe Communities Transactions and Use Tax ceases to be  
6 collected, this ordinance shall expire by operation of law.

7 **SEC. 1653. PURPOSE.**

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

10 (a) To provide support and funding for public safety programs and services for children and  
11 senior citizens in the City and County.

12 (b) To impose a retail transactions and use tax in accordance with the provisions of Part  
13 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section  
14 7285.5 of Part 1.7 of Division 2 which authorizes the City and County to adopt this tax ordinance  
15 which shall be operative if 2/3 of the electors voting on the measure vote to approve the imposition of  
16 the tax at an election called for that purpose.

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

21 (d) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a  
22 measure therefor that can be administered and collected by the State Board of Equalization in a  
23 manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the  
24 existing statutory and administrative procedures followed by the State Board of Equalization in  
25 administering and collecting the California State Sales and Use Taxes.

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

6 **SEC. 1654. CONTRACT WITH STATE.**

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

13 **SEC. 1655. TRANSACTIONS TAX RATE.**

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

18 **SEC. 1656. PLACE OF SALE.**

19           For the purposes of this ordinance, all retail sales are consummated at the place of business of  
20 the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an  
21 out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross  
22 receipts from such sales shall include delivery charges, when such charges are subject to the state sales  
23 and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent  
24 place of business in the State or has more than one place of business, the place or places at which the  
25

1 retail sales are consummated shall be determined under rules and regulations to be prescribed and  
2 adopted by the State Board of Equalization.

3 **SEC. 1657. USE TAX RATE.**

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

9 **SEC. 1658. ADOPTION OF PROVISIONS OF STATE LAW.**

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

14 **SEC. 1659. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE**  
15 **TAXES.**

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

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

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

22 (2) The result of that substitution would require action to be taken by or against the City  
23 and County or any agency, officer, or employee thereof rather than by or against the State  
24 Board of Equalization, in performing the functions incident to the administration or operation  
25 of this Ordinance.

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

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

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

11                  (4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737,  
12                  6797 or 6828 of the Revenue and Taxation Code.

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

16                  **SEC. 1660. PERMIT NOT REQUIRED.**

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

19                  **SEC. 1661. EXEMPTIONS AND EXCLUSIONS.**

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

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

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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 this State, the United States, or any  
5           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 this State, the United States, or any  
16 foreign government. This exemption is in addition to the exemptions provided in Sections 6366  
17 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) of this section, a retailer engaged in  
5 business in the City and County shall not be required to collect use tax from the purchaser of  
6 tangible personal property, unless the retailer ships or delivers the property into the City and  
7 County or participates within the City and County in making the sale of the property, including,  
8 but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of  
9 business of the retailer in the City and County or through any representative, agent, canvasser,  
10 solicitor, 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.

23 **SEC. 1662. AMENDMENTS.**

24 All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the  
25 Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part

1 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and  
2 Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this  
3 ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax  
4 imposed by this ordinance.

5 **SEC. 1663. ENJOINING COLLECTION FORBIDDEN.**

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

10 **SEC. 1664. ADOPTION OF EXPENDITURE PLAN.**

11 The Safe Communities Transactions and Use Tax Expenditure Plan ("Expenditure Plan") on file  
12 with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and incorporated into this ordinance  
13 by reference is hereby adopted. Proceeds of the tax imposed by this ordinance shall be placed in a  
14 special account and shall be spent only to implement the project components set forth in the  
15 Expenditure Plan. The Expenditure Plan may be amended from time to time to further the purposes of  
16 this ordinance, to add or delete a project or to take into consideration unforeseen circumstances.

17 **SEC. 1665. SEVERABILITY.**

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

21 **SEC. 1666. EFFECTIVE DATE.**

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

1     **SEC. 1667. TERMINATION DATE.**

2             *The authority to levy the tax imposed by this ordinance shall expire on December 31, 2022.*

3     Section 2. The San Francisco Administrative Code is hereby amended by adding Section  
4     10.100.321 to read as follows:

5     **SEC. 10.100.321. SAFE COMMUNITIES TRANSACTIONS AND USE TAX FUND.**

6             *(a) Establishment of Fund. The Safe Communities Transactions And Use Tax Fund, a special*  
7     *revenue fund, is hereby established as a category-four fund to receive any and all collections of the*  
8     *Transactions and Use Tax imposed by Business and Tax Regulations Code, Article 16A, Section 1650*  
9     *et. seq.*

10            *(b) Use of Fund. Monies in the Safe Communities Transactions And Use Tax Fund shall be*  
11     *used solely to fund the public safety and social safety programs described in the Safe Communities*  
12     *Transactions And Use Tax Expenditure Plan.*

13            *(c) Oversight of Fund. The Controller shall maintain the Fund and shall record all receipts*  
14     *and expenditures.*

15     Section 3. Pursuant to Article XIIC of the Constitution of the State of California and Section  
16     7285 of the California Revenue and Taxation Code, this ordinance shall be submitted to the  
17     qualified electors of the City and County of San Francisco, at the November 8, 2011 municipal  
18     election. This ordinance shall become operative only if approved by the qualified electors at  
19     such election.

20  
21     APPROVED AS TO FORM:  
22     DENNIS J. HERRERA, City Attorney

23     By: \_\_\_\_\_  
24         JEAN ALEXANDER  
25         Deputy City Attorney

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