

FILE NO. 110749

[Administrative, Business and Tax Regulations Codes - 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; amending the Administrative Code by adding Section 10.100.321 establishing a special revenue fund; 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 16-A, 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*
3 *110 days after the adoption of this ordinance, as provided in Cal. Rev. & Tax. Code Section 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*
11 *and for the same purpose (a "Substantially Similar State Tax"), for a term of at least 1 year, and (ii) as*
12 *a result of such failure to extend or reimpose the Temporary State Tax or impose a Substantially*
13 *Similar State Tax, the state sales and use tax rate, inclusive of the Bradley-Burns Uniform Sales and*
14 *Use Tax rate, is then no more than 7.25%. If either such condition is not satisfied on or before*
15 *November 30, 2011, then the Safe Communities Transactions and Use Tax shall not become operative*
16 *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, 2016 (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*
20 *for a period of at least 1 calendar year, and (ii) as a result the state sales and use tax rate, inclusive of*
21 *the Bradley-Burns Uniform Sales and Use Tax rate, is at least 8.00% or a combination of the state tax*
22 *rate, the Bradley-Burns Uniform Sales and Use Tax rate and the rate of a Substantially Similar State*
23 *Tax equals at least 8.00%, then the Safe Communities Transactions and Use Tax will expire by*
24 *operation of law as follows: (1) Promptly following satisfaction of the conditions described in clauses*
25 *(i) and (ii) above, the Board of Supervisors shall adopt and transmit to the State Board of Equalization*

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

7 (c) If the Safe Communities Transactions and Use Tax becomes operative and remains
8 operative after January 1, 2016 and (i) subsequent to January 1, 2016 the state legislature or the state
9 voters approve the extension or reimposition of the Temporary State Tax or impose a Substantially
10 Similar State Tax for a period of at least 1 calendar year, and (ii) as a result the state sales and use tax
11 rate, inclusive of the Bradley-Burns Uniform Sales and Use Tax rate, is at least 8.00% or a
12 combination of the state tax rate, the Bradley-Burns Uniform Sales and Use Tax rate and the rate of a
13 Substantially Similar State Tax equals at least 8.00%, then the Board of Supervisors shall hold a public
14 hearing to consider the economic impact of the state sales and use tax and whether the Safe
15 Communities Transactions and Use Tax should continue to be collected.

16 **SEC. 1653. PURPOSE.**

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

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

21 (b) To impose a retail transactions and use tax in accordance with the provisions of Part
22 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section
23 7285.5 of Part 1.7 of Division 2 which authorizes the City and County to adopt this tax ordinance
24 which shall be operative if 2/3 of the electors voting on the measure vote to approve the imposition of
25 the tax at an election called for that purpose.

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

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

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

15 **SEC. 1654. CONTRACT WITH STATE.**

16 Prior to the operative date, the City and County shall contract with the State Board of
17 Equalization to perform all functions incident to the administration and operation of this transactions
18 and use tax ordinance; provided, that if the City and County shall not have contracted with the State
19 Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case
20 the operative date shall be the first day of the first calendar quarter following the execution of such a
21 contract.

22 **SEC. 1655. TRANSACTIONS TAX RATE.**

23 For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all
24 retailers in the incorporated and unincorporated territory of the City and County at the rate of 0.50%
25

1 of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the
2 City and County on and after the operative date of this ordinance.

3 **SEC. 1656. PLACE OF SALE.**

4 For the purposes of this ordinance, all retail sales are consummated at the place of business of
5 the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an
6 out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross
7 receipts from such sales shall include delivery charges, when such charges are subject to the state sales
8 and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent
9 place of business in the State or has more than one place of business, the place or places at which the
10 retail sales are consummated shall be determined under rules and regulations to be prescribed and
11 adopted by the State Board of Equalization.

12 **SEC. 1657. USE TAX RATE.**

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

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

19 Except as otherwise provided in this ordinance and except insofar as they are inconsistent with
20 the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part
21 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted
22 and made a part of this ordinance as though fully set forth herein.

23 **SEC. 1659. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE**
24 **TAXES.**

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

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

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

6 (2) The result of that substitution would require action to be taken by or against the City
7 and County or any agency, officer, or employee thereof rather than by or against the State
8 Board of Equalization, in performing the functions incident to the administration or operation
9 of this ordinance;

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

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

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

20 (4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737,
21 6797 or 6828 of the Revenue and Taxation Code.

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

1 **SEC. 1660. PERMIT NOT REQUIRED.**

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

4 **SEC. 1661. EXEMPTIONS AND EXCLUSIONS.**

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

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

11 (1) Sales of tangible personal property, other than fuel or petroleum products, to
12 operators of aircraft to be used or consumed principally outside the City and County in which
13 the sale is made and directly and exclusively in the use of such aircraft as common carriers of
14 persons or property under the authority of the laws of this State, the United States, or any
15 foreign government.

16 (2) Sales of property to be used outside the City and County which is shipped to a
17 point outside the City and County, pursuant to the contract of sale, by delivery to such point by
18 the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee
19 at such point. For the purposes of this paragraph, delivery to a point outside the City and
20 County shall be satisfied:

21 (A) With respect to vehicles (other than commercial vehicles) subject to
22 registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the
23 Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities
24 Code, and undocumented vessels registered under Division 3.5 (commencing with
25 Section 9840) of the Vehicle Code by registration to an address outside the City and

1 County and by a declaration under penalty of perjury, signed by the buyer, stating that
2 such address is, in fact, his or her principal place of residence; and

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

6 (3) The sale of tangible personal property if the seller is obligated to furnish the
7 property for a fixed price pursuant to a contract entered into prior to the operative date of this
8 ordinance.

9 (4) A lease of tangible personal property which is a continuing sale of such
10 property, for any period of time for which the lessor is obligated to lease the property for an
11 amount fixed by the lease prior to the operative date of this ordinance.

12 (5) For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of
13 tangible personal property shall be deemed not to be obligated pursuant to a contract or lease
14 for any period of time for which any party to the contract or lease has the unconditional right to
15 terminate the contract or lease upon notice, whether or not such right is exercised.

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

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

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

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

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

7 (5) For the purposes of subparagraphs (3) and (4) of this section, storage, use, or
8 other consumption, or possession of, or exercise of any right or power over, tangible personal
9 property shall be deemed not to be obligated pursuant to a contract or lease for any period of
10 time for which any party to the contract or lease has the unconditional right to terminate the
11 contract or lease upon notice, whether or not such right is exercised.

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

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

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

6 **SEC. 1662. AMENDMENTS.**

7 All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the
8 Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part
9 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and
10 Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this
11 ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax
12 imposed by this ordinance.

13 **SEC. 1663. ENJOINING COLLECTION FORBIDDEN.**

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

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

19 The Safe Communities Transactions and Use Tax Expenditure Plan ("Expenditure Plan") on file
20 with the Clerk of the Board of Supervisors in File No. _____, and incorporated into this
21 ordinance by reference is hereby adopted. Proceeds of the tax imposed by this ordinance shall be
22 placed in a special account and shall be spent only to implement the project components set forth in the
23 Expenditure Plan. The Expenditure Plan may be amended from time to time to further the purposes of
24 this ordinance, to add or delete a project or to take into consideration unforeseen circumstances.
25

1 **SEC. 1665. SEVERABILITY.**

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

5 **SEC. 1666. EFFECTIVE DATE.**

6 *This ordinance relates to the levying and collecting of the City and County transactions and use*
7 *taxes and shall take effect immediately.*

8 **SEC. 1667. TERMINATION DATE.**

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

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

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

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

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

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

22 Section 3. Pursuant to Article XIIC of the Constitution of the State of California and
23 Section 7285 of the California Revenue and Taxation Code, this ordinance shall be submitted
24 to the qualified electors of the City and County of San Francisco at the November 8, 2011

1 municipal election. This ordinance shall become operative only if approved by the qualified
2 electors at such election.

3
4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 JEAN ALEXANDER
8 Deputy City Attorney