

FILE NO. 080283

ORDINANCE NO.

[San Francisco Special Tax Financing Law.]

Ordinance amending the San Francisco Administrative Code by adding Article 43.10, Sections 43.10.1 through 43.10.23, to enact the Special Tax Financing Law establishing procedures for the formation of special tax districts, the imposition of special taxes and the issuance of bonds secured by such special tax funds.

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

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

Section 1. Findings.

A. The City and County of San Francisco (the "City") is a municipal corporation and chartered city and county duly organized and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 1.01 of the Charter of the City (the "Charter").

B. The Board of Supervisors of the City and County acting under and pursuant to the powers reserved to the City and County under Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 1.01 of the Charter, finds that the public interest and necessity require the establishment by this ordinance of a law for financing certain public and private capital facilities and services. See Section 43.10.4 below.

Section 2. The San Francisco Administrative Code is hereby amended by adding Article 43.10, Sections 43.10.1 through 43.10.23, to read as follows:

1 **ARTICLE X SPECIAL TAX FINANCING LAW**

2 **TITLE 1 – GENERAL PROVISIONS**

3
4 **SEC. 43.10.1. TITLE.**

5 *This Article may be cited as the Special Tax Financing Law.*

6
7 **SEC. 43.10.2. PURPOSE.**

8 *This Article provides an alternative method of financing certain public and private capital*
9 *facilities and municipal services.*

10
11 **SEC. 43.10.3. FULL AUTHORITY.**

12 *This Article is full authority for the City to undertake the matters specified herein.*

13
14 **SEC. 43.10.4. ADDITIONAL AUTHORITY.**

15 *This Article is adopted pursuant to Section 1.01 of the Charter of the City. In proceedings had*
16 *pursuant to this Article, which are a municipal affair, any general laws referred to in this Article are*
17 *deemed a part of this Article. The provisions of this Article shall not affect or limit any other*
18 *provisions of law authorizing or providing for the furnishing of public and private capital facilities or*
19 *services, or the raising of revenue for these purposes. The City and County may use the provisions of*
20 *this Article instead of or in conjunction with any other method of financing a part or all of the cost of*
21 *providing the authorized kinds of public and private capital facilities and municipal services.*

1 **SEC. 43.10.5. ACTIONS AND DETERMINATIONS.**

2 *The Board of Supervisors may take any actions or make any determinations which it determines*
3 *are necessary or convenient to carry out the purposes of this Article and which are not otherwise*
4 *prohibited by law.*

6 **SEC. 43.10.6. COMPLIANCE WITH ARTICLE.**

7 *Any proceedings taken or special taxes levied pursuant to this Article shall not be held invalid*
8 *for failure to comply with the provisions of this Article provided such failure is not a constitutional*
9 *defect.*

11 **SEC. 43.10.7. NECESSARY OR CONVENIENT PROCEDURE AUTHORIZED.**

12 *Any procedure not expressly set forth in this Article but deemed necessary or convenient to*
13 *carry out any of its purposes is authorized.*

15 **SEC. 43.10.8. NONEXCLUSIVENESS OF REMEDIES.**

16 *The remedies provided in this Article for the enforcement of any levy pursuant to this Article are*
17 *not exclusive, and additional remedies may be provided at any time.*

19 **SEC. 43.10.9. INCORPORATION OF THE MELLO-ROOS COMMUNITY FACILITIES ACT OF**
20 **1982.**

21 *The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, commencing with Section*
22 *53311 of Part 1, Division 2, Title 5 of the California Government Code) (the “Act”), as amended from*
23 *time to time, is incorporated in and made a part of this Article. Except as otherwise provided by this*

1 Article, the purposes, mode and manner of levying and collecting special taxes and the issuance of
2 bonds secured by special taxes shall be as prescribed in the Act.

3
4 **SEC. 43.10.10. ADMINISTRATIVE APPEALS PROCEDURES.**

5 The Board of Supervisors may provide by separate resolution such appeals procedures as it
6 may deem appropriate to facilitate the levy and enforcement of the special taxes. Such procedures may
7 provide for the appeal of confirmed special taxes to an official of the City responsible for the collection
8 of the special taxes and grounds upon and times within which such appeals must be made. There shall
9 be no appeal to the Board of Supervisors from the decision of the appointed official or other official of
10 the City. The taking of an administrative appeal under this Article shall be a precondition to bringing
11 any action under Section 43.10.11 of this Article.

12
13 **SEC. 43.10.11. LIMITATION OF ACTIONS.**

14 The validity of any special tax levied under this Article shall not be contested in any action or
15 proceeding unless the action or proceeding is commenced within 30 days after the effective date of any
16 ordinance or resolution providing for the levy of such special tax. Thereafter, a special tax may be
17 contested only for the purpose of challenging the accuracy of computation of the special tax. Any
18 appeal from a final judgment in the action or proceeding shall be perfected within 30 days after the
19 entry of judgment. The validity of any bonds issued under this Article shall not be contested in any
20 action or proceeding unless the action or proceeding is commenced within 30 days after the effective
21 date of any ordinance or resolution authorizing the issuance of such bonds. Any appeal from a final
22 judgment in the action or proceeding shall be perfected within 30 days after the entry of judgment.

1 **SEC. 43.10.12. DEFINITIONS.**

2 *Unless the context otherwise requires, the terms defined in this Article shall have the following*
3 *meanings. Defined terms used in this Article but not defined in this Article have the meaning given them*
4 *in the Act.*

5 *(a) "Act" means the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, commencing*
6 *with Section 53311 of Part 1, Division 2, Title 5 of the California Government Code), as amended from*
7 *time to time,*

8 *(b) "Board of Supervisors" means the Board of Supervisors of the City and County of San*
9 *Francisco.*

10 *(c) "City" means the City and County of San Francisco.*

11 *(d) "Services" means, in addition to the "Services" defined in Section 53317 of the Act,*
12 *operation and maintenance of any improvements that may be financed under this Article or the Act, and*
13 *any related studies, testing or monitoring.*

14
15 **TITLE 2 - PROVISIONS RELATING TO FORMATION OF DISTRICTS**

16
17 **SEC. 43.10.13. NAME AND NATURE OF DISTRICTS.**

18 *The name of any district created under this Article shall be substantially as follows: "City and*
19 *County of San Francisco Special Tax District No. ()."*

20
21 **SEC. 43.10.14. ELECTIONS.**

22 *For purposes of any election herein, unless otherwise waived by unanimous action of all*
23 *qualified electors, the time for the conduct of the election shall be not less than 30 nor more than 120*
24 *days from the adoption of the Resolution of Formation or other resolution ordering such election. For*
25

1 purposes of any such election, the Clerk of the Board of Supervisors shall be the election official
2 responsible for conducting and canvassing such election.

3
4 **SEC. 43.10.15. AUTHORIZED FACILITIES.**

5 In addition to the facilities that may be financed under the Act, special taxes may be levied and
6 bonds may be issued to finance [or refinance](#) the acquisition, installation and improvement of [energy](#)
7 [efficiency and renewable energy equipment with an estimated useful life of five years or longer and/or](#)
8 energy efficiency and renewable energy improvements to or on real property and in buildings, whether
9 such real property or buildings are privately or publicly owned. Work on privately owned buildings
10 and on privately owned real property may only be financed by a special tax levy if all of the votes cast
11 on the question of levying the special tax are in favor of levying the special tax, or with the prior
12 written consent to the special tax of all of the owners of each property that may be subject to the special
13 tax, in which case the prior written consent shall be deemed to constitute a unanimous vote in favor of
14 the special tax and any associated bonded indebtedness.

15
16 **SEC. 43.10.16. AUTHORIZED SERVICES.**

17 It is hereby specifically provided that in proceedings under this Article to finance Services, the
18 limitations set forth in the penultimate paragraph of Section 53313 shall not apply.

19
20 **SEC. 43.10.17. ALTERNATE PROCEDURE FOR FORMING SPECIAL TAX DISTRICTS.**

21 (a) As an alternate and independent procedure for forming a special tax district, the Board of
22 Supervisors may form a special tax district that initially consists solely of territory proposed for
23 annexation to the special tax district in the future, with the condition that a parcel or parcels within
24 that territory may be annexed to the special tax district and subjected to the special tax only with the

1 unanimous approval of the owner or owners of such parcel or parcels at the time that such parcel or
2 those parcels are annexed. In such case, the Board of Supervisors shall follow the procedures set forth
3 in the Act for the formation of a community facilities district, with the following exceptions:

4 (i) The Board of Supervisors shall not be obligated to specify the rate or rates of special
5 tax in the resolution of intention or the resolution of formation, provided that the rate of special
6 tax applicable to a parcel or parcels shall be specified in the unanimous approval described in
7 this Section relating to such parcel or parcels.

8 (ii) In lieu of approval pursuant to an election held in accordance with the procedures
9 set forth in this Article and in Sections 53326, 53327, 53327.5 and 53328 of the Act, the
10 appropriations limit for the special tax district, the applicable rate, method of apportionment
11 and manner of collection of special tax and the authorization to incur bonded indebtedness for
12 the special tax district shall be specified and approved by the unanimous approval of the owner
13 or owners of each parcel or parcels at the time that such parcel or parcels are annexed to the
14 special tax district. No additional hearings or procedures are required, and such unanimous
15 approval shall be deemed to constitute a unanimous vote in favor of the appropriations limit for
16 the special tax district, the authorization to levy the special tax on such parcel or parcels and
17 the authorization to incur bonded indebtedness for the special tax district.

18 (iii) This subsection establishes the applicable protest provisions in the event the City
19 forms a special tax district pursuant to the procedures set forth in this Section. If 50 percent or
20 more of the registered voters, or six registered voters, whichever is more, residing within the
21 territory proposed to be annexed to the special tax district in the future, or if the owners of one-
22 half or more of the area of land proposed to be annexed in the future and not exempt from the
23 special tax, file written protests against establishment of the special tax district, and protests
24 are not withdrawn so as to reduce the protests to less than a majority, no further proceedings to
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1 form the special tax district shall be undertaken for a period of one year from the date of
2 decision of the Board of Supervisors on the issues discussed at the hearing. If the majority
3 protests of the registered voters or of the landowners are only against the furnishing of a
4 specified type or types of facilities or services within the district, or against levying a specified
5 special tax, those types of facilities or services or the specified special tax shall be eliminated
6 from the resolution of formation.

7 (iv) The Board of Supervisors shall not record a notice of special tax lien against any
8 parcel or parcels in the special tax district until such time as the owner or owners of such
9 parcel or parcels have given their unanimous approval of such parcel or parcels' annexation to
10 the special tax district, at which time the notice of special tax lien shall be recorded against
11 such parcel or parcels as set forth in Section 53328.3 of the Act.

12 (b) Notwithstanding the provisions of Section 53340 of the Act, after adoption of the resolution
13 of formation for a special tax district described in subdivision (a) hereof, the Board of Supervisors may,
14 by ordinance, provide for the levy of the special taxes on parcels that will annex to the special tax
15 district at the rate or rates to be approved by unanimous approval of the owner or owners of each
16 parcel or parcels to be annexed to the special tax district and for apportionment and collection of the
17 special taxes in the manner specified in the resolution of formation. No further ordinance shall be
18 required even though no parcels may then have annexed to the special tax district.

19 (c) Notwithstanding the provisions of Section 53359, an action to determine the validity of any
20 special taxes levied pursuant to this Article and authorized pursuant to the procedures set forth in this
21 Section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of
22 the Code of Civil Procedure but shall, notwithstanding the time limits specified in Section 860 of the
23 Code of Civil Procedure, be commenced within 30 days after the adoption of the resolution of
24 formation if the action is brought by an interested person pursuant to Section 863 of the Code of Civil
25

1 Procedure. Any appeal from a judgment in that action or proceeding shall be commenced within 30
2 days after entry of judgment.

4 **TITLE 3 - PROVISIONS RELATING TO BONDS**

6 **SEC. 43.10.18. ALTERNATE PROCEDURE FOR APPROVING ISSUANCE OF BONDS.**

7 (a) As an alternate and independent procedure for conducting an election on the proposition to
8 authorize bonded indebtedness for a special tax district formed pursuant to Section 43.10.17, and in
9 lieu of the procedure set forth in this Article and in Sections 53353.5, 53354 and 53355 of the Act, the
10 proposition to authorize bonded indebtedness may be approved by the owner or owners of a parcel or
11 parcels of property at the time that the parcel or parcels are annexed to the special tax district
12 pursuant to the unanimous approval described in 43.10.17. No additional hearings or procedures are
13 required, and such unanimous approval shall be deemed to constitute a unanimous vote in favor of
14 such proposition.

15 (b) Notwithstanding the provisions of Section 43.10.11, an action to determine the validity of
16 any bonds issued pursuant to this Article and authorized pursuant to the procedures set forth in this
17 Section 43.10.18 shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of
18 Part 2 of the Code of Civil Procedure but shall, notwithstanding the time limits specified in Section 860
19 of the Code of Civil Procedure, be commenced within 30 days after the effective date of the resolution
20 described in Section 53351 if the action is brought by an interested person pursuant to Section 863 of
21 the Code of Civil Procedure. Any appeal from a judgment in that action or proceeding shall be
22 commenced within 30 days after entry of judgment.

1 **SEC. 43.10.19. REFUNDING BONDS; USE OF SAVINGS.**

2 Bonds may be issued under this Article to refund any outstanding special tax bonds, whether
3 fixed lien bonds or any other improvement or special tax bonds, including ad valorem assessment or
4 revenue bonds. Any savings achieved through the issuance of refunding bonds may be used by the City
5 in any manner that it determines to be in the best financial interests of the City.

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7 **TITLE 4 - SUPPLEMENTAL PROVISIONS**

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9 **SEC. 43.10.20. LIBERAL CONSTRUCTION.**

10 This chapter is to be liberally construed.

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12 **SEC. 43.10.21. OMISSIONS DO NOT IMPACT VALIDITY.**

13 Any proceedings taken or special tax levied pursuant to this Article shall not be held invalid for
14 failure to comply with the provisions of this Article provided such failure is not a constitutional defect.

15
16 **SEC. 43.10.22. ARTICLE CONTROLLING.**

17 To the extent that the provisions of this Article are inconsistent with the provisions of any
18 general statute or special act or parts thereof the provisions of this Article shall be deemed controlling.

19
20 **SEC. 43.10.23. SEVERABILITY.**

21 If any provisions of this Article or the application thereof to any person or circumstance is held
22 invalid, such invalidity shall not affect any other provision or application of this Article which can be
23 given effect without the invalid provision or application, and to this end the provisions of this Article
24 are declared to be severable. The Board of Supervisors hereby declares that it would have adopted and

1 passed this Article and each section, subsection, sentence, clause, phrase and word hereof, irrespective
2 of the fact that any one or more of the other sections, subsections, sentences, clauses, phrases or words
3 hereof be declared invalid or unconstitutional.

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

8 By:

9 Michael J. Martin
10 Deputy City Attorney
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