

1 [Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Tax on Net
2 Rider Fares of Transportation Network Companies, Autonomous Vehicles, and Private Transit
3 Services Vehicles]

4 **Motion ordering submitted to the voters at an election to be held on November 5, 2019,**
5 **an Ordinance amending the Business and Tax Regulations Code and Administrative**
6 **Code to impose an excise tax on the net rider fares for rides facilitated by**
7 **transportation network companies and rides provided by autonomous vehicles and**
8 **private transit services vehicles, to fund transportation operations and infrastructure**
9 **for traffic congestion mitigation in the City; and to increase the City’s appropriations**
10 **limit by the amount collected under the tax for four years from November 5, 2019.**

11
12 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
13 voters of the City and County of San Francisco, at an election to be held on November 5,
14 2019.

15
16 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**
17 **to impose an excise tax on the net rider fares for rides facilitated by transportation**
18 **network companies and rides provided by autonomous vehicles and private transit**
19 **services vehicles, to fund transportation operations and infrastructure for traffic**
20 **congestion mitigation in the City; and to increase the City’s appropriations limit by the**
21 **amount collected under the tax for four years from November 5, 2019.**

22 NOTE: **Unchanged Code text and uncodified text** are in plain font.
23 **Additions to Codes** are in *single-underline italics Times New Roman font*.
24 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
25 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

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

2
3 Section 1. Pursuant to Articles XIII A and XIII C of the Constitution of the State of
4 California, this ordinance shall be submitted to the qualified electors of the City and County of
5 San Francisco at the November 5, 2019, municipal election.

6
7 Section 2. The Business and Tax Regulations Code is hereby amended by adding
8 Article 32, consisting of Sections 3201 to 3213, to read as follows:

9
10 **ARTICLE 32: TRAFFIC CONGESTION MITIGATION TAX**

11
12 **SEC. 3201. SHORT TITLE.**

13 *This Article 32 shall be known as the “Traffic Congestion Mitigation Tax Ordinance,” and the*
14 *tax it imposes shall be known as the “Traffic Congestion Mitigation Tax.”*

15
16 **SEC. 3202. FINDINGS AND PURPOSE.**

17 *(a) Strategies for managing traffic congestion are key to ensuring that San Francisco’s*
18 *transportation system remains efficient, affordable, and safe as the number of jobs and the population*
19 *in San Francisco grows. These strategies include improving transit, improving access to bicycling and*
20 *walking, supporting walkable and transit-oriented neighborhoods, and managing vehicle use, parking,*
21 *and traffic signals.*

22 *(b) Over the years, traffic congestion has increased in San Francisco, with San Francisco*
23 *ranking among the top five most congested cities in the world, according to the 2018 INRIX Global*
24 *Traffic Scorecard, which analyzes traffic congestion in more than 200 cities across 38 countries. As*
25

1 congestion increases, it is vital that San Francisco continue to make its transit system faster and more
2 reliable while ensuring that the City invests in streets to create a safer environment.

3 (c) Emerging technologies, including autonomous vehicles, are expected to further increase
4 traffic congestion in San Francisco, with the San Francisco County Transportation Authority's 2017
5 Report "TNCs Today" documenting that transportation network companies accounted for
6 approximately 50% of San Francisco's congestion increase from 2010-2016. As these technologies
7 expand, it is critical that they complement existing transit infrastructure and improve first-mile-last-
8 mile accessibility, while mitigating congestion.

9 (d) In 2014, San Francisco adopted Vision Zero, a plan committed to eliminating all traffic
10 deaths in San Francisco. The Vision Zero High Injury Network guides the City's investments in
11 infrastructure and ensures prioritization of critical Transit First, pedestrian safety, and bicycle safety
12 projects. In San Francisco, 13% of streets account for 75% of the City's severe traffic injuries and
13 fatalities. To further the goal of Vision Zero, San Francisco must increase capital investments in street
14 safety.

15 (e) In 2017, the San Francisco Transportation 2045 Task Force identified a projected \$22
16 billion funding gap for San Francisco's transportation system through 2045 and possible revenue
17 sources to close that gap, including a tax on rides facilitated by transportation network companies.

18 (f) In 2018, the Legislature enacted Assembly Bill 1184, which confirmed the City's authority to
19 impose a tax on net rider fares for rides originating in San Francisco, including rides facilitated by
20 transportation network companies and rides provided by autonomous vehicles.

21
22 **SEC. 3203. DEFINITIONS.**

23 Unless otherwise defined in this Article 32, the terms used in this Article shall have the
24 meanings given to them in Article 6 of the Business and Tax Regulations Code, as amended from time
25 to time.

1 For purposes of this Article 32, the following definitions apply.

2 “Autonomous Vehicle” means a vehicle, other than a Taxicab or Limousine, with or without a
3 driver, equipped with and into which has been integrated technology that has the capability to drive the
4 vehicle without the active physical control by a human operator, regardless of whether the vehicle is in
5 driverless operation. An Autonomous Vehicle includes any vehicle capable of being driven by a remote
6 driver.

7 “Limousine” means a limousine as that term is used in Section 5431 of the California Public
8 Utilities Code as of June 30, 2019.

9 “Net Rider Fare” means all charges for a ride, including but not limited to charges based on
10 time or distance, or both, and excluding any taxes, fees, and other charges where such taxes, fees, and
11 other charges are imposed by governmental entities on that ride. The Net Rider Fare for a ride
12 includes subscription fees and other indirect charges that are attributable to that ride. The entire
13 amount of subscription fees and other indirect charges that are charged in connection with passenger
14 rides shall be presumed, subject to rebuttal, to be attributable to passenger rides.

15 “Operator” means any person conducting or controlling a business that provides rides to fare-
16 paying passengers using an Autonomous Vehicle or a Private Transit Services Vehicle, or both,
17 including but not limited to the owner or proprietor of such business.

18 “Personal Vehicle” means a vehicle that (1) has a passenger capacity of eight persons or less,
19 including the driver, (2) is owned, leased, rented, or otherwise authorized for use by the driver,
20 (3) meets any applicable inspection and other safety requirements imposed by the California Public
21 Utilities Commission, and (4) is not a Taxicab or Limousine.

22 “Private Transit Services Vehicle” means a private transit vehicle as defined in Section 1202 of
23 the Transportation Code as of June 30, 2019.

24 “Shared Ride” means a ride in which, prior to the commencement of the ride, a passenger
25 requests to share the ride with one or more passengers and each passenger is charged a fare that is

1 calculated, in whole or in part, based on the passenger's request to share all or part of the ride with
2 one or more passengers, regardless of whether the passenger actually shares all or part of the ride. A
3 ride provided by a Private Transit Services Vehicle shall be deemed to be a Shared Ride if that vehicle
4 is designed to carry and regularly carries more than one passenger at a time.

5 "Taxicab" means a taxicab as that term is used in Section 5431 of the California Public
6 Utilities Code as of June 30, 2019.

7 "Transportation Network Company" means a person that provides prearranged transportation
8 services for compensation using an online-enabled application or platform or any offline method to
9 connect passengers with drivers using a Personal Vehicle.

10 "Zero-Emission Vehicle" means a vehicle of a year, make, and model that the California Air
11 Resources Board has certified as a zero-emission vehicle under Section 1962.2 of Title 13 of the
12 California Code of Regulations, as may be amended or replaced by a similar regulation, for 2018 and
13 subsequent model years; under Section 1962.1 of Title 13 of the California Code of Regulations for
14 2009 through 2017 model years; or under Section 1962 of Title 13 of the California Code of
15 Regulations or predecessor regulation, for 2008 and prior model years. For purposes of this
16 Article 32, a vehicle shall be considered a Zero-Emission Vehicle on and after the date the California
17 Air Resources Board has certified that vehicle's year, make, and model as a zero-emission vehicle
18 under the aforementioned regulations.

19
20 **SEC. 3204. IMPOSITION OF TAX.**

21 (a) Except as otherwise provided in this Article 32, for the privilege of engaging in business in
22 the City and to raise revenue for the purposes set forth in Section 3208, the City imposes a Traffic
23 Congestion Mitigation Tax, which shall be a special excise tax, as follows:

24 (1) Except as provided in Section 3204(a)(3), for each ride originating in the City
25 facilitated by a Transportation Network Company, the tax shall be imposed on the Transportation

1 Network Company and shall be calculated by applying the following percentages to the Net Rider Fare
2 attributable to the City.

3 (A) 1.5% for a Shared Ride;

4 (B) 3.25% for a ride other than a Shared Ride.

5 (2) Except as provided in Section 3204(a)(3), for each ride originating in the City
6 provided by an Autonomous Vehicle or a Private Transit Services Vehicle, and not facilitated by a
7 Transportation Network Company, the tax shall be imposed on the Operator of the Autonomous Vehicle
8 or the Private Transit Services Vehicle and shall be calculated by applying the following percentages to
9 the Net Rider Fare attributable to the City.

10 (A) 1.5% for a Shared Ride;

11 (B) 3.25% for a ride other than a Shared Ride.

12 (3) From January 1, 2020 through December 31, 2024, for each ride described in
13 Section 3204(a)(1) or Section 3204(a)(2) that is provided in a Zero-Emission Vehicle, the tax shall be
14 calculated by multiplying the Net Rider Fare attributable to the City for that ride by 1.5%.

15 (b) For purposes of this Article 32, a passenger's ride originates in the City if the vehicle picks
16 up that passenger in the City. The Net Rider Fare attributable to the City for each ride shall be the Net
17 Rider Fare for that ride multiplied by a fraction, the numerator of which is the distance traveled within
18 the City for that ride and the denominator of which is the total distance traveled for that ride. In lieu of
19 calculating the distance traveled within the City for each ride a portion of which occurs outside the
20 City, a person subject to tax under this Article 32 may presume that the Net Rider Fare for each such
21 ride is 50% attributable to the City; provided, however, that such presumption must be applied to all
22 rides for which a portion occurs outside the City during the reporting period. If it is impracticable or
23 unreasonable to attribute a Net Rider Fare to the City based on distance traveled, the Net Rider Fare
24 attributable to the City shall be determined on the basis of all relevant facts and circumstances of the
25

1 particular case, in accordance with any rulings or regulations issued or promulgated by the Tax
2 Collector.

3 (c) The tax imposed under this Section 3204 shall apply only to persons that are engaging in
4 business within the City within the meaning of Section 6.2-12 of Article 6 of the Business and Tax
5 Regulations Code.

6 (d) The Traffic Congestion Mitigation Tax shall be operative on January 1, 2020 and shall
7 expire on November 5, 2045.

8
9 **SEC. 3205. EXEMPTIONS AND EXCLUSIONS.**

10 (a) Rides that originate in the City and carry passengers across the California state line shall
11 be exempt from the Traffic Congestion Mitigation Tax for only so long as and to the extent that the City
12 is prohibited from taxing such rides under Section 14505 of Title 49 of the United States Code.

13 (b) Net Rider Fare as defined in Section 3203 shall not include charges for a ride or a portion
14 of a ride if, and only so long as and to the extent that, the City is prohibited from taxing such ride or
15 portion of a ride under the Constitution or laws of the United States or under the Constitution or laws
16 of the State of California.

17 (c) Any person upon whom the City is prohibited under the Constitution or laws of the United
18 States or under the Constitution or laws of the State of California from imposing the Traffic Congestion
19 Mitigation Tax shall be exempt from the Traffic Congestion Mitigation Tax.

20
21 **SEC. 3206. CONSTRUCTION AND SCOPE OF THE TRAFFIC CONGESTION MITIGATION**
22 **TAX ORDINANCE.**

23 (a) This Article 32 is intended to authorize application of the Traffic Congestion Mitigation Tax
24 in the broadest manner consistent with its provisions and with the California Constitution, the United
25 States Constitution, and any other applicable provision of federal or state law.

1 (b) The Traffic Congestion Mitigation Tax imposed by this Article 32 is in addition to all other
2 City taxes, including without limitation the gross receipts tax imposed by Article 12-A-1 of the Business
3 and Tax Regulations Code, as amended from time to time. Accordingly, by way of example and not
4 limitation, persons subject to both the Traffic Congestion Mitigation Tax and the gross receipts tax
5 shall pay both taxes. Similarly, persons exempt from either the gross receipts tax or the Traffic
6 Congestion Mitigation Tax, but not both, shall pay the tax from which they are not exempt.

7
8 **SEC. 3207. ADMINISTRATION OF THE TRAFFIC CONGESTION MITIGATION TAX**
9 **ORDINANCE.**

10 Except as otherwise provided under this Article 32, the Traffic Congestion Mitigation Tax shall
11 be administered pursuant to Article 6 of the Business and Tax Regulations Code, as amended from time
12 to time, including all penalties and other charges imposed by that Article.

13
14 **SEC. 3208. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.**

15 (a) All monies collected under the Traffic Congestion Mitigation Tax Ordinance shall be
16 deposited to the credit of the Traffic Congestion Mitigation Fund, established in Administrative Code
17 Section 10.100-345. The Fund shall be maintained separate and apart from all other City funds and
18 shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year
19 shall be deemed to have been provided for a special purpose within the meaning of Charter
20 Section 9.113(a) and shall be carried forward and accumulated in the Fund for the purposes described
21 in Section 3208(b)(3), below.

22 (b) Subject to the budgetary and fiscal provisions of the Charter, monies in the Traffic
23 Congestion Mitigation Fund shall be appropriated on an annual or supplemental basis and used
24 exclusively for the following purposes:

1 (1) Up to 2% of the proceeds of the Traffic Congestion Mitigation Tax distributed in
2 any proportion to the Tax Collector and other City departments, for administration of the Traffic
3 Congestion Mitigation Tax and administration of the Traffic Congestion Mitigation Fund.

4 (2) Refunds of any overpayments of the Traffic Congestion Mitigation Tax, including
5 any related penalties, interests, and fees.

6 (3) All remaining amounts for the following purposes, in the following percentages,
7 which amounts shall include the costs of administering the programs described.

8 (A) 50% to the Municipal Transportation Agency, or any successor agency, for
9 Muni transit service and affordability, system reliability and capacity, and keeping transit
10 infrastructure in a state of good repair, to be used exclusively for the following purposes:

11 (i) Improving bus and rail service frequency and reliability.

12 (ii) Maintaining and expanding Muni fleet and facilities.

13 (iii) Improving access, including stations, escalators, and elevators.

14 (iv) Improving reliability through fixing and/or replacing rails, overhead
15 wires, associated fixed guideway infrastructure, and traffic signals.

16 (B) 50% to the San Francisco County Transportation Authority, or any
17 successor body, for planning, design studies, and/or capital improvements that promote users' safety in
18 the public right-of-way, to be used exclusively for the following purposes:

19 (i) Pedestrian and bicycle safety infrastructure, including civil and
20 signal improvements, mid-block crossings, and bike boxes.

21 (ii) Physical protection of bicycle facilities from motorized traffic,
22 including bicycle lanes within street rights-of-way.

23 (iii) Traffic calming.

24 (iv) Traffic signal and traffic signal timing improvements.

25 (v) Maintenance of existing safety infrastructure.

1 (c) All amounts allocated to the Municipal Transportation Agency under Section 3208(b)(3)(A)
2 shall be credited to the Municipal Transportation Fund as described in Section 8A.105 of Article VIIIA
3 of the Charter.

4 (d) Commencing with a report filed no later than February 15, 2022, covering the fiscal year
5 ending on June 30, 2021, the Controller shall file annually with the Board of Supervisors, by
6 February 15 of each year, a report containing the amount of monies collected in and expended from the
7 Traffic Congestion Mitigation Fund during the prior fiscal year, the status of any project authorized to
8 be funded by this Section 3208, and such other information as the Controller, in the Controller's sole
9 discretion, deems relevant to the operation of this Article 32.

10
11 **SEC. 3209. AUTHORIZATION AND LIMITATION ON ISSUANCE OF BONDS.**

12 The City is hereby authorized to issue from time to time limited tax bonds to finance the costs of
13 the capital projects described in Section 3208. The City shall be authorized to pledge revenues
14 generated by the Traffic Congestion Mitigation Tax to the repayment of limited tax bonds authorized
15 under this Section 3209. The amount of limited tax bonds authorized hereby shall not exceed
16 \$300,000,000 in aggregate principal amount. The Board of Supervisors shall by ordinance or
17 resolution, as applicable, establish the terms of any limited tax bonds authorized hereby, including but
18 not limited to, the amount of the issue, date, covenants, denominations, interest rate or rates, maturity
19 or maturities, redemption rights, tax status, manner of sale, and such other particulars as are necessary
20 or desirable.

21
22 **SEC. 3210. AMENDMENT OF ORDINANCE.**

23 The Board of Supervisors may amend or repeal this Article 32 by ordinance by a two-thirds
24 vote and without a vote of the people except as limited by Articles XIII A and XIII C of the California
25 Constitution.

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SEC. 3211. EFFECT OF STATE AND FEDERAL AUTHORIZATION.

To the extent that the City’s authorization to impose or to collect any tax imposed under this Article 32 is expanded or limited as a result of changes in state or federal statutes, regulations, or other laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with those changes, and the Tax Collector shall collect them to the full extent of the City’s authorization up to the full amount and rate of the taxes imposed under this Article.

SEC. 3212. SEVERABILITY.

(a) Except as provided in Section 3212(b), if any section, subsection, sentence, clause, phrase, or word of this Article 32, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Article. The People of the City and County of San Francisco hereby declare that, except as provided in Section 3212(b), they would have adopted this Article 32 and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Article or application thereof would be subsequently declared invalid or unconstitutional.

(b) If the imposition of the Traffic Congestion Mitigation Tax in Section 3204 is held in its entirety to be facially invalid or unconstitutional in a final court determination, the remainder of this Article 32 shall be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax Regulations Code, and likewise cause Section 10.100-345 to be removed from the Administrative Code.

1 **SEC. 3213. SAVINGS CLAUSE.**

2 No section, clause, part, or provision of this Article 32 shall be construed as requiring the
3 payment of any tax that would be in violation of the Constitution or laws of the United States or of the
4 Constitution or laws of the State of California.

5
6 Section 3. Chapter 10 of the Administrative Code is hereby amended by adding
7 Section 10.100-345 to Article XIII, to read as follows:

8
9 **SEC. 10.100-345. TRAFFIC CONGESTION MITIGATION FUND.**

10 (a) Establishment of Fund. The Traffic Congestion Mitigation Fund (“Fund”) is established as
11 a category four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all
12 taxes, penalties, interest, and fees collected from the Traffic Congestion Mitigation Tax imposed under
13 Article 32 of the Business and Tax Regulations Code.

14 (b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the
15 Fund shall be used exclusively for the purposes described in Section 3208(b) of Article 32 of the
16 Business and Tax Regulations Code.

17 (c) Administration of Fund. As stated in Section 3208(d) of Article 32 of the Business and Tax
18 Regulations Code, commencing with a report filed no later than February 15, 2022, covering the fiscal
19 year ending June 30, 2021, the Controller shall file annually with the Board of Supervisors, by
20 February 15 of each year, a report containing the amount of monies collected in and expended from the
21 Fund during the prior fiscal year, the status of any project authorized to be funded by Section 3208,
22 and such other information as the Controller, in the Controller’s sole discretion, deems relevant to the
23 operation of Article 32.

1 Section 4. Appropriations Limit Increase. Pursuant to California Constitution
2 Article XIII B and applicable laws, for four years from November 5, 2019, the appropriations
3 limit for the City shall be increased by the aggregate sum collected by the levy of the tax
4 imposed under this ordinance.

5
6 Section 5. Effective and Operative Dates. The effective date of this ordinance shall be
7 ten days after the date the official vote count is declared by the Board of Supervisors. This
8 ordinance shall become operative on January 1, 2020.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: _____
13 KERNE H. O. MATSUBARA
14 Deputy City Attorney

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