

1 [Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Additional Tax  
2 on Businesses With Disproportionate Executive Pay]

3 **Motion ordering submitted to the voters at an election to be held on November 5, 2019,**  
4 **an Ordinance amending the Business and Tax Regulations Code and Administrative**  
5 **Code to impose an additional gross receipts tax and administrative office tax on**  
6 **businesses with a ratio of the compensation of the business’s highest-paid employee**  
7 **to the median compensation paid to the business’s employees based in the City that**  
8 **exceeds 100:1, to fund Mental Health SF (as proposed in the initiative ordinance in**  
9 **Board File No. 190665) or other mental health services; and increasing the City’s**  
10 **appropriations limit by the amount collected under the additional tax for four years**  
11 **from November 5, 2019.**

12  
13 MOVED, That the Board of Supervisors hereby submits the following ordinance to the  
14 voters of the City and County of San Francisco, at an election to be held on November 5,  
15 2019.

16  
17 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**  
18 **to impose an additional gross receipts tax and administrative office tax on businesses**  
19 **with a ratio of the compensation of the business’s highest-paid employee to the**  
20 **median compensation paid to the business’s employees based in the City that exceeds**  
21 **100:1, to fund Mental Health SF (as proposed in the initiative ordinance in Board File**  
22 **190665) or other mental health services; and increasing the City’s appropriations limit**  
23 **by the amount collected under the additional tax for four years from November 5, 2019.**

1 NOTE: **Unchanged Code text and uncodified text** are in plain font.  
2 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
3 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.  
4 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or  
5 parts of tables.

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

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

10 Section 2. The Business and Tax Regulations Code is hereby amended by adding  
11 Article 33, consisting of Sections 3301 through 3313, to read as follows:

12  
13 **ARTICLE 33: MENTAL HEALTH GROSS RECEIPTS TAX**

14  
15 **SEC. 3301. SHORT TITLE.**

16 *This Article 33 shall be known as the “Mental Health Gross Receipts Tax Ordinance,” and the*  
17 *tax it imposes shall be known as the “Mental Health Gross Receipts Tax.”*

18  
19 **SEC. 3302. DEFINITIONS.**

20 *(a) Unless otherwise defined in this Article 33, the terms used in this Article shall have the*  
21 *meanings given to them in Articles 6 and 12-A-1 of the Business and Tax Regulations Code, as*  
22 *amended from time to time. For purposes of this Article, the following definitions apply.*

23 *(b) “Compensation” means wages, salaries, commissions, bonuses, property issued or*  
24 *transferred in exchange for the performance of services (including but not limited to stock options).*

1 compensation for services to owners of pass-through entities, and any other form of remuneration paid  
2 to employees for services.

3 (c) “Executive Pay Ratio” means the ratio of the annual Compensation of the person or  
4 combined group’s Highest-Paid Employee for a tax year to the median Compensation paid to the  
5 person or combined group’s full-time and part-time employees based in the City for that tax year. For  
6 purposes of this subsection (c), an employee is based in the City for a tax year if the number of the  
7 employee’s working hours in the City during the tax year exceed the number of the employee’s working  
8 hours in any other City or municipality during the tax year.

9 (d) “Highest-Paid Employee” means the person or combined group’s individual employee or  
10 officer that received the most Compensation for a tax year.

11  
12 **SEC. 3303. IMPOSITION OF TAX.**

13 (a) Except as otherwise provided in this Article 33, commencing with tax years beginning on or  
14 after January 1, 2021, for the privilege of engaging in business in the City, the City imposes an annual  
15 Mental Health Gross Receipts Tax on each person engaged in business in the City where the Executive  
16 Pay Ratio for the tax year of that person or the combined group of which it is a part exceeds 100:1.

17 (b) The Mental Health Gross Receipts Tax shall be calculated as follows:

18 (1) 0.1% of the person or combined group’s taxable gross receipts for a tax year if the  
19 person or combined group has an Executive Pay Ratio for that tax year of greater than 100:1, but less  
20 than or equal to 200:1;

21 (2) 0.2% of the person or combined group’s taxable gross receipts for a tax year if the  
22 person or combined group has an Executive Pay Ratio for that tax year of greater than 200:1, but less  
23 than or equal to 300:1;

1                   (3) 0.3% of the person or combined group's taxable gross receipts for a tax year if the  
2 person or combined group has an Executive Pay Ratio for that tax year of greater than 300:1, but less  
3 than or equal to 400:1;

4                   (4) 0.4% of the person or combined group's taxable gross receipts for a tax year if the  
5 person or combined group has an Executive Pay Ratio for that tax year of greater than 400:1, but less  
6 than or equal to 500:1;

7                   (5) 0.5% of the person or combined group's taxable gross receipts for a tax year if the  
8 person or combined group has an Executive Pay Ratio for that tax year of greater than 500:1, but less  
9 than or equal to 600:1; or

10                   (6) 0.6% of the person or combined group's taxable gross receipts for a tax year if the  
11 person or combined group has an Executive Pay Ratio for that tax year of greater than 600:1.

12                   (c) Notwithstanding any other subsection of this Section 3303, every person engaging in  
13 business within the City as an administrative office, as defined in Section 953.8 of Article 12-A-1, shall  
14 pay an annual mental health administrative office tax if the Executive Pay Ratio for the tax year of that  
15 person or the combined group of which it is a part exceeds 100:1. This mental health administrative  
16 office tax shall be measured by the person's total payroll expense, as defined in Section 953.8(f) of  
17 Article 12-A-1, that is attributable to the City. If a person is a member of a combined group, then its  
18 tax shall be measured by the total payroll expense of the combined group attributable to the City. Such  
19 person or combined group shall pay only the mental health administrative office tax, and not the tax  
20 imposed under other subsections of this Section 3303, but a person or combined group may be liable  
21 for the administrative office tax imposed by Section 953.8 of Article 12-A-1, the homelessness  
22 administrative office tax imposed by Section 2804(d) of Article 28, and the mental health administrative  
23 office tax imposed by this subsection (c). Unless specified otherwise, this mental health administrative  
24 office tax shall be considered part of the Mental Health Gross Receipts Tax for all purposes. The  
25 mental health administrative office tax shall be calculated as follows:

1                   (1) 0.4% of the person or combined group’s total payroll expense attributable to the  
2 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of  
3 greater than 100:1, but less than or equal to 200:1;

4                   (2) 0.8% of the person or combined group’s total payroll expense attributable to the  
5 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of  
6 greater than 200:1, but less than or equal to 300:1;

7                   (3) 1.2% of the person or combined group’s total payroll expense attributable to the  
8 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of  
9 greater than 300:1, but less than or equal to 400:1;

10                   (4) 1.6% of the person or combined group’s total payroll expense attributable to the  
11 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of  
12 greater than 400:1, but less than or equal to 500:1;

13                   (5) 2.0% of the person or combined group’s total payroll expense attributable to the  
14 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of  
15 greater than 500:1, but less than or equal to 600:1; or

16                   (6) 2.4% of the person or combined group’s total payroll expense attributable to the  
17 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of  
18 greater than 600:1.

19                   (d) “Taxable Gross Receipts” means a person or combined group’s gross receipts, not  
20 excluded under Section 3304, attributable to the City. The person or combined group’s gross receipts  
21 that are attributable to the City shall be determined in the same manner as in Article 12-A-1, as  
22 amended from time to time.

1     **SEC. 3304. EXEMPTIONS AND EXCLUSIONS.**

2             (a) An organization that is exempt from income taxation by Chapter 4 (commencing with  
3     Section 23701) of Part 11 of Division 2 of the California Revenue and Taxation Code or Subchapter F  
4     (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as  
5     amended, as qualified by Sections 502, 503, 504, and 508 of the Internal Revenue Code of 1986, as  
6     amended, shall be exempt from taxation under this Article 33, only so long as those exemptions  
7     continue to exist under state or federal law.

8             (b) For only so long as and to the extent that the City is prohibited from imposing the Mental  
9     Health Gross Receipts Tax, any person upon whom the City is prohibited under the Constitution or  
10    laws of the State of California or the Constitution or laws of the United States from imposing the  
11    Mental Health Gross Receipts Tax shall be exempt from the Mental Health Gross Receipts Tax.

12            (c) For purposes of this Article 33, gross receipts shall not include receipts that are excluded  
13    from gross receipts for purposes of the gross receipts tax imposed by Article 12-A-1.

14            (d) A person or combined group exempt from the gross receipts tax as a small business  
15    enterprise under Section 954.1 of Article 12-A-1 shall also be exempt from taxation under this  
16    Article 33.

17  
18     **SEC. 3305. COMBINED RETURNS.**

19            (a) Persons subject to the Mental Health Gross Receipts Tax shall file returns at the same time  
20    and in the same manner as returns filed for the gross receipts tax imposed by Article 12-A-1, including  
21    the rules for combined returns under Section 956.3, as amended from time to time.

22            (b) If a person is subject to the Mental Health Gross Receipts Tax, but is not required to file a  
23    gross receipts tax return under Article 12-A-1, such person or combined group's Mental Health Gross  
24    Receipts Tax return shall be filed at the same time and in the same manner as if such person or  
25    combined group were required to file a gross receipts tax return under Article 12-A-1.

1           (c) For purposes of this Article 33, a lessor of residential real estate is treated as a separate  
2 person with respect to each individual building in which it leases residential real estate units,  
3 notwithstanding Section 6.2-15 of Article 6, as amended from time to time, or subsection (a) of this  
4 Section 3305. This subsection (c) applies only to leasing residential real estate units within a building,  
5 and not to any business activity related to other space, either within the same building or other  
6 buildings, which is not residential real estate. The Tax Collector is authorized to determine what  
7 constitutes a separate building and the number of units in a building.

8  
9           **SEC. 3306. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.**

10           The Tax Collector may, in the Tax Collector’s reasonable discretion, independently establish a  
11 person or combined group’s gross receipts within the City and establish or reallocate gross receipts  
12 among related entities so as to fairly reflect the gross receipts within the City of all persons and  
13 combined groups.

14  
15           **SEC. 3307. CONSTRUCTION AND SCOPE OF THE MENTAL HEALTH GROSS RECEIPTS**  
16 **TAX ORDINANCE.**

17           (a) This Article 33 is intended to authorize application of the Mental Health Gross Receipts  
18 Tax in the broadest manner consistent with its provisions and with the California Constitution, the  
19 United States Constitution, and any other applicable provision of federal or state law.

20           (b) The Mental Health Gross Receipts Tax imposed by this Article 33 is in addition to all other  
21 City taxes, including the gross receipts tax imposed by Article 12-A-1, as amended from time to time.  
22 Accordingly, by way of example and not limitation, persons subject to both the Mental Health Gross  
23 Receipts Tax and the gross receipts tax shall pay both taxes. Persons exempt from either the gross  
24 receipts tax or the Mental Health Gross Receipts Tax, but not both, shall pay the tax from which they  
25 are not exempt.

1 **SEC. 3308. ADMINISTRATION OF THE MENTAL HEALTH GROSS RECEIPTS TAX**  
2 **ORDINANCE.**

3 Except as otherwise provided under this Article 33, the Mental Health Gross Receipts Tax  
4 Ordinance shall be administered pursuant to Article 6 of the Business and Tax Regulations Code, as  
5 amended from time to time, including all penalties and other charges imposed by that Article.  
6

7 **SEC. 3309. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.**

8 (a) All monies collected under the Mental Health Gross Receipts Tax Ordinance shall be  
9 deposited to the credit of the Mental Health Fund, established in Administrative Code Section 10.100-  
10 157. The Fund shall be maintained separate and apart from all other City funds and shall be subject to  
11 appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to  
12 have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be  
13 carried forward and accumulated in the Fund for the purposes described in subsection (b).

14 (b) Subject to the budgetary and fiscal provisions of the Charter, monies in the Mental Health  
15 Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following  
16 purposes:

17 (1) Up to 2% of the proceeds of the Mental Health Gross Receipts Tax, distributed in  
18 any proportion to the Tax Collector and other City departments, for administration of the Mental  
19 Health Gross Receipts Tax and administration of the Mental Health Fund.

20 (2) Refunds of any overpayments of the Mental Health Gross Receipts Tax, including  
21 any related penalties, interest, and fees.

22 (3) If a measure creating the Mental Health SF program passes at the November 5,  
23 2019 election, all remaining amounts shall be used for said program, including the costs of  
24 administering Mental Health SF. If Mental Health SF is fully funded during any fiscal year, any excess  
25



1 funds in the Mental Health Fund during that fiscal year may be used for any other mental health  
2 facilities, services, and programs, including the costs of administering those programs.

3 (4) If a measure creating the Mental Health SF program does not pass at the  
4 November 5, 2019 election, all remaining amounts shall be used for any mental health facilities,  
5 services, and programs, including the costs of administering those programs.

6 (c) Commencing with a report filed no later than February 15, 2023, covering the fiscal year  
7 ending on June 30, 2022, the Controller shall file annually with the Board of Supervisors, by  
8 February 15 of each year, a report containing the amount of monies collected in and expended from the  
9 Mental Health Fund during the prior fiscal year, the status of any project required or authorized to be  
10 funded by this Section 3309, and such other information as the Controller, in the Controller's sole  
11 discretion, deems relevant to the operation of this Article 33.

12  
13 **SEC. 3310. AMENDMENT OF ORDINANCE.**

14 The Board of Supervisors may amend or repeal this Article 33 by ordinance without a vote of  
15 the people except as limited by Articles XIII A and XIII C of the California Constitution.

16  
17 **SEC. 3311. EFFECT OF STATE AND FEDERAL AUTHORIZATION.**

18 To the extent that the City's authorization to impose or to collect any tax imposed under this  
19 Article 33 is expanded or limited as a result of changes in state or federal statutes, regulations, or other  
20 laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be  
21 required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with  
22 those changes, and the Tax Collector shall collect them to the full extent of the City's authorization up  
23 to the full amount and rate of the taxes imposed under this Article.

1 **SEC. 3312. SEVERABILITY.**

2 (a) Except as provided in Section 3312(b), below, if any section, subsection, sentence, clause,  
3 phrase, or word of this Article 33, or any application thereof to any person or circumstance, is held to  
4 be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not  
5 affect the validity of the remaining portions or applications of this Article. The People of the City and  
6 County of San Francisco hereby declare that, except as provided in Section 3312(b), they would have  
7 adopted this Article and each and every section, subsection, sentence, clause, phrase, and word not  
8 declared invalid or unconstitutional without regard to whether any other portion of this Article or  
9 application thereof would be subsequently declared invalid or unconstitutional.

10 (b) If the imposition of the Mental Health Gross Receipts Tax in Section 3303 is held in its  
11 entirety to be facially invalid or unconstitutional in a final court determination, the remainder of this  
12 Article 33 shall be void and of no force and effect, and the City Attorney shall cause it to be removed  
13 from the Business and Tax Regulations Code, and likewise cause Section 10.100-157 to be removed  
14 from the Administrative Code.

15  
16 **SEC. 3313. SAVINGS CLAUSE.**

17 No section, clause, part, or provision of this Article 33 shall be construed as requiring the  
18 payment of any tax that would be in violation of the Constitution or laws of the United States or of the  
19 Constitution or laws of the State of California.

20  
21 Section 3. Chapter 10 of the Administrative Code is hereby amended by adding  
22 Section 10.100-157 to Article XIII, to read as follows:  
23  
24  
25

1 **SEC. 10.100-157. MENTAL HEALTH FUND.**

2 (a) Establishment of Fund. The Mental Health Fund (“Fund”) is established as a category  
3 four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all taxes,  
4 penalties, interest, and fees collected from the Mental Health Gross Receipts Tax imposed under  
5 Article 33 of the Business and Tax Regulations Code.

6 (b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the  
7 Fund shall be used exclusively for the purposes described in Section 3309(b) of Article 33 of the  
8 Business and Tax Regulations Code.

9 (c) Administration of Fund. As stated in Section 3309(c) of Article 33 of the Business and Tax  
10 Regulations Code, commencing with a report filed no later than February 15, 2023, covering the fiscal  
11 year ending June 30, 2022, the Controller shall file annually with the Board of Supervisors, by  
12 February 15 of each year, a report containing the amount of monies collected in and expended from the  
13 Fund during the prior fiscal year, the status of any project required or authorized to be funded by  
14 Section 3309, and such other information as the Controller, in the Controller’s sole discretion, shall  
15 deem relevant to the operation of Article 33.

16  
17 Section 4. Appropriations Limit Increase. Pursuant to California Constitution  
18 Article XIII B and applicable laws, for four years from November 5, 2019, the appropriations  
19 limit for the City shall be increased by the aggregate sum collected by the levy of the tax  
20 imposed under this ordinance.

1 Section 5. Effective and Operative Date. The effective date of this ordinance shall be  
2 ten days after the date the official vote count is declared by the Board of Supervisors. This  
3 ordinance shall become operative on January 1, 2021.

4  
5 APPROVED AS TO FORM:

6 DENNIS J. HERRERA, City Attorney

7  
8 By: \_\_\_\_\_  
9 MOE JAMIL  
Deputy City Attorney

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