

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: September 23, 2019

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 190927

Ordinance amending the Business and Tax Regulations Code to add provisions to administer the Traffic Congestion Mitigation Tax; and to make conforming non-substantive changes.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ **No Comment**

____ **Recommendation Attached**

Chairperson, Small Business Commission

c: Dominica Donovan, Small Business Commission

1 [Business and Tax Regulations Code - Administration of Traffic Congestion Mitigation Tax]

2
3 **Ordinance amending the Business and Tax Regulations Code to add provisions to**
4 **administer the Traffic Congestion Mitigation Tax; and to make conforming non-**
5 **substantive changes.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

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

14 Section 1. Article 6 of the Business and Tax Regulations Code is hereby amended by
15 revising Sections 6.1-1, 6.2-12, 6.2-17, 6.8-1, 6.9-1, 6.9-2, 6.9-3, 6.9-5, and 6.15-2, to read as
16 follows:

17 **SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS.**

18 (a) These common administrative provisions shall apply to Articles 6, 7, 8, 9, 10, 10B,
19 11, 12, 12-A, 12-A-1, 12-B, 21, ~~and 28~~, and 32 of this Code and to Chapter 105 of the
20 Administrative Code, unless the specific language of either Code otherwise requires. Any
21 provision of this Article 6 that references or applies to Article 10 shall be deemed to also
22 reference or apply to Article 10B. Any provision of this Article 6 that references or applies to a
23 tax shall be deemed to also reference or apply to a fee administered pursuant to this Article,
24 and shall be deemed to also reference or apply to an assessment levied pursuant to the
25 Property and Business Improvement District Law of 1994 (California Streets and Highways

1 Code sections 36600 *et seq.*) or Article 15 of this Code. A fee administered pursuant to
2 Article 6 or an assessment levied pursuant to the Property and Business Improvement District
3 Law of 1994 or Article 15 of this Code shall for purposes of this Article be deemed to be
4 imposed pursuant to the provisions of the Business and Tax Regulations Code.

5 * * * *

6
7 **SEC. 6.2-12. NEXUS: “ENGAGING IN BUSINESS WITHIN THE CITY.”**

8 The taxes imposed by Article 12-A (Payroll Expense Tax Ordinance), Article 12-A-1
9 (Gross Receipts Tax Ordinance), Article 21 (Early Care and Education Commercial Rents Tax
10 Ordinance), Article 28 (Homelessness Gross Receipts Tax Ordinance), ~~and~~ Article 30
11 (Cannabis Business Tax Ordinance), and Article 32 (Traffic Congestion Mitigation Tax
12 Ordinance), and the registration fee imposed by Article 12 (Business Registration Ordinance)
13 shall apply to any person engaging in business within the City unless exempted therefrom
14 under said Articles. A person is “engaging in business within the City,” within the meaning of
15 this Article 6, if that person meets one or more of the following conditions:

16 (a) The person maintains a fixed place of business within the City; or

17 (b) An employee, representative, or agent of the person maintains a fixed place of
18 business within the City for the benefit or partial benefit of the person; or

19 (c) The person or one or more of the person’s employees, representatives, or agents
20 owns, rents, leases, or hires real or personal property within the City for business purposes for
21 the benefit or partial benefit of the person; or

22 (d) The person or one or more of the person’s employees, representatives, or agents
23 regularly maintains a stock of tangible personal property within the City, for sale in the
24 ordinary course of the person’s business; or
25

1 (e) The person or one or more of the person's employees, representatives, or agents
2 employs or loans capital on property within the City for the benefit or partial benefit of the
3 person; or

4 (f) The person or one or more of the person's employees, representatives, or agents
5 solicits business within the City for all or part of any seven days during a tax year; or

6 (g) The person or one or more of the person's employees, representatives, or agents
7 performs work or renders services within the City for all or part of any seven days during a tax
8 year; or

9 (h) The person or one or more of the person's employees, representatives, or agents
10 utilizes the streets within the City in connection with the operation of motor vehicles for
11 business purposes for all or part of any seven days during a tax year; or

12 (i) The person or one or more of the person's employees, representatives, or agents
13 exercises corporate or franchise powers within the City for the benefit or partial benefit of the
14 person; or

15 (j) The person or one or more of the person's employees, representatives, or agents
16 liquidates a business when the liquidators thereof hold themselves out to the public as
17 conducting such business; or

18 (k) The person has more than \$500,000 in total gross receipts, as the term "gross
19 receipts" is used in Article 12-A-1 of the Business and Tax Regulations Code, in the City
20 during the tax year, using the rules for assigning gross receipts under Section 956.1 of
21 Article 12-A-1.

22
23 **SEC. 6.2-17. RETURN.**

24 The term "return" means any written statement required to be filed under Articles 6, 7,
25 8, 9, 10, 10B, 11, 12, 12-A, 12-A-1, 21, ~~or 28~~, or 32, or under laws applicable to a fee

1 administered pursuant to Article 6, or under laws applicable to an assessment levied pursuant
2 to the Property and Business Improvement District Law of 1994 (California Streets and
3 Highways Code sections 36600 *et seq.*) or Article 15 of this Code.

4
5 **SEC. 6.8-1. CITY, PUBLIC ENTITY, AND CONSTITUTIONAL EXEMPTIONS.**

6 (a) Nothing in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A, 12-A-1, 21, ~~or 28~~, or 32 shall be
7 construed as imposing a tax upon:

8 (1) The City;

9 (2) The State of California, or any county, municipal corporation, district, or
10 other political subdivision of the State, except where any constitutional or statutory immunity
11 from taxation is waived or is not applicable;

12 (3) The United States of America, or any of its agencies or subdivisions, except
13 where any constitutional or statutory immunity from taxation is waived or is not applicable; or

14 (4) Any person exempted from the particular tax by the Constitution or statutes
15 of the United States or the Constitution or statutes of the State of California.

16 (b) The foregoing exemption from taxation does not relieve an exempt party from its
17 duty to collect, report, and remit third-party taxes.

18
19 **SEC. 6.9-1. DETERMINATIONS, RETURNS AND PAYMENTS; DUE DATE OF TAXES.**

20 Except for jeopardy determinations under Section 6.12-2, and subject to remittances
21 required under Sections 6.9-2 and 6.9-3, all amounts of taxes and fees imposed by Articles 6,
22 7, 8, 9, 10, 10B, 11, 12, 12-A, 12-A-1, 21, ~~and 28~~, and 32 are due and payable, and shall be
23 delinquent if not paid to the Tax Collector on or before the following dates:

24 (a) For the hotel tax (Article 7) and the parking tax (Article 9), for each month, on or
25 before the last day of the following month;

1 (b) For the payroll expense tax (Article 12-A), the gross receipts tax (Article 12-A-1)
2 (including the tax on administrative office business activities imposed under Section 953.8 of
3 Article 12-A-1), the Early Care and Education Commercial Rents Tax (Article 21), and the
4 Homelessness Gross Receipts Tax (Article 28) (including the homelessness administrative
5 office tax imposed under Section 2804(d) of Article 28), on or before the last day of February
6 of each year;

7 (c) For the utility users tax (Article 10) and the access line tax (Article 10B), for each
8 monthly period, on or before the last day of the following month;

9 (d) For the stadium operator admission tax (Article 11), within five days after the
10 event, subject to the provisions of Section 804 of Article 11;

11 (e) For the business registration certificate (Article 12), on or before the last day of
12 May preceding the registration year commencing July 1 of that year;~~and~~

13 (f) For the sugary drinks distributor tax (Article 8), for each quarterly period, on or
14 before the last day of the month immediately following each calendar quarter; and

15 (g) For the traffic congestion mitigation tax (Article 32), for each month, on or before the last
16 day of the following month.

17
18 **SEC. 6.9-2. DETERMINATIONS, RETURNS AND PAYMENTS; RETURNS.**

19 (a) **Returns.** Except as provided in subsection (b) below, on or before the due date, or
20 in the event of a cessation of business within 15 days of such cessation, each taxpayer shall
21 file a return for the subject period on a form provided by the Tax Collector, regardless of
22 whether there is a tax liability owing. A person subject to any tax or required to remit any
23 third-party tax who has not received a return form or forms from the Tax Collector is
24 responsible for obtaining such form(s) and filing a return or returns on or before the due date,
25 or upon the cessation of business. Returns shall show the amount of tax and any third-party

1 tax paid or otherwise due for the related period and such other information as the Tax
2 Collector may require. Each person subject to any tax or required to remit any third-party tax
3 and required to file the return shall transmit the return, together with the remittance of the
4 amount of tax or third-party tax due, to the Tax Collector at the Tax Collector's Office on or
5 before the due date specified in Section 6.9-1.

6 (b) **Exemption From Filing.** Commencing with tax years beginning on or after
7 January 1, 2017, a person who qualifies for the small business tax exemption in Section 905-
8 A of Article 12-A shall be exempt from filing a payroll expense tax return, and a person or
9 combined group who qualifies for the small business exemption in Section 954.1 of Article 12-
10 A-1 shall be exempt from filing a gross receipts tax return and an Early Care and Education
11 Commercial Rents Tax return. Notwithstanding the preceding sentence, any person taking
12 any of the following exclusions must file a payroll expense tax return, a gross receipts tax
13 return, and an Early Care and Education Commercial Rents Tax return, regardless of whether
14 such person qualifies for the small business tax exemption from the payroll expense tax or the
15 small business exemption from the gross receipts tax after claiming the exclusion:

16 (1) the Biotechnology Exclusion in Section 906.1;

17 (2) the Clean Technology Business Exclusion in Section 906.2; or

18 (3) the Central Market Street and Tenderloin Area Payroll Expense Tax
19 Exclusion in Section 906.3; ~~or~~

20 ~~(4) the Stock-Based Compensation Exclusion in Section 906.4.~~

1 **SEC. 6.9-3. DETERMINATIONS, RETURNS AND PAYMENTS; REMITTANCES.**

2 (a) **Remittances.** Notwithstanding the due dates otherwise provided in Section 6.9-1,
3 taxpayers shall make remittances of taxes and third-party taxes to the Tax Collector as
4 follows:

5 * * * *

6 **(5) Traffic Congestion Mitigation Tax.** *The Traffic Congestion Mitigation Tax*
7 *(Article 32) returns shall be filed monthly and taxes shall be remitted monthly. Such monthly*
8 *remittances shall be due and payable to the Tax Collector on or before the last day of the month*
9 *immediately following the month for which such remittance is due.*

10 * * * *

11 (c) **Forms and Adjustments.** Tax remittances required under this Section 6.9-3 shall
12 be accompanied by a tax remittance form prepared by the Tax Collector, but failure of the Tax
13 Collector to furnish the taxpayer with a tax remittance form shall not relieve the taxpayer from
14 any tax payment obligation.

15
16 **SEC. 6.9-5. DETERMINATIONS, RETURNS AND PAYMENTS; CREDITS AND**
17 **EXEMPTIONS.**

18 The credits and exemptions set forth in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A, 12-A-
19 1, 12-C, 21, ~~and 28~~, and 32, in laws applicable to fees administered pursuant to Article 6, and
20 in laws applicable to assessments levied pursuant to the Property and Business Improvement
21 District Law of 1994 (California Streets and Highways Code sections 36600 *et seq.*) or
22 Article 15 of this Code, are provided on the assumption that the City has the power to offer
23 such credits and exemptions. If a credit or exemption is invalidated by a court of competent
24 jurisdiction, the taxpayer must pay any additional amount that the taxpayer would have owed
25 but for such invalid credit or exemption. Amounts owed as a result of the invalidation of a

1 credit or exemption that are paid within three years after the decision of the court becomes
2 final shall not be subject to interest or penalties.

3
4 **SEC. 6.15-2. REFUNDS; INTEREST.**

5 (a) Any amounts refunded prior to entry of a final judgment in a judicial proceeding
6 shall bear interest at the rate for prejudgment interest on refunds of local taxes or fees
7 provided by Section 3287(c) of the California Civil Code, as amended from time to time, and
8 shall be computed from the date of payment to the date of refund.

9 (b) If the Controller offsets overpayments for a period or periods against another
10 liability or liabilities currently owed to the City, or against penalties or interest on the other
11 liability or liabilities currently owed to the City, the taxpayer will be credited with interest on the
12 amount so applied at the rate of interest set forth above, computed from the date of payment.

13 (c) If a taxpayer elects to apply all or part of an overpayment of the business
14 registration fee in Article 12, the payroll expense tax in Article 12-A, the gross receipts tax in
15 Article 12-A-1 (including the tax on administrative office business activities under
16 Section 953.8 of Article 12-A-1), the sugary drinks distributor tax in Article 8, the Early Care
17 and Education Commercial Rents Tax in Article 21, or the Homelessness Gross Receipts Tax
18 in Article 28 (including the homelessness administrative office tax under Section 2804(d) of
19 Article 28) as a credit against the taxpayer's immediately succeeding payment or payments
20 due of any of these six tax types, the taxpayer will not be credited with interest on the amount
21 so applied.

1 Section 2. Effective and Operative Dates.

2 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
3 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
4 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
5 Supervisors overrides the Mayor's veto of the ordinance.

6 (b) Operative Date. If the proposed initiative adding the Traffic Congestion Mitigation
7 Tax Ordinance in Article 32 of the Business and Tax Regulations Code receives at least a
8 two-thirds vote of the electorate in the November 5, 2019 election, this ordinance shall be
9 operative on January 1, 2020. If the proposed initiative adding the Traffic Congestion
10 Mitigation Tax Ordinance in Article 32 of the Business and Tax Regulations Code does not
11 receive at least a two-thirds vote of the electorate in the November 5, 2019 election, this
12 ordinance shall be void, and shall never become operative.

13
14 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the "Note" that appears under
19 the official title of the ordinance.

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

23 By: 
24 KERNE H. O. MATSUBARA
25 Deputy City Attorney

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