

1 [Initiative Ordinance - Business and Tax Regulations Code - Three-Quarter Cent Sales Tax
2 Increase]

3 **Ordinance amending the Business and Tax Regulations Code to impose a transactions**
4 **(sales) and use tax at the rate of three-quarters of one percent (0.75%) for a period of 25**
5 **years, to be administered by the State Board of Equalization in accordance with Parts**
6 **1.6 and 1.7 of Division 2 of the California Revenue and Taxation Code; and increasing**
7 **the City's appropriations limit by the amount of the tax increase for four years from**
8 **November 8, 2016; and directing submission of the tax for voter approval at the**
9 **November 8, 2016 general municipal election.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in ~~italics Times New Roman font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
14 parts of tables.

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

15
16 Section 1. The Board of Supervisors hereby submits the following ordinance to the
17 voters of the City and County of San Francisco, at the general municipal election to be held on
18 November 8, 2016.

19
20 Section 2. The Business and Tax Regulations Code is hereby amended by adding
21 Article 12-E, consisting of Sections 1220 through 1234, to read as follows:

22 **SEC. 1220. TITLE.**

23 *This Article 12-E shall be known as the San Francisco Transactions and Use Tax Ordinance.*

24 *The City and County of San Francisco hereinafter shall be called "City and County." This Article shall*
25 *be applicable in the incorporated and unincorporated territory of the City and County.*

1 **SEC. 1221. OPERATIVE DATE.**

2 "Operative Date" means the first day of the first calendar quarter commencing more than 110
3 days after the effective date of this Article 12-E.

4
5 **SEC. 1222. PURPOSE.**

6 This Article 12-E is adopted to achieve the following, among other purposes, and directs that its
7 provisions be interpreted in order to accomplish those purposes:

8 (a) To impose a retail transactions and use tax in accordance with the provisions of Part
9 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285
10 of Part 1.7 of Division 2 which authorize the City and County to adopt this Article which shall be
11 operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at
12 an election called for that purpose.

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

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

22 (d) To adopt a retail transactions and use tax ordinance that can be administered in a
23 manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of
24 Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use
25 taxes, and at the same time, minimize the burden of recordkeeping upon persons subject to taxation

1 under the provisions of this Article.

2
3 **SEC. 1223. CONTRACT WITH STATE.**

4 Prior to the operative date, the City and County shall contract with the State Board of
5 Equalization to perform all functions incident to the administration and operation of this Article 12-E;
6 provided, that if the City and County shall not have contracted with the State Board of Equalization
7 prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall
8 be the first day of the first calendar quarter following the execution of such a contract.

9
10 **SEC. 1224. TRANSACTIONS TAX RATE.**

11 For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all
12 retailers in the incorporated and unincorporated territory of the City and County at the rate of 0.75%
13 of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said
14 territory on and after the operative date of this ordinance.

15
16 **SEC. 1225. PLACE OF SALE.**

17 For the purposes of this Article 12-E, all retail sales are consummated at the place of business
18 of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an
19 out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross
20 receipts from such sales shall include delivery charges, when such charges are subject to the state sales
21 and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent
22 place of business in the State or has more than one place of business, the place or places at which the
23 retail sales are consummated shall be determined under rules and regulations to be prescribed and
24 adopted by the State Board of Equalization.

1 **SEC. 1226. USE TAX RATE.**

2 An excise tax is hereby imposed on the storage, use, or other consumption in the City and
3 County of tangible personal property purchased from any retailer on and after the operative date of
4 this Article 12-E for storage, use, or other consumption in said territory at the rate of 0.75% of the
5 sales price of the property. The sales price shall include delivery charges when such charges are
6 subject to state sales or use tax regardless of the place to which delivery is made.

7
8 **SEC. 1227. ADOPTION OF PROVISIONS OF STATE LAW.**

9 Except as otherwise provided in this Article 12-E and except insofar as they are inconsistent
10 with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of
11 Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby
12 adopted and made a part of this Article as though fully set forth herein.

13
14 **SEC. 1228. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE**
15 **TAXES.**

16 In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code pursuant to
17 Section 1227:

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

21 (1) The word "State" is used as a part of the title of the State Controller, State
22 Treasurer, Victim Compensation & Government Claims Board, State Board of Equalization, State
23 Treasury, or the Constitution of the State of California;

24 (2) The result of that substitution would require action to be taken by or against this
25 City and County or any agency, officer, or employee thereof rather than by or against the State Board

1 of Equalization, in performing the functions incident to the administration or operation of this Article
2 12-E.

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

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

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

12 (4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737,
13 6797 or 6828 of the Revenue and Taxation Code.

14 (b) The word "City and County" shall be substituted for the word "State" in the phrase
15 "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in
16 Section 6203.

17
18 **SEC. 1229. PERMIT NOT REQUIRED.**

19 If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation
20 Code, an additional transactor's permit shall not be required by this Article 12-E.

21
22 **SEC. 1230. EXEMPTIONS AND EXCLUSIONS.**

23 (a) There shall be excluded from the measure of the transactions tax and the use tax the
24 amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or
25 county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any

1 state-administered transactions or use tax.

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

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

8 (2) Sales of property to be used outside the City and County which is shipped to a
9 point outside the City and County, pursuant to the contract of sale, by delivery to such point by the
10 retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such
11 point. For the purposes of this subsection (b)(2), delivery to a point outside the City and County shall
12 be satisfied:

13 (A) With respect to vehicles (other than commercial vehicles) subject to
14 registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code,
15 aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented
16 vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by
17 registration to an out-of-City and County address and by a declaration under penalty of perjury, signed
18 by the buyer, stating that such address is, in fact, his or her principal place of residence; and

19 (B) With respect to commercial vehicles, by registration to a place of
20 business out-of-City and County and declaration under penalty of perjury, signed by the buyer, that the
21 vehicle will be operated from that address.

22 (3) The sale of tangible personal property if the seller is obligated to furnish the
23 property for a fixed price pursuant to a contract entered into prior to the operative date of this Article
24 12-E.

1 (4) A lease of tangible personal property which is a continuing sale of such
2 property, for any period of time for which the lessor is obligated to lease the property for an amount
3 fixed by the lease prior to the operative date of this Article 12-E.

4 (5) For the purposes of subsections (b)(3) and (b)(4) of this Section 1230, the sale or
5 lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease
6 for any period of time for which any party to the contract or lease has the unconditional right to
7 terminate the contract or lease upon notice, whether or not such right is exercised.

8 (c) There are exempted from the use tax imposed by this Article 12-E the storage, use, or
9 other consumption in this City and County of tangible personal property:

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

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

18 (3) If the purchaser is obligated to purchase the property for a fixed price pursuant
19 to a contract entered into prior to the operative date of this Article 12-E.

20 (4) If the possession of, or the exercise of any right or power over, the tangible
21 personal property arises under a lease which is a continuing purchase of such property for any period
22 of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the
23 operative date of this Article 12-E.

24 (5) For the purposes of subsections (c)(3) and (c)(4) of this Section 1230, storage,
25 use, or other consumption, or possession of, or exercise of any right or power over, tangible personal

1 property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for
2 which any party to the contract or lease has the unconditional right to terminate the contract or lease
3 upon notice, whether or not such right is exercised.

4 (6) Except as provided in subsection (7) of this Section 1230, a retailer engaged in
5 business in the City and County shall not be required to collect use tax from the purchaser of tangible
6 personal property, unless the retailer ships or delivers the property into the City and County or
7 participates within the City and County in making the sale of the property, including, but not limited to,
8 soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the
9 City and County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the
10 City and County under the authority of the retailer.

11 (7) "A retailer engaged in business in the City and County" shall also include any
12 retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing
13 with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section
14 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5
15 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax
16 from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City
17 and County.

18 (d) Any person subject to use tax under this Article 12-E may credit against that tax any
19 transactions tax or reimbursement for transactions tax paid to a City and County imposing, or retailer
20 liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with
21 respect to the sale to the person of the property the storage, use, or other consumption of which is
22 subject to the use tax.

23
24 **SEC. 1231. AMENDMENTS.**

25 All amendments subsequent to the effective date of this Article 12-E to Part 1 of Division 2 of

1 the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part
2 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and
3 Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this
4 Article, provided however, that no such amendment shall operate so as to affect the rate of tax imposed
5 by this Article.

6
7 **SEC. 1232. ENJOINING COLLECTION FORBIDDEN.**

8 No injunction or writ of mandate or other legal or equitable process shall issue in any suit,
9 action, or proceeding in any court against the State or the City and County, or against any officer of
10 the State or the City and County, to prevent or enjoin the collection under this Article 12-E, or Part 1.6
11 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be
12 collected.

13
14 **SEC. 1233. SEVERABILITY.**

15 If any provision of this Article 12-E or the application thereof to any person or circumstance is
16 held invalid, the remainder of the Article and the application of such provision to other persons or
17 circumstances shall not be affected thereby.

18
19 **SEC. 1234. TERMINATION DATE.**

20 The authority to levy the tax imposed by this Article 12-E shall expire 25 years after the
21 operative date.

22
23 Section 3. Appropriations Limit Increase. Pursuant to California Constitution Article
24 XIII B and applicable laws, for four years from November 8, 2016, the appropriations limit for
25 the City shall be increased by the aggregate sum collected by the levy of the San Francisco

1 County Transactions and Use Tax (Business and Tax Regulations Code, Article 12-E)
2 imposed by this ordinance.

3
4 Section 4. Pursuant to Article XIII C of the Constitution of the State of California and
5 Section 7285 of the California Revenue and Taxation Code, this ordinance shall be submitted
6 to the qualified electors of the City and County of San Francisco at the November 8, 2016,
7 general municipal election.

8
9 Section 5. Effective Date. The ordinance shall be effective at the close of the polls of
10 the November 8, 2016, general municipal election.

11
12 Section 6. Letter Designation. Notwithstanding Municipal Elections Code Section 505,
13 the Director of Elections shall assign successive letter designations to the Charter
14 Amendment bearing Board of Supervisors' File No. 160581 and this ordinance. The Director
15 of Elections shall determine the letter designation for the Charter Amendment bearing Board
16 of Supervisors' File No. 160581 by following the procedures set forth in Municipal Elections
17 Code Section 505, and shall designate the next letter in the alphabet for this ordinance.

18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By: _____
22 CAROLE F. RUWART
23 Deputy City Attorney

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