

FILE NO. 01-0826

ORDINANCE NO. 177-01

1 [Administrative penalties for violations of tax code; combining deadlines for renewing business
2 registration certificates and tax returns; fines, rather than loss of small business exemption, as
3 penalty for late filing; parking lot operators liable for taxes under certificate of authority.]

3

4 **Ordinance amending the Business Tax and Regulations Code by:**

- 5 **(1) amending Sections 6.12-1, 6.18-1, and 6.18-3, and repealing Section 6.19-3, to**
- 6 **clarify general administrative provisions of Article 6;**
- 7 **(2) adding Sections 6.19-3 through 6.19-11, to establish a system of administrative**
- 8 **penalties for specified violations of the Business Tax and Regulations Code;**
- 9 **(3) adding new Sections 852.8 and 852.9, re-numbering existing Sections 852.8 and**
- 10 **852.9 as Sections 852.10 and 852.11, respectively, and amending Section 856, to**
- 11 **consolidate the deadlines for renewing business registration certificates and filing**
- 12 **annual tax returns;**
- 13 **(4) amending Section 905-A, to create a graduated system of fines for persons who**
- 14 **qualify for the small business exemption but fail to file a timely return; and,**
- 15 **(5) amending Section 6.6-1, to provide that a parking lot operator is considered liable**
- 16 **for collection of parking taxes at a location covered by his or her certificate of**
- 17 **authority unless and until the certificate is surrendered to the Tax Collector.**

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

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

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3 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended
4 by amending Section 6.12-1 thereof, to read as follows:

5 **SEC. 6.12-1. JEOPARDY DETERMINATIONS; DUTY OF TAX COLLECTOR.**

6 If the Tax Collector believes that the collection of any tax or any amount of tax required
7 to be collected and paid to the City and County or of any determination will be jeopardized, in
8 whole or in part, by delay, the Tax Collector shall serve upon the taxpayer or other person
9 determined to be liable for the tax notice of his or her determination of jeopardy and of the tax
10 or amount of tax required to be collected, and demanding immediate payment of the tax,
11 interest and penalty determined to be due. The Tax Collector may consider all facts and
12 circumstances relevant to determining whether the collection of any tax will be jeopardized by delay,
13 including but not limited to indications that the taxpayer intends or is taking action to discontinue
14 business activities in the City and County, dissipate or otherwise remove assets from the City and
15 County, or sell, exchange, assign or otherwise dispose of personal or business income or property. The
16 Tax Collector also may consider whether the taxpayer is insolvent or likely to become insolvent after
17 the taxes at issue are assessed or collected; whether the taxpayer is or has been uncooperative or
18 unresponsive in connection with any investigation, examination, audit, deficiency determination,
19 assessment or collection action or procedure undertaken by the Tax Collector in connection with the
20 taxes at issue; what taxable years are at issues; how many taxable years are at issue; and whether the
21 taxes at issue are third-party taxes.

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1 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended
2 by amending Section 6.18-1 thereof, to read as follows:

3 **SEC. 6.18-1. SUMMARY JUDGMENT; NOTICE; CERTIFICATE.**

4 If any tax imposed pursuant to Part III of the Municipal Code is not paid by the last day
5 of the month succeeding the delinquency date, or after any jeopardy or deficiency
6 determination of the Tax Collector becomes final pursuant to Sections 6.12-1 et seq. or 6.13-1
7 et seq., the Tax Collector may file, no sooner than 10 days after the mailing of the notice
8 required in Subdivision (b), in the office of the County Clerk, without fee, a certificate
9 specifying as follows:

10 (a) The fact that a notice of intent to file the certificate has been sent, by ~~registered~~
11 certified mail, to the operator, taxpayer or other person determined to be liable for the tax, as
12 defined in Section 6.2-10 of Part III of the Municipal Code, at his or her last known address,
13 not less than 10 days prior to the date of the certificate;

14 (b) The fact that the notice required in Subdivision (a) set forth the following
15 information:

16 (1) The name of the operator, taxpayer or other person determined to be
17 liable for the tax,

18 (2) The description of the operator's, taxpayer's or other person's business
19 against which the tax has been assessed,

20 (3) The location and/or address of the ~~taxpayer's~~ business,

21 (4) The fact that judgment will be sought in the amount of the tax, penalty ~~or~~
22 and interest remaining unpaid at the time of the filing of the certificate,

23 (5) The fact that, upon issuance and recordation of ~~that~~ the judgment,
24 additional interest will continue to accrue at the rate prescribed in this ordinance, and

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1 that any bond premium posted or other costs to enforce the judgment shall be an
2 added charge,

3 (6) The fact that a recording fee in the amount set forth in Section 27361.3 of
4 the California Government Code will be required to be paid for the purpose of the
5 recordation of any release of the judgment lien;

6 (c) The name of the operator, taxpayer or other person determined to be liable for
7 the tax;

8 (d) The amount for which judgment is to be entered;

9 (e) The fact that the City and County has complied with all provisions of Part III of
10 the Municipal Code in the computation and the levy of the tax, penalty or interest;

11 (f) The fact that a request is therein made for issuance and entry of judgment
12 against the operator, taxpayer or other person determined to be liable for the tax.

13
14 Section 3. The San Francisco Business and Tax Regulations Code is hereby amended
15 by amending Section 6.18-2 thereof, to read as follows:

16 **SEC. 6.18-2. SUMMARY JUDGMENT; FILING OF CERTIFICATE; ENTRY OF JUDGMENT.**

17 The County Clerk, immediately upon the filing of the certificate shall enter a judgment
18 for the City and County against the operator, taxpayer or other person determined to be liable
19 for the tax in the amount of the tax, penalty and interest set forth in the certificate. The County
20 Clerk may file the judgment in a loose-leaf book entitled "City and County Summary Tax
21 Judgments."

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1 Section 4. The San Francisco Business and Tax Regulations Code is hereby amended
2 by amending Section 6.18-3 thereof, to read as follows:

3 **SEC. 6.18-3. SUMMARY JUDGMENT; RECORDING OF JUDGMENT; LIEN.**

4 An abstract or copy of the judgment shall be recorded, without fee, in the office of the
5 Assessor-Recorder. From the time of the recording, the amount of the tax, penalty and
6 interest set forth constitutes a lien upon all property of the ~~operator~~ judgment debtor in the City
7 and County, owned by the ~~operator or afterward~~ judgment debtor on the date of recording or
8 acquired by the judgment debtor thereafter, and before the lien expires, acquired by the operator.
9 The lien has the force, effect and priority of a judgment lien and continues for 10 years from
10 the date of the recording unless sooner released or otherwise discharged.

11
12 Section 5. The San Francisco Business and Tax Regulations Code is hereby amended
13 by repealing Section 6.19-3 thereof, as follows:

14 ~~**SEC. 6.19-3. LIMITATIONS.**~~

15 ~~*Any action challenging the validity of a tax imposed under Part III of the Municipal Code, as*~~
16 ~~*opposed to the application of that tax to a particular person, shall be commenced within 90 days after*~~
17 ~~*the delinquency date for payment of the tax.*~~

18
19 Section 6. The San Francisco Business and Tax Regulations Code is hereby amended
20 by adding a new Section 6.19-3 thereto, to read as follows:

21 **SEC. 6.19-3. ADMINISTRATIVE PENALTIES AND CITATIONS.**

22 (a) **Administrative Penalties; Citations.** An administrative penalty may be assessed for a
23 violation of the provisions of this Code as specified below. The penalty may be assessed by means of
24 an administrative citation issued by any person designated as an "enforcement officer" in
25 subsection (c).

1 **(b) Penalty Amounts.** *In addition to all other civil penalties provided for by law, the*
 2 *following violations shall be subject to administrative penalties in the amounts set forth below:*

<u>VIOLATION</u>	<u>PENALTY AMOUNT</u>
• <u>Failure to post a Certificate of Authority to Collect</u>	<u>\$100.00</u>
<u>Third Party Taxes</u>	
• <u>Failure to post Annual Business Tax Registration Certificate</u>	<u>100.00</u>
• <u>Failure to show proof of current Fire Permit</u>	<u>100.00</u>
• <u>Failure to show proof of current Business License</u>	<u>100.00</u>
• <u>Failure of an operator in the business of renting parking</u>	<u>100.00</u>
<u>space in a parking station to post a bond</u>	
• <u>Failure to appear for noticed hearing</u>	<u>100.00</u>
• <u>Failure to produce information requested by the Tax Collector</u>	<u>100.00</u>
<u>within 30 days of mailing of such request</u>	
• <u>Failure to produce financial records requested by the Tax Collector</u>	<u>500.00</u>
• <u>Failure to retain financial records</u>	<u>500.00</u>
• <u>Failure to allow the Tax Collector to inspect financial records</u>	<u>500.00</u>

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19 The penalty amounts shall be increased cumulatively by fifty percent (50%) for each subsequent
 20 violation of the same provision by the same person within a three (3) year period. The maximum
 21 penalty amount that may be imposed by administrative citation in a calendar year for each type of
 22 violation listed above shall be \$5,000. In addition to the penalty amounts listed above, the Tax
 23 Collector may assess enforcement costs to cover the reasonable costs incurred in enforcing the
 24 administrative penalty, including reasonable attorneys' fees. Enforcement costs shall not count toward
 25 the \$5,000 annual maximum.

1 (c) Persons Who May Issue Citations. The following classes of employees within the
2 Treasurer/Tax Collector's office are designated "enforcement officers" and are authorized to issue
3 administrative citations pursuant to this ordinance:

<u>CLASSIFICATION NO.</u>	<u>CLASS TITLE</u>
4334	<u>Investigator</u>
4335	<u>Senior Investigator</u>
4337	<u>Principal Investigator</u>
4340	<u>Chief investigator</u>

10
11 Section 7. The San Francisco Business and Tax Regulations Code is hereby amended
12 by adding a new Section 6.19-4 thereto, to read as follows:

13 **SEC. 6.19-4. VIOLATIONS.**

14 (a) Separate and Continuing Violations; Penalties Paid Do Not Cure Violations. Each
15 and every day that a violation exists constitutes a separate and distinct offense. Each section violated
16 constitutes a separate violation for any day at issue. If the person or persons responsible for a
17 violation fail to correct the violation, subsequent administrative citations may be issued for the same
18 violation(s). Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar
19 any further enforcement action by the City and County. If penalties and costs are the subject of
20 administrative appeal or judicial review, then the accrual of such penalties and costs shall be stayed
21 until the determination of such appeal or review is final.

22 (b) Payments to City and County; Due Date; Late Payment Penalty. All penalties assessed
23 shall be payable to the City and County. Administrative penalties and costs assessed by means of an
24 administrative citation shall be due within thirty (30) days from the date of the citation. The failure of
25 any person to pay an administrative penalty and costs within that time shall result in the assessment of

1 an additional late fee. The amount of the late fee shall be ten (10) percent of the total amount of the
2 administrative penalty assessed for each month the penalty and any already accrued late payment
3 penalty remains unpaid.

4 (c) **Collection of Penalties; Special Assessments.** The failure of any person to pay a
5 penalty assessed by administrative citation within the time specified on the citation constitutes a debt to
6 the City and County. The City and County may file a civil action, create and impose liens as set forth
7 below, or pursue any other legal remedy to collect such money.

8 (d) **Liens.** The City and County may create and impose liens against any property owned or
9 operated by a person who fails to pay a penalty assessed by administrative citation. The procedures
10 provided for in Article XX of Chapter 10 of the San Francisco Administrative Code shall govern the
11 imposition and collection of such liens.

12
13 Section 8. The San Francisco Business and Tax Regulations Code is hereby amended
14 by adding a new Section 6.19-5 thereto, to read as follows:

15 **SEC. 6.19-5. ADMINISTRATIVE CITATION; NOTICE OF VIOLATION.**

16 (a) **Notice and Opportunity to Cure.** The enforcement officer shall notify any person in
17 violation of the Code provisions identified in Section 6.19-3(b) of such violation prior to the issuance of
18 an administrative citation. The notice of violation shall specify the action required to correct or
19 otherwise remedy the violation(s). The person or persons responsible for the violation shall be allowed
20 not less than ten (10) days from the date of the notice of violation to correct or otherwise remedy the
21 violation; provided, however, that the enforcement officer may, in his or her discretion, assign a longer
22 period, not to exceed twenty-one (21) days, within which to correct or otherwise remedy each violation.
23 The enforcement officer may consider the cost of correction and the time needed to obtain information,
24 documents, data and records for correction in assigning a specific period of time within which to
25 correct or otherwise remedy each violation.

1 **(b) Issuance of Citation.** If the person or persons responsible for the violation fail to
2 comply with any portion of a notice of violation within the time provided, the enforcement officer may
3 issue an administrative citation to the violator. The administrative citation shall be issued on a form
4 prescribed by the Tax Collector.

5
6 Section 9. The San Francisco Business and Tax Regulations Code is hereby amended
7 by adding a new Section 6.18-6 thereto, to read as follows:

8 **SEC. 6.19-6. ADMINISTRATIVE CITATION; SERVICE.**

9 Service of an administrative citation may be accomplished as follows:

10 (a) The enforcement officer may obtain the signature of the person responsible for the
11 violation to establish personal service of the citation; or

12 (b) The enforcement officer shall post the citation by affixing the citation to a surface in a
13 conspicuous place on the property. Conspicuous posting of the citation is not required when personal
14 service is accomplished or when conspicuous posting poses a hardship or is excessively expensive; and

15 (c) The enforcement officer shall serve the citation by first class mail as follows:

16 (1) The administrative citation shall be mailed to the person responsible for the
17 violation by first class mail, postage prepaid, with a declaration of service under penalty of
18 perjury; and

19 (2) A declaration of service shall be made by the person mailing the administrative
20 citation showing the date and manner of service by mail and reciting the name and address of
21 the citation addressee; and

22 (3) Service of the administrative citation by mail in the manner described above
23 shall be effective on the date of mailing.

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1 Section 10. The San Francisco Business and Tax Regulations Code is hereby
2 amended by adding a new Section 6.19-7 thereto, to read as follows:

3 **SEC. 6.19-7. ADMINISTRATIVE CITATION; CONTENTS.**

4 *The administrative citation shall include all the following:*

5 *(1) A description of the violation;*

6 *(2) The date and location of the violation(s) and the approximate time the violation(s) was*
7 *observed;*

8 *(3) A citation to the provisions of law violated;*

9 *(4) A description of corrective action required;*

10 *(5) A statement explaining that each day of a continuing violation may constitute a new and*
11 *separate violation;*

12 *(6) The amount of administrative penalty imposed for the violation(s);*

13 *(7) A statement informing the violator that the fine shall be paid to the City and County of*
14 *San Francisco within thirty (30) days from the date on the administrative citation, the procedure for*
15 *payment, and the consequences of failure to pay; and*

16 *(8) A description of the process for appealing the citation, including the deadline for filing*
17 *such an appeal.*

18 *(9) The name and signature of the enforcement officer.*

19
20 Section 11. The San Francisco Business and Tax Regulations Code is hereby
21 amended by adding a new Section 6.19-8 thereto, to read as follows:

22 **SEC. 6.19-8. ADMINISTRATIVE APPEAL.**

23 *(a) Period of Limitation for Appeal. Persons receiving an administrative citation may*
24 *appeal it within fifteen (15) days from the date the citation is served. The appeal must be in writing and*

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1 must indicate a return address. It must be accompanied by the penalty amount, specifying the basis for
2 the appeal in detail, and must be filed with the Tax Collector as indicated in the administrative citation.

3 (b) **Hearing Date.** As soon as practicable after receiving the written notice of appeal and
4 the penalty amount, the Tax Collector or his or her representative shall fix a date, time and place for
5 hearing before a hearing officer. Written notice of the time and place for the hearing may be served by
6 first class mail, at the return address indicated on the written appeal. Service of the notice must be
7 made at least ten (10) days prior to the date of the hearing to the person appealing the citation. The
8 hearing shall be held no later than thirty (30) days after service of the notice of hearing, unless that
9 time is extended by mutual agreement of the parties.

10 (c) **Notice.** Except as otherwise provided by law, the failure of any person with an interest
11 in property affected by the administrative citation, or other person responsible for a violation, to
12 receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under
13 this ordinance. Service by first class mail, postage prepaid shall be effective on the date of mailing.

14 (d) **Failure to Appeal.** Failure of any person to file an appeal in accordance with the
15 provisions of this Section or to appear at the hearing shall constitute a failure to exhaust administrative
16 remedies and a forfeiture of the penalty amount previously remitted.

17 (e) **Submittals for the Hearing.** No later than five (5) days prior to the hearing, the
18 taxpayer and the Tax Collector shall submit to the hearing officer, with simultaneous service on the
19 opposing party, written information including, but not limited to, the following: the statement of issues
20 to be determined by the hearing officer and a statement of the evidence to be offered and the witnesses
21 to be presented at the hearing.

22 (f) **Conduct of Hearing.** A hearing officer appointed by the Tax Collector shall conduct all
23 appeal hearings under this ordinance. The Tax Collector shall have the burden of proof in such
24 hearings. The hearing officer may accept evidence on which persons would commonly rely in the
25 conduct of their serious business affairs, including but not limited to the following:

1 (1) A valid citation shall be prima facie evidence of the violation;

2 (2) The hearing officer may accept testimony by declaration under penalty of perjury
3 relating to the violation and the appropriate means of correcting the violation;

4 (3) The person responsible for the violation, or any other interested person, may
5 present testimony or evidence concerning the violation and the means and time frame for
6 correction.

7 The hearing shall be open to the public and shall be tape-recorded. Any party to the hearing
8 may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court
9 reporter. The hearing officer may continue the hearing and request additional information from the
10 enforcement officer or the appellant prior to issuing a written decision.

11 (g) **Hearing Officer's Decision; Findings.** The hearing officer shall make findings based
12 on the record of the hearing and issue a proposed decision based on such findings within ten (10) days
13 of the hearing. The hearing officer may also recommend that the Tax Collector reduce, waive or
14 conditionally reduce the penalties stated in a citation or any late fees assessed if mitigating
15 circumstances are shown and the hearing officer finds specific grounds for reduction or waiver in the
16 evidence presented at the hearing. The hearing officer may recommend conditions and deadlines for
17 the correction of violations or the payment of outstanding civil penalties. Copies of the findings and
18 decision shall be served upon the taxpayer and the Tax Collector by certified mail.

19 (h) **Tax Collector's Decision.** The decision of the hearing officer shall be a
20 recommendation to the Tax Collector, and the Tax Collector, within five (5) days of receipt of such
21 recommendation, shall adopt, modify, or deny such recommendation. If the Tax Collector concludes
22 that the violation charged in the citation did not occur or that the person charged in the citation was
23 not the responsible party, the Tax Collector shall refund the penalty amount on deposit. The Tax
24 Collector's decision on the hearing officer's recommendation is final. Such decision shall be served on
25 the taxpayer by certified mail.

1 Section 12. The San Francisco Business and Tax Regulations Code is hereby
2 amended by adding a new Section 6.19-9 thereto, to read as follows:

3 **SEC. 6.19-9. REGULATIONS.**

4 *The Tax Collector may promulgate and enforce rules and regulations, and issue determinations*
5 *and interpretations, relating to the administrative penalty and citation system, and the conducting of*
6 *administrative hearings and rendering of decisions, pursuant to Sections 6.19-3 through 6.19-11,*
7 *inclusive. Any rules and regulations promulgated by the Tax Collector and any modifications thereof*
8 *made by the Board of Review shall be approved as to legal form by the City Attorney. The rules and*
9 *regulations shall become effective 30 days after receipt by the Clerk of the Board of Supervisors and*
10 *the Clerk of the Finance Committee, unless the Board of Supervisors by resolution disapproves or*
11 *modifies the regulations. The Board of Supervisors' determination to modify or disapprove a rule or*
12 *regulation submitted by the Tax Collector shall not impair the ability of the Tax Collector to resubmit*
13 *the same or similar rule or regulation directly to the Board of Supervisors if the Tax Collector*
14 *determines it is necessary to effectuate the purposes of the administrative penalty and citation system.*

15
16 Section 13. The San Francisco Business and Tax Regulations Code is hereby
17 amended by adding a new Section 6.19-10 thereto, to read as follows:

18 **SEC. 6.19-10. JUDICIAL REVIEW.**

19 *(a) Procedures. After receipt of the Tax Collector's decision, the appellant may file an*
20 *appeal with the superior court pursuant to California Government Code Section 53069.4. The appeal*
21 *shall be submitted within twenty (20) days of the date of mailing of the Tax Collector's decision, with*
22 *the applicable filing fee. The appeal shall state the reasons the appellant objects to the Tax Collector's*
23 *findings or decision.*

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1 **(b) Review.** *The superior court shall conduct a de novo hearing, except that the contents of*
2 *the Tax Collector's file shall be received into evidence. A copy of the notice of violation and imposition*
3 *of penalty shall be entered as prima facie evidence of the facts stated therein.*

4 **(c) Filing Fee.** *The superior court filing fee shall be twenty-five dollars (\$25.00). If the*
5 *court finds in favor of the appellant, the amount of the fee shall be reimbursed to the appellant by the*
6 *City and County of San Francisco. Any deposit of penalty shall be refunded by the City and County of*
7 *San Francisco in accordance with the judgment of the court.*

8
9 Section 14. The San Francisco Business and Tax Regulations Code is hereby
10 amended by adding a new Section 6.19-11 thereto, to read as follows:

11 **SEC. 6.19-11. OTHER REMEDIES NOT AFFECTED.**

12 *The procedures established in this ordinance shall be in addition to any other criminal, civil, or*
13 *other remedy established by law which may be pursued to address violations of this Code. An*
14 *administrative citation issued pursuant to this ordinance shall not prejudice or adversely affect any*
15 *other action, civil or criminal, that may be brought to abate a violation or to seek compensation for*
16 *damages suffered.*

17
18 Section 15. The San Francisco Business and Tax Regulations Code is hereby
19 amended by adding a new Section 852.8 thereto, to read as follows:

20 **SEC. 852.8. "REGISTRATION TRANSITION PERIOD."**

21 *The term "Registration Transition Period" means the six-month period commencing January 1,*
22 *2003 and ending June 30, 2003.*

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1 Section 16. The San Francisco Business and Tax Regulations Code is hereby
2 amended by adding a new Section 852.9 thereto, to read as follows:

3 **SEC. 852.9. "REGISTRATION YEAR.."**

4 *The term "registration year" means the fiscal year commencing on July 1 of each calendar year*
5 *and ending on June 30 of the subsequent calendar year.*

6
7 Section 17. The San Francisco Business and Tax Regulations Code is hereby
8 amended by renumbering existing Section 852.8 thereof to be a new Section 852.10, to read
9 as follows:

10 **SEC. ~~852.8~~ 852.10. "SUCCESSOR."**

11 The term "successor" means any person who, through direct or mesne conveyance,
12 purchases or succeeds to the business or portion thereof, or the whole or any part of the stock
13 of goods, wares, merchandise, or fixtures, or any interest therein of a taxpayer quitting, selling
14 out, exchanging or otherwise disposing of his or her business. Any person obligated to fulfill
15 the terms of a contract shall be deemed a successor to any contractor defaulting in the
16 performance of any contract as to which such person is a surety or guarantor.

17
18 Section 18. The San Francisco Business and Tax Regulations Code is hereby
19 amended by renumbering existing Section 852.9 thereof to be a new Section 852.11, to read
20 as follows:

21 **SEC. ~~852.9~~ 852.11. "TAX YEAR."**

22 The term "tax year" means the year commencing on January 1st of each calendar year
23 and ending on December 31st of the same calendar year.

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1 Section 19. The San Francisco Business and Tax Regulations Code is hereby
2 amended by amending Section 856 thereof, to read as follows:

3 **SEC. 856. REGISTRATION CERTIFICATE -- APPLICATION AND ISSUANCE.**

4 (a) Each person engaging in business within the City shall apply to the Tax
5 Collector, on a form prescribed by the Tax Collector, for a registration certificate. The
6 application shall be accompanied by the person's registration fee as determined under this
7 Article. To ease administrative burdens on taxpayers (by consolidating the deadlines to file annual tax
8 returns and apply for renewal of registration certificates), the term of registration certificates shall be
9 changed from the calendar year basis to a fiscal year basis. The purpose of Subsections (b) through (e)
10 of this Section is to facilitate such change and shall be interpreted in accordance with this purpose.

11 (b) A Registration registration certificates shall be issued for a calendar year
12 commencing on or before January 1, 2002 shall be valid until December 31 of such calendar year.
13 All persons engaging in business within the City during any such calendar year shall, before
14 the last business day in October, apply to the Tax Collector for a registration certificate for the
15 succeeding calendar year. The application for renewal of the annual registration certificate
16 shall become delinquent if the registration fee is not paid on or before the last business day in
17 October.

18 (c) To accomplish the change from the calendar year registration period to a fiscal year
19 registration period, there shall be a Registration Transition Period commencing January 1, 2003 and
20 ending June 30, 2003. A registration certificate issued for the Registration Transition Period shall be
21 valid through June 30, 2003. Except as provided in Subsection (f) of this Section, any person engaging
22 in business within the City during the calendar year preceding the Registration Transition Period shall,
23 before October 31, 2002, apply to the Tax Collector for a registration certificate covering the
24 Registration Transition Period. The application for renewal of the registration certificate covering the
25 Registration Transition Period shall become delinquent if the registration fee is not paid on or before

1 October 31, 2002. Except as provided in Subsection (f) of this Section, the fee for a registration
2 certificate covering the Registration Transition Period shall be 50 percent of the amount of the annual
3 registration fee otherwise applicable under Section 855 of this Article.

4 (d) Any person engaging in business within the City during the Registration Transition
5 Period shall, between January 1 and February 28, 2003, apply to the Tax Collector for a registration
6 certificate for the succeeding registration year (commencing July 1, 2003 and ending June 30, 2004).
7 The application for renewal of such certificate shall become delinquent if not paid on or before
8 February 28, 2003.

9 (e) A registration certificate issued for any registration year after the Registration
10 Transition Period shall be valid through June 30 of such registration year. Except as provided in
11 Subsection (f) of this Section, for any registration year commencing on or after July 1, 2003, any
12 person engaging in business within the City shall, between January 1 and the last day of February,
13 apply to the Tax Collector for a registration certificate for the succeeding registration year. The
14 application for renewal of the annual registration certificate shall become delinquent if the registration
15 fee is not paid on or before the last day of February.

16 (f) A person shall have 15 days after commencing business within the City to apply
17 for a registration certificate. ~~Notwithstanding the amount of the annual registration fee set forth in~~
18 ~~Section 855, for persons who commence business operations after January 1st of any year after 1990,~~
19 ~~except for those businesses that pay the minimum registration fee of \$25 under Section 855, the~~
20 ~~registration fee will be prorated as follows: For persons commencing business between January 1st~~
21 ~~and March 31st, the registration fee shall be 100 percent of the annual fee; for persons commencing~~
22 ~~business between April 1st and June 30th, the prorated registration fee shall be 75 percent of the~~
23 ~~annual fee; for persons commencing business between July 1st and September 30th, the prorated~~
24 ~~registration fee shall be 50 percent of the annual fee; and for persons commencing business between~~

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1 October 1st and December 31st, the prorated registration fee shall be 25 percent of the annual fee. The
2 registration fee for newly-established businesses shall be prorated as follows:

3 (1) For tax years ending on or before December 31, 2001, the fee for obtaining a
4 registration certificate for a newly established business shall be determined in accordance with
5 Sections 1007, 1007.1 and 1007.2 of Article 12-B of the Business Tax and Regulations Code as
6 it read on December 31, 1999, or the predecessor provisions governing the registration fee for
7 the relevant tax year.

8 (2) For the tax year ending on December 31, 2002, the fee for obtaining a
9 registration certificate for a newly established business shall be determined pursuant to Section
10 905 of this Article using the estimated Payroll Expense Tax liability for such tax year. The
11 registration fee for any person who commences business operations within the City during such
12 tax year shall be prorated as follows: For persons commencing business between January 1st
13 and March 31st, the registration fee shall be 100 percent of the annual fee; for persons
14 commencing business between April 1st and June 30th, the registration fee shall be 75 percent
15 of the annual fee; for persons commencing business between July 1st and September 30th, the
16 registration fee shall be 50 percent of the annual fee; and for persons commencing business
17 between October 1st and December 31st, the registration fee shall be 25 percent of the annual
18 fee. Where a registration certificate is issued for a period other than for a calendar year, the
19 Tax Collector shall have discretion to prorate the registration fee in accordance with this
20 model.

21 (3) For the Registration Transition Period, the fee for obtaining a registration
22 certificate for a newly established business shall be determined pursuant to Section 905 of this
23 Article using the estimated Payroll Expense Tax liability for the 2003 tax year. For any person
24 who commences business operations within the City on or after January 1, 2003 and before
25 April 1, 2003, the registration fee shall be as set forth in Subsection (c) of this Section. For any

1 person who commences business operations within the City on or after April 1, 2003 and before
2 July 1, 2003, the registration fee shall be 25 percent of the amount of the annual registration fee
3 otherwise applicable under Section 905(a) of this Article.

4 (4) For registration years commencing on or after July 1, 2003, the fee for obtaining
5 a registration certificate for a newly established business shall be determined pursuant to
6 Section 905 of this Article using the estimated Payroll Expense Tax liability for the tax year in
7 which the person commences such business within the City. The registration fee for persons
8 who commence business operations after the Registration Transition Period shall be prorated
9 as follows: For persons commencing business between January 1st and March 31st, the
10 registration fee shall be 50 percent of the annual fee; for persons commencing business between
11 April 1st and June 30th, the registration fee shall be 25 percent of the annual fee; for persons
12 commencing business between July 1st and September 30th, the registration fee shall be 100
13 percent of the annual fee; and for persons commencing business between October 1st and
14 December 31st, the registration fee shall be 75 percent of the annual fee. Where a registration
15 certificate is issued for a period other than for a registration year, the Tax Collector shall have
16 discretion to prorate the registration fee in accordance with this model.

17 (5) Notwithstanding any other provision of this Article, no person obtaining a
18 registration certificate for a newly established business that qualifies for the \$25 minimum
19 registration fee set forth in Section 905 of this Article shall be entitled to prorate the
20 registration fee under this Section, but instead shall pay the \$25 minimum registration fee.

21 (g) All applications for renewal of registration certificates shall be accompanied by
22 the full amount of the applicant's annual registration fee for the period covered by the
23 registration certificate.

24 (h) Promptly after receiving a properly completed application and registration fee
25 from any person, the Tax Collector shall determine whether the applicant has paid all

1 outstanding: (1) Payroll Expense Taxes, (2) costs and/or charges assessed pursuant to
2 Section 174.2 of Article 5.1 of the Public Works Code, as amended from time to time, for
3 failure to abate a nuisance regarding the cleanliness of an abutting public sidewalk or right-of-
4 way, and (3) other taxes and license fees due to the City. In addition, the Tax Collector may
5 investigate whether the applicant has paid other amounts owing to the City as a result of fines,
6 penalties, interest, assessments, or any other financial obligations imposed by law, regulation
7 or contract. If the Tax Collector determines that all liabilities have been paid, the Tax
8 Collector shall issue a registration certificate to the applicant for each place of business
9 maintained by the applicant.

10 (i f) If a person submits a timely application under this Section and the Tax Collector
11 determines that the applicant has satisfied all the requirements of this Article, including the
12 payment of all outstanding liabilities owed to the City, then the Tax Collector shall issue a
13 registration certificate to the applicant within 30 days after the Tax Collector makes such
14 determination.

15 (i g) Each registration certificate shall be nonassignable and nontransferable, except
16 in cases in which the business is transferred, whether by sale or otherwise, to another person
17 or legal entity and the ultimate beneficial ownership of the business, both before and after the
18 transfer, is substantially the same. For purposes of this Section, shareholders, partners, or
19 other persons holding a direct or indirect interest in a legal entity shall be deemed to be the
20 ultimate beneficial owners of such legal entity. Except as provided above, the holder of the
21 registration certificate shall surrender the certificate to the Tax Collector immediately upon the
22 sale or transfer of the business for which the Tax Collector issued the registration certificate.
23 The holder of the registration certificate shall also surrender the certificate to the Tax Collector
24 when such holder ceases to conduct business at the location designated in the certificate.

25 / / /

1 (~~k~~h) If the Tax Collector determines that any liabilities enumerated in Subsection (h)
2 of this Section remain unpaid as of the date an application is received, the Tax Collector shall
3 give written notification of that fact to the applicant. The written notification shall set forth the
4 amount owed, the liabilities enumerated in Subsection (h) of this Section for which the
5 amount(s) are owed, the dates the liabilities were incurred and any other information the Tax
6 Collector deems necessary to apprise the applicant of what specific liabilities are owed to the
7 City. The Tax Collector shall not issue a registration certificate unless and until the applicant
8 has paid all amounts owing to the City, including but not limited to, taxes, license fees, and
9 costs or charges assessed for failure to abate a nuisance condition on a public right-of-way
10 under Section 174.2 of Article 5.1 of the Public Works Code, as amended from time to time,
11 for which the applicant is liable; provided, that if a good faith dispute exists regarding the
12 amount of the outstanding liability or liabilities owed by the applicant to the City, and the
13 dispute is pending before a City agency or court of competent jurisdiction, then the Tax
14 Collector shall not refuse to issue a registration certificate solely for non-payment of the
15 amount in dispute.

16 (~~l~~i) Each registration certificate, and each duplicate thereof, shall set forth the name
17 under which the person transacts or intends to transact business, the location of the
18 registrant's place of business and such other information as the Tax Collector may require,
19 and be prominently displayed therein. In the case of a sole proprietorship, the registration
20 certificate shall be signed by the sole proprietor; in the case of a partnership, the registration
21 certificate shall be signed by a general partner; in the case of a limited liability company, the
22 registration certificate shall be signed by the managing member; and in the case of a
23 corporation, the registration certificate shall be signed by the person authorized by the
24 corporation to sign on its behalf.

25 / / /

1 (m.j) Each person liable for payment of a registration fee pursuant to this Article shall
2 only pay one registration fee; however, the Tax Collector shall issue a separate registration
3 certificate for each location within the City where the person engages in business.
4

5 Section 20. The San Francisco Business and Tax Regulations Code is hereby
6 amended by amending Section 905-A thereof, to read as follows:

7 **SEC. 905-A. SMALL BUSINESS TAX EXEMPTION.**

8 (a) Notwithstanding any other provisions of this Payroll Expense Tax Ordinance,
9 except Sections 907 and 909 herein, "small business enterprises" as hereinafter defined, shall
10 be exempt from taxation under this ordinance; provided, however, that small business
11 enterprises shall pay the annual registration fee pursuant to Section 855 of this Code.

12 (b) The term "small business enterprise" shall mean and include any taxpayer who
13 has performed all of the following:

14 (1) Whose tax liability hereunder, but for this exemption provision, would not
15 exceed \$2,500; and

16 (2) For the purpose of taxes due on payroll expenses and/or salary distribution
17 incurred after January 1, 1995, who has filed a tax return pursuant to Section 907 of
18 this Article by the last date of February of each year. If the taxpayer fails to file a return
19 by that date, the taxpayer shall ~~not be entitled to the exemption for that tax year; provided,~~
20 ~~however, that upon a showing of good cause, the Tax Collector may in his or her discretion~~
21 ~~allow the exemption for a taxpayer filing a late return~~ be subject to a penalty as specified in
22 subsection (c).

23 (c) In lieu of the penalty specified in Section 6.17-3 of this Code for failing to file a return,
24 any person who otherwise qualifies for the small business exemption set forth in this Section who fails
25 to file a return by the last date of February shall pay a penalty as follows:

1 (1) If the person's liability for taxes due on payroll expenses and/or salary
2 distribution but for the small business exemption would be less than \$1,000, the penalty shall be
3 \$100 plus 10% of the amount of such liability, for each month, or fraction thereof, that the
4 return is delinquent, up to a maximum amount equal to the person's liability for such tax but for
5 the small business exemption;

6 (2) If the person's liability for taxes due on payroll expenses and/or salary
7 distribution but for the small business exemption would be \$1,000 or more, then the penalty
8 shall be \$250 plus 10% of the amount of such liability, for each month, or fraction thereof, that
9 the return is delinquent, up to a maximum amount equal to the person's liability for such tax but
10 for the small business exemption.

11 (d) The Tax Collector may, in his or her discretion, reduce the penalty set forth in
12 subsection (c) to not less than \$100 upon a showing that the late filing of the return was due to
13 circumstances beyond the reasonable control of the person.

14
15 Section 21. The San Francisco Business and Tax Regulations Code is hereby
16 amended by amending Section 6.6-1, to read as follows:

17 **SEC. 6.6-1. REGISTRATION FOR THIRD-PARTY TAXES.**

18 (a) These additional provisions shall apply to operators under the transient hotel
19 occupancy tax (Article 7), the parking space occupancy tax (Article 9), and the stadium
20 operator admission tax (Article 11), and to service providers under the utility users tax (Article
21 10) and the emergency response fee (Article 10A).

22 (b) Every operator or service supplier engaging in or about to engage in business
23 within the City who is required to collect any of the taxes identified in Subsection (a) shall
24 immediately register with the Tax Collector on a form provided by the Tax Collector.

25 / / /

1 (c) Such registration shall set forth the name under which such person transacts or
2 intends to transact business, the location of each of his or her place or places of business in
3 the City and County, and such other information to facilitate collection of the tax as the Tax
4 Collector may require. The registration shall be signed by the owner if a natural person, by a
5 member or partner, in the case of a partnership, or by an executive officer or some person
6 specifically authorized by the corporation to sign the registration, in the case of a corporation.

7 (d) Except as provided in Subsections (e) and (f) below, the Tax Collector within 10
8 days after such registration shall issue without charge a separate certificate of authority to
9 each registrant to collect the tax from the customer for each place of business of such
10 registrant. Each certificate shall state the place of business to which it is applicable and shall
11 be prominently displayed at said place of business therein so as to be seen and come to the
12 notice readily of all customers. Such certificates shall be nonassignable and nontransferable
13 and shall be surrendered immediately to the Tax Collector upon the cessation of business by
14 the operator or service provider at the location named or upon the sale or transfer of the
15 business.

16 The holder of a certificate of authority to collect the parking space occupancy tax shall remain
17 presumptively liable for the collection of parking taxes at the location named in the certificate, and for
18 the reporting and remittance of such taxes to the Tax Collector, unless and until the holder of the
19 certificate both (i) notifies the Tax Collector in writing that the holder has ceased to conduct a parking
20 business at such location, and (ii) surrenders the certificate for that location to the Tax Collector.

21 (e) Where within the 10-day period referred to in Subsection (d) above, the Tax
22 Collector determines that the operator or service provider, or any signatory to the registration
23 statement, or any person holding a 10 percent or greater legal or beneficial interest in said
24 operator or service provider, is not in compliance with any provision of Articles 7, 9, 10, 10A or
25 11 of Part III of the Municipal Code, the Tax Collector may refuse to issue the certificate.

1 Further, if any person subject to this Section violates any provision of Articles 7, 9, 10,
2 10A or 11 of Part III of the Municipal Code or a rule or regulation promulgated by the Tax
3 Collector, including but not limited to failing to maintain accurate registration information,
4 failure to file any return or pay any tax when due, failure to timely respond to any request for
5 information or subpoena, the Tax Collector may, after serving the affected person with written
6 notice of his or her determination in the manner provided in Section 6.11-2 and an opportunity
7 to be heard pursuant to the notice and review provisions of Sections 6.13-1 et seq. and 6.14-1
8 et seq., revoke or suspend that person's registration under this Section. The Tax Collector
9 may refuse to issue that person a new certificate of authority or to withdraw the suspension of
10 an existing certificate until the person seeking to re-register has complied with the provisions
11 of Part III of the Municipal Code and corrected the original violation to the satisfaction of the
12 Tax Collector.


13 (f) Before any certificate of authority shall be issued to any applicant to engage in the
14 business of renting parking space in a parking station in this City and County, such applicant
15 shall file with the Tax Collector a bond, which shall run to the City and County of San
16 Francisco. For any parking station with annual gross receipts less than \$100,000, such bond
17 shall be in the amount of \$5,000. For any parking station with annual gross receipts of
18 \$100,000 or more, such bond shall be in the amount of \$25,000. Such bond shall be
19 executed by the applicant as principal, and by a corporation or association which is licensed
20 by the Insurance Commissioner of this State to transact the business of fidelity and surety
21 insurance, as surety.

22 The bond shall contain conditions that require the applicant to comply fully with all the
23 provisions of Part III of the San Francisco Municipal Code concerning the collection of third-
24 party taxes from occupants of parking stations and the remittance of such taxes to the Tax
25 Collector. The bond shall be payable to this City and County in the amount of all unpaid

1 parking taxes on amounts of taxable rents collected by the applicant, together with all interest,
2 penalties, and costs applicable thereto; provided, however, that the aggregate liability of the
3 surety for any and all claims which may arise under such bond shall in no event exceed the
4 face amount of such bond regardless the amount due and owing to the City and County. The
5 City and County may bring an action upon the bond for the recovery of any unpaid parking
6 taxes, interest, penalties and costs at any time prior to the expiration of the period of
7 limitations applicable to the collection of such unpaid taxes by the Tax Collector.

8
9
10
11 APPROVED AS TO FORM:

12 LOUISE H. RENNE, City Attorney

13 By: 
14 DORJI ROBERTS
15 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 010826

Date Passed:

Ordinance amending the Business Tax and Regulations Code by:

- (1) amending Sections 6.12-1, 6.18-1, and 6.18-3, and repealing Section 6.19-3, to clarify general administrative provisions of Article 6;
 - (2) adding Sections 6.19-3 through 6.19-11, to establish a system of administrative penalties for specified violations of the Business Tax and Regulations Code;
 - (3) adding new Sections 852.8 and 852.9, re-numbering existing Sections 852.8 and 852.9 as Sections 852.10 and 852.11, respectively, and amending Section 856, to consolidate the deadlines for renewing business registration certificates and filing annual tax returns;
 - (4) amending Section 905-A, to create a graduated system of fines for persons who qualify for the small business exemption but fail to file a timely return; and,
 - (5) amending Section 6.6-1, to provide that a parking lot operator is considered liable for collection of parking taxes at a location covered by his or her certificate of authority unless and until the certificate is surrendered to the Tax Collector.
-

July 30, 2001 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Ammiano, Daly, Gonzalez, Hall, Leno, McGoldrick, Newsom, Peskin,
Sandoval, Yee

Absent: 1 - Maxwell

August 6, 2001 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Ammiano, Hall, Leno, Maxwell, McGoldrick, Newsom, Peskin,
Sandoval, Yee

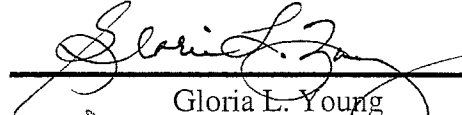
Absent: 2 - Daly, Gonzalez


File No. 010826

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on August 6, 2001
by the Board of Supervisors of the City and
County of San Francisco.

AUG 17 2001

Date Approved


Gloria L. Young
Clerk of the Board


Mayor Willie L. Brown Jr.