

FILE NO. 040758

ORDINANCE NO. 196-04

1 [Business Tax]

2

3 Ordinance amending the Business and Tax Regulations Code to: (1) enact a new

4 Article 12-A-1 (Business Tax Ordinance), as specified, to impose a business tax for four

5 years on all persons engaging in business in San Francisco measured by the gross

6 receipts of the business at the rate of one tenth of one percent (0.1%) for the 2005 tax

7 year and, if Business Tax revenues collected in such year exceed \$30 million, a lower

8 rate for the 2006, 2007 and 2008 tax years, as specified; (2) amend Article 12-A (Payroll

9 Expense Tax Ordinance), as specified, to: (i) conform Article 12-A with the enactment

10 of the Business Tax Ordinance, and (ii) clarify the payroll expense of partnerships,

11 Subchapter S corporations, limited liability companies, limited liability partnerships

12 and other persons or entities not subject to federal income tax or which are allowed a

13 deduction in computing such tax for distributions to the owners or beneficiaries of

14 such persons or entities ("pass-through entities"), ~~and (iii) promote development of the~~

15 ~~biotechnology industry by excluding from the payroll expense of persons subject to~~

16 ~~the Payroll Expense Tax compensation paid to employees and owners or beneficiaries~~

17 ~~of a pass-through entity for work performed and services rendered in connection with~~

18 ~~the person's biotechnology business;~~ and (3) amend Article 6 (Common Administrative

19 Provisions), as specified, to add definitions and conform common administrative

20 provisions with the enactment of the Business Tax Ordinance and amendments to the

21 Payroll Expense Tax Ordinance.

22

23 Note: Additions are *single-underline italics Times New Roman*;

24 deletions are ~~*strikethrough italics Times New Roman*~~.

25 Board amendment additions are double underlined.

Board amendment deletions are ~~strikethrough normal~~.

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

2  
3 Section 1. Pursuant to Article XIII C of the Constitution of the State of California,  
4 Sections ~~2, 3 and 4~~ 3, 4 and 5 of this ordinance shall be submitted to the qualified electors of  
5 the City and County of San Francisco, at the November 2, 2004 general municipal election.  
6 Sections ~~2, 3 and 4~~ 3, 4 and 5 of this ordinance shall become operative only if approved by  
7 the qualified electors at such election. Section ~~56~~ of this ordinance shall become operative on  
8 the date Sections ~~2, 3 and 4~~ 3, 4 and 5 of this ordinance become operative.

9  
10 Section 2. Section 510 of the San Francisco Elections Code and the 30 word limit on  
11 ballot questions set forth therein shall not apply to the ballot question for the Business Tax  
12 Ordinance set forth in Section 3 of this ordinance and submitted for voter approval at the  
13 November 2, 2004 general municipal election because the subject measure is unusually  
14 complex. The ballot question for the Business Tax Ordinance at such election shall read as  
15 follows:

16 Shall the City tax certain gross receipts of businesses at a rate up to 1/10th of  
17 1% for a temporary period of four years, and extend the payroll tax to the  
18 compensation paid to partners and owners of certain businesses, with  
19 exceptions in both cases for small businesses?

20  
21 Section ~~23~~. The San Francisco Business and Tax Regulations Code is hereby  
22 amended by adding Article 12-A-1 (Business Tax Ordinance), to read as follows:

23  
24 ARTICLE 12-A-1

25 BUSINESS TAX

1  
2           SEC. 951. SHORT TITLE. *This Article shall be known as the "Business Tax Ordinance." The*  
3 *tax imposed under this Article shall be known as the "Business Tax."*

4  
5           SEC. 952. OPERATION OF DEFINITIONS. *Except where the context otherwise requires,*  
6 *terms not defined in this Article that are defined in Article 6 shall have the same meaning as given to*  
7 *them in Article 6.*

8  
9           SEC. 952.1. ADVANCE PAYMENTS. *"Advance payments" means nonrefundable*  
10 *payments for the purchase of tangible personal property or services to be delivered or*  
11 *performed in the future.*

12  
13           SEC. 952.12. CASH DISCOUNT. *"Cash discount" means a deduction from the invoice price*  
14 *of goods or charge for services which is allowed if the bill is paid on or before a specified date.*

15  
16           SEC. 952.23. GROSS RECEIPTS. (a) *"Gross receipts" means the total amount of the sale*  
17 *price of all sales, the total amount charged or received for the performance of any act, service or*  
18 *employment of whatever nature it may be, whether such serviceact or employment is done as part of*  
19 *or in connection with the sale of goods, wares, merchandise or not, for which a charge is made or*  
20 *credit allowed, including all receipts, cash, credits and property of any kind or nature, any amount for*  
21 *which credit is allowed by the seller to the purchaser without any deduction therefrom on account of*  
22 *the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable,*  
23 *losses or any other expense whatsoever; provided, that cash discounts allowed or taken on sales shall*  
24 *not be included. Gross receipts, including advance payments, shall be included in a taxpayer's*  
25

1 gross receipts at the time such receipts are recognized as revenue for federal income tax  
2 reporting purposes.

3 (b) Gross receipts shall also include the total amount of all lease or rental amounts paid or  
4 rendered by, on behalf of, or for the benefit of, all of the tenants of a landlord, valued in money, for the  
5 occupancy or use of all premises located in the City, any services that are part of the lease or rental of  
6 the premises, whether received in money or otherwise, that are paid to, on behalf of, or for the benefit  
7 of, the landlord, and all receipts, cash, credits, property of any kind or character and the fair market  
8 value of services so paid or rendered for such occupancy, use and services. Gross receipts shall also  
9 include the amount of any federal manufacturers or importers excise tax included in the price of the  
10 property sold, even though the manufacturer or importer is also the retailer thereof and whether or not  
11 the amount of such tax is stated as a separate charge.

12 (bc) "Gross receipts" shall not include the amount of any federal tax imposed on or with  
13 respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of  
14 whether or not the amount of federal tax is stated to customers as a separate charge, or any state and  
15 local sales or use tax required by law to be included in or added to the purchase price and collected  
16 from the consumer or purchaser, or such part of the sales price of any property previously sold and  
17 returned by the purchaser to the seller which is refunded by the seller by way of cash or credit  
18 allowances given or taken as part payment on any property so accepted for resale.

19 (ed) "Gross receipts" shall not include any amount received from or charged to any person  
20 that is a related entity to the taxpayer. A person is a related entity to a taxpayer if 80%-50% or more  
21 of the ownership interests in both value and voting power of such person and the taxpayer are held,  
22 directly or indirectly, by the same person or persons. Notwithstanding the foregoing, any amount  
23 received from or charged to any person which is a related entity to a taxpayer shall be included in  
24 "gross receipts" when said amount is compensation for activities, including, but not limited to, selling,  
25 renting and service, performed by the taxpayer for any person which is not a related entity to the

1 taxpayer, unless such amount has been included in the "gross receipts" by the related entity  
2 and the tax thereon has been paid to the City.

3 (e) "Gross receipts" shall not include any amount derived from the sale of the  
4 taxpayer's ownership interest in real property.

5 (f) "Gross receipts" shall not include any amount received by persons acting as  
6 agents or brokers, other than amounts received as commissions or fees earned or charges of  
7 any character made or compensation of any character received for the performance of any  
8 service as agent or broker; provided, that any agent or broker dealing in stocks or other  
9 similar written instruments evidencing a right to participate in the assets of any business, or  
10 dealing in bonds or other evidence of indebtedness, who also deals in such financial  
11 instruments as a principal, shall not include in the gross receipts resulting from such dealings  
12 as a principal the cost to acquire the financial instrument(s) sold or otherwise exchanged or  
13 converted.

14 (g) "Gross receipts" shall not include any amount of third party taxes that a taxpayer  
15 collects from or on behalf of the taxpayer's customers and remits to the appropriate  
16 governmental entity imposing such tax.

17  
18 SEC. 952.3-4. LANDLORD AND LESSOR. (a) "Landlord" and "Lessor" mean a lessor of  
19 real estate located within the City, except as provided in Subsection (b), regardless of whether the  
20 leased premises is designed, intended, used or occupied for business purposes or residential purposes.  
21 The failure of a landlord or tenant, or both, to obtain a business registration certificate under Article  
22 12, or any other license or permit required for engaging in either person's business or occupation in  
23 the City, shall not relieve such landlord or tenant from the tax or other obligations imposed under this  
24 Article or Article 6.

1           **(b) Notwithstanding Subsection (a), a person receiving rental or lease income in connection**  
2 **with the operation of any of the following shall not, by reason of that fact alone, be deemed to be a**  
3 **landlord or lessor subject to the tax imposed under this Article: (1) a cooperative housing corporation,**  
4 **as defined in Section 216(b) of the Internal Revenue Code of 1986, as amended; (2) one residential**  
5 **structure consisting of fewer than four units; or (3) one residential condominium.**

6  
7           **SEC. 952.45. PREMISES. "Premises" means any land and/or building, or any portion**  
8 **thereof, that is located within the City.**

9  
10           **SEC. 952.56. RENT. "Rent" means the total amount of all lease or rental amounts paid or**  
11 **rendered by, on behalf of, or for the benefit of, a lessor's tenant, valued in money, for the occupancy or**  
12 **use of real estate located within the City, and for any services, privileges, furnishings and facilities**  
13 **provided in connection with the use or occupancy thereof, including storage, garage and parking**  
14 **facilities, whether paid in money or otherwise, to, on behalf of, or for the benefit of, the lessor. "Rent"**  
15 **includes all receipts, cash, credits, property of any kind or character and the fair market value of**  
16 **services so paid or rendered for such occupancy, use, services, privileges, furnishings and facilities.**

17  
18           **SEC. 952.67. SALE AND SELL. "Sale" and "sell" mean the making of any transfer of title, in**  
19 **any manner or by any means whatsoever, to tangible personal property for a price, and to the serving,**  
20 **supplying or furnishing, for a price, of any tangible personal property fabricated or made at the special**  
21 **order of consumers who do or who do not furnish directly or indirectly the specifications therefor. A**  
22 **transaction whereby the possession of property is transferred but the seller retains the title as security**  
23 **for the payment of the price shall likewise be deemed a sale.**

1           SEC. 952.8. SALES PRICE. "Sales price" means the actual amount charged or  
2 received for the sale of an item of property.

3  
4           ~~SEC. 952.8. SALES FOR CONVENIENCE. (a) "Sales for convenience" means a sale~~  
5 ~~of new goods, wares, or merchandise by a person engaged in selling such articles to another~~  
6 ~~person engaged in selling like or similar kinds of articles:~~

7                   (1) ~~Where the primary purpose of the particular transaction or sale is to~~  
8 ~~accommodate the purchaser rather than to make a sale in the ordinary course of~~  
9 ~~business;~~

10                   (2) ~~Where, in the particular kind of business involved, a similar manner of~~  
11 ~~dealing is frequent or customary in the circumstances under which the particular sale is~~  
12 ~~made; and~~

13                   (3) ~~Where goods, wares or merchandise of like or similar kind and of~~  
14 ~~substantially equivalent value to that which was sold is received in consideration.~~

15           (b) ~~The following types of transactions are sales for convenience within the meaning~~  
16 ~~of this Section when the circumstances stated in paragraphs (1), (2) and (3) of Subsection (a)~~  
17 ~~are present:~~

18                   (1) ~~Transactions in which the seller conveys an article which is in short~~  
19 ~~supply, or which, under the circumstances, cannot be obtained by the purchaser~~  
20 ~~through normal sources of supply in sufficient time to permit the purchaser to furnish an~~  
21 ~~equivalent article to a prospective customer;~~

22                   (2) ~~Transactions in which, by reason of the seller's more convenient location~~  
23 ~~relative to a designated point of delivery, the purchaser agrees to reimburse the seller~~  
24 ~~for delivering goods, wares or merchandise at that point to the purchaser's customer in~~  
25

1 accordance with a contract of sale between the purchaser and the purchaser's  
2 customer;

3 (3) — Transactions in which, as a matter of business practice, the form of a sale  
4 is arranged and entered into by the seller and the purchaser as a substitute for or the  
5 equivalent of the transportation of the article or the payment of transportation charges  
6 on the article from the point of the delivery to some other point;

7 (4) — Transactions different in detail from those described in the three  
8 immediately preceding paragraphs of this Section, but which the Tax Collector has  
9 found and by rule determined to be of a kind whose primary purpose is to  
10 accommodate the purchaser rather than to make a sale in the ordinary course of  
11 business; of a kind which, in the particular kind of business involved, is frequent or  
12 customary in the circumstances under which a particular sale is made; and of a kind  
13 where goods, wares or merchandise of like or similar kind, and of substantially  
14 equivalent value to that which was sold is received as consideration.

15 (c) — No sale shall be considered a sale for convenience within the meaning of this  
16 Subsection unless it is of a kind described in paragraphs (1), (2), (3) or (4) of Subsection (b).

17  
18 SEC. 952.89. TENANT AND TENANCY. "Tenant" and "Tenancy" include tenants and  
19 tenancies of all types, and persons occupying and the occupation of a building or structure, or space in  
20 a building or structure, or any other real estate in the City, under any lease, rental agreement, license  
21 or concession agreement with a lessor. The right to use or possess such space shall be deemed to be  
22 the same as actual occupation.  
23  
24  
25



1           SEC. 953. IMPOSITION OF BUSINESS TAX; STATEMENT OF VOTER INTENT; TAX

2           COLLECTOR REGULATIONS. (a) Except as provided under Sections 954 and 954.1, every person  
3           engaging in business within the City shall pay an annual business tax measured by the person's gross  
4           receipts from all taxable business activities attributable to the City. A person's liability for the  
5           Business Tax shall be calculated using the rate set forth in Section 953.1.

6           (b) The Business Tax is a privilege tax imposed upon persons engaging in business within  
7           the City for the privilege of engaging in a business or occupation in the City. The Business Tax is  
8           imposed for general governmental purposes and in order to require commerce and the business  
9           community to carry a fair share of the costs of local government in return for the benefits, opportunities  
10           and protections afforded by the City. Proceeds from the tax shall be deposited in the City's general  
11           fund and may be expended for any purposes of the City.

12           ~~(c) The voters intend by approving this measure to impose the Business Tax upon~~  
13           ~~all persons engaging in business within the City and upon all commerce and business~~  
14           ~~activities occurring within, attributable to or having sufficient nexus with the City to lawfully~~  
15           ~~impose the tax hereunder in the broadest possible manner consistent with the provisions and~~  
16           ~~requirements of California Constitution Article XIII C, the United States Constitution and any~~  
17           ~~other applicable provision of federal and state law.~~

18           ~~(dc) The Tax Collector may promulgate all reasonable regulations and issue all reasonable~~  
19           ~~rules, determinations and interpretations necessary or appropriate to implement and administer the~~  
20           ~~Business Tax upon all commerce and business activities occurring within, attributable to or having~~  
21           ~~sufficient nexus with the City to lawfully impose the tax hereunder, regardless of the form (corporate or~~  
22           ~~otherwise) of the person or other legal entity engaging in business within the City.~~

23           ~~(ed) The Business Tax imposed under this Article is in addition to the Payroll Expense Tax~~  
24           ~~imposed under Article 12-A. Persons not otherwise exempt from the Business Tax or Payroll Expense~~  
25

1 Tax shall pay both taxes. Persons exempt from either the Business Tax or Payroll Expense Tax, but not  
2 both, shall pay the tax from which not exempt.

3  
4 SEC. 953.1. BUSINESS TAX RATE. (a) The rate of the Business Tax for the tax year  
5 commencing on January 1, 2005 and ending on December 31, 2005 (the 2005 tax year) shall  
6 be one tenth of one percent (0.1%) of the person's gross receipts attributable to the person's business  
7 activities in the City. The rate of the Business Tax for the tax years commencing on or after  
8 January 1, 2006 and ending on or before December 31, 2008 (the 2006, 2007 and 2008 tax  
9 years) shall be the same rate as for the 2005 tax year unless the revenues from the Business  
10 Tax in the 2005 tax year exceed \$30 million, in which case the rate for the 2006, 2007 and  
11 2008 tax years shall be adjusted as set forth in Subsection (b) of this Section.

12 (b) If the Controller determines that the revenues from the Business Tax in the 2005  
13 tax year were more than \$30 million, then the rate of the Business Tax for the 2006, 2007 and  
14 2008 tax years shall be established by operation of this Section by decreasing, in increments  
15 of one basis point (0.01%), the rate that was applicable to the 2005 tax year to a rate where  
16 the revenue from the Business Tax for the 2005 tax year would have been or first dropped  
17 below \$30 million had the decreased rate for the 2006, 2007 and 2008 tax years applied to  
18 the 2005 tax year.

19 (c) The Controller shall make the determination required by Subsection (b) of this  
20 Section no later than September 30, 2006. The Tax Collector shall, within 15 days of the  
21 Controller's determination, publish a notice announcing the rate of the Business Tax for the  
22 2006, 2007 and 2008 tax years.

1           SEC. 954. EXEMPTIONS. (a) Except as provided in Subsection (b) of this Section, an  
2 organization that is exempt from income taxation by Chapter 4 (commencing with Section 23701) of  
3 Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section  
4 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended, as qualified by  
5 Sections 502, 503, 504 and 508 of the Internal Revenue Code of 1986, as amended, shall be exempt  
6 from taxation under this Article.

7           (b) An organization otherwise exempt from income taxation under Subsection (a) that is  
8 directly engaged within the City in an unrelated trade or business within the meaning of Section 513(a)  
9 of the Internal Revenue Code of 1986, as amended, and has, from its own operations, unrelated  
10 business taxable income within the meaning of Section 512(a)(1) of the Internal Revenue Code of 1986,  
11 as amended, shall pay the Business Tax on its gross receipts from its unrelated trade or business  
12 activities that are attributable to the City. If it is impracticable, unreasonable or improper to allocate  
13 such organization's gross receipts as aforesaid either because of the particular nature of the  
14 organization's unrelated trade or business or for any other reason, then the amount of gross receipts  
15 reasonably attributable to the organization's unrelated trade or business in the City shall be  
16 determined on the basis of all relevant facts and circumstances of the particular case, in accordance  
17 with any rulings or regulations issued or promulgated by the Tax Collector for the purpose.

18           (c) "Gross receipts" as defined in Section 952.23 shall not include receipts from business  
19 activities if, and only so long as and to the extent that, the City is prohibited from taxing such receipts  
20 under the Constitution or laws of the United States or under the Constitution or laws of the State of  
21 California.

22           (d) Blind persons licensed under the provisions of Chapter 6A of Title 12 of the United  
23 States Code ("Vending Stands for Blind in Federal Buildings") or Article 5 of Chapter 6 of Part 2 of  
24 Division 10 of the California Welfare and Institutions Code ("Business Enterprises for the Blind") need  
25

1 not include in the computation of gross receipts the first \$15,000 of gross receipts in any one year  
2 which is attributable to their licensed operations within the City.

3 (e) Skilled Nursing Facilities licensed under the provisions of Title 22, California  
4 Administrative Code, Division 5 ("Licensing and Certification of Health Facilities and Referral  
5 Agencies"), Chapter 3 ("Skilled Nursing Facilities"), shall be exempt from taxation under this Article.

6 (f) Receipts derived from contracts for services or sales initiated or consummated at closed  
7 conventions shall be excluded from taxable "gross receipts" as defined in Section 952.23. For  
8 purposes of this Section, a "closed convention" means an assemblage of delegates to or members of a  
9 formally established organization devoted to trade, industrial or commercial purposes, and to which  
10 only such delegates or members are admitted, to the exclusion of the general public.

11 ~~(g) Receipts derived from the sale of real property located in the City shall be~~  
12 ~~excluded from taxable "gross receipts" as defined in Section 952.2.~~

13 (g) Sales for resale shall be exempt from the tax imposed under this Article;  
14 provided the purchaser provides the seller, and the seller retains, a resale certificate in  
15 accordance with applicable provisions of the Revenue and Taxation Code and regulations  
16 promulgated by the Board of Equalization.

17 (h) For only so long as and to the extent that the City is prohibited from imposing the tax  
18 under this Article, the following persons shall be exempt from the Business Tax:

19 (1) Banks and financial corporations exempt from local taxation under Article XIII,  
20 Section 27 of the California Constitution and Revenue and Taxation Code Section 23182;

21 (2) Insurance companies exempt from local taxation under Article XIII, Section 28  
22 of the California Constitution;

23 (3) Persons engaging in business as a for-hire motor carrier of property under  
24 Revenue and Taxation Code Section 7233;

1           (4) Persons engaging in intercity transportation as a household goods carrier under  
2           Public Utilities Code Section 5327;

3           (5) Charter-party carriers operating limousines that are neither domiciled nor  
4           maintain a business office within the City under Public Utilities Code Section 5371.4.

5           (6) Any person upon whom the City is prohibited under the Constitution or statute of  
6           the State of California from imposing the Business Tax.

7           (i) To the extent that any taxpayer has paid a substantially similar tax to any other taxing  
8           jurisdiction on any gross receipts taxed under this Article, the tax paid to such taxing jurisdiction shall  
9           be credited against the tax due under this Article.

10           (j) Nothing in this Article shall be construed as requiring the payment of any tax for  
11           engaging in a business or the doing of an act when such payment would be in violation of the  
12           Constitution or a statute of the United States or of the Constitution or a statute of the State of  
13           California.

14  
15           SEC. 954.1. SMALL BUSINESS EXEMPTION. (a) Notwithstanding any other provision of  
16           this Article, "small business enterprises," as hereinafter defined, shall be exempt from payment of the  
17           Business Tax; provided, that small business enterprises shall pay the annual registration fee pursuant  
18           to Section 855 of Article 12 and shall provide all information and records and file all returns with the  
19           Tax Collector as required by this Article and Article 6.

20           (b) The term "small business enterprise" shall mean and include any taxpayer:

21           (1) Whose tax liability under this Article, but for the small business exemption in this  
22           Section, would not exceed \$500; and

23           (2) Who has filed a tax return by the last day of February for the preceding tax year.  
24  
25

1            SEC. 955. ALLOCATION AND APPORTIONMENT; BUSINESS WITHIN AND WITHOUT  
2 CITY; BUSINESSES SUBJECT TO BUSINESS TAX AND PAYROLL EXPENSE TAX. (a) Any  
3 person deriving gross receipts from business activities engaged in both within and without the City  
4 shall allocate such gross receipts to determine the amount thereof derived from or attributable to such  
5 activities within the City for purposes of calculating the person's tax liability under this Article. The  
6 person shall make such allocation, which shall be set forth on appropriate returns, using the ordinary  
7 methods of allocation and apportionment, as follows:

8            (1) Taxpayers shall include 100% of gross receipts derived from or attributable to  
9 sales of tangible personal property if: (i) a purchaser takes physical or constructive possession  
10 of the property within the City regardless of the f.o.b. point or other conditions of the sale; or  
11 (ii) the property is delivered or shipped to a purchaser within the City regardless of the f.o.b.  
12 point or other conditions of the sale; or (iii) the property is shipped from an office, store,  
13 warehouse, factory, or other place of storage within the City to a location outside the City  
14 provided the taxpayer is not subject to a tax on the gross receipts derived from such sale in the  
15 city, county or analogous local jurisdiction (excluding states and countries) to which the  
16 property is shipped.

17            (2) Taxpayers shall ~~include 100% of~~ apportion gross receipts derived from or  
18 attributable to the performance of any ~~act, service or employment~~ of whatever nature, and  
19 sales other than of tangible personal property, if: (i) ~~the activity producing the gross~~  
20 receipts is performed in the City; or (ii) ~~the activity producing the gross receipts is~~  
21 performed both in and outside the City and a greater proportion of such activity is  
22 performed in the City than in any other city, county or analogous local jurisdiction  
23 (excluding states and countries) that may lawfully impose a tax on the gross receipts  
24 derived from the person's performance of such activity, based on the costs of  
25

1 performance, by multiplying 100% of such gross receipts by the percentage of the  
2 taxpayer's payroll expense attributable to the City under Section 904 of Article 12-A.

3 (3) Taxpayers who are landlords (as defined in Section 952.4) shall include 100% of  
4 gross receipts derived from or attributable to the leasing or renting of all of the landlord's  
5 premises located within the City; taxpayers shall not include gross receipts that are derived  
6 from or attributable to the leasing or renting of real estate located outside of the City.

7 (b) Nothing in this Section may be construed to deny any person (i) exempt from the  
8 tax imposed under this Article, (ii) entitled to a credit against the person's liability for the tax, or  
9 (iii) whose receipts from business activities or any amount thereof are excluded from "gross  
10 receipts" as defined in Section 952.3 of this Article or from liability for the tax, under any  
11 applicable provision of law, from the benefit of such exemption, credit or exclusion.

12 (c) The Tax Collector may promulgate regulations and issue rules, determinations and  
13 interpretations regarding the ordinary methods of allocation and apportionment set forth in this  
14 Section so as to fairly allocate the gross receipts of all persons subject to this Article in order to impose  
15 the tax generally and in individual cases only upon gross receipts from the business activities that are  
16 derived from or attributable to such activities engaged in within the City. The Tax Collector may, in  
17 the application to individual cases of such regulations, rules, determinations and interpretations and  
18 regulations to individual cases, depart from or make such modifications thereto as may be necessary  
19 to fairly allocate the taxpayer's gross receipts and impose the tax under this Article in a lawful manner.

20 (d) If the Tax Collector reallocates gross receipts upon examination of any return, the Tax  
21 Collector shall notify the person in writing of the basis upon which the Tax Collector made the  
22 reallocation. The Tax Collector shall provide such notice as soon as practicable following such  
23 reallocation, and within 10 days of receipt of a written request therefor from the taxpayer. The time for  
24 the doing of any act required by this Article or Article 6, and the commencement of any liability for  
25

1 penalties and interest under such Articles, shall not begin to run until the Tax Collector provides such  
2 notice.

3  
4 SEC. 956. PAYMENTS, RETURNS, PREPAYMENTS, EXTENSIONS AND REFUNDS.

5 Payments, returns, prepayments, extensions and refunds for person's subject to this Article shall be as  
6 prescribed in the common administrative provisions set forth in Article 6.

7  
8 SEC. 957. AUTHORITY TO PROMULGATE REGULATIONS. The Tax Collector may  
9 promulgate regulations and issue rules, determinations and interpretations consistent with the  
10 purposes of this Article and Article 6 as may be necessary and appropriate to apply such Articles in a  
11 lawful manner, including the provisions of such Articles for penalties due to fraud, underpayment of  
12 fees and taxes, or any evasion of such Articles or the rules and regulations promulgated thereunder.  
13 All regulations, rules, determinations and interpretations promulgated or issued by the Tax Collector  
14 that are not inconsistent with such Articles, and that were promulgated or issued prior to the effective  
15 date of this Article, shall remain in full force and effect.

16  
17 Section 34. Operative Date of Article 12-A-1 (Business Tax Ordinance); Sunset Date  
18 of Business Tax. Article 12-A-1 of the Business and Tax Regulations Code (Business Tax  
19 Ordinance), as enacted by this ordinance, shall be operative commencing January 1, 2005.  
20 The authority to levy the Business Tax imposed under Article 12-A-1 shall expire on January  
21 1, ~~2010~~2009.



1           Section 45. The San Francisco Business and Tax Regulations Code is hereby  
2 amended by amending Sections 902.1, 903 and 903.1, and by adding Sections 902.2 and  
3 906.1, of Article 12-A (Payroll Expense Tax Ordinance), as set forth below. The amendments  
4 to Sections 902.1, 903 and 903.1 and the addition of Sections 902.2 and 906.1, as enacted by  
5 this ordinance, are temporary and shall be operative commencing January 1, 2005 and shall  
6 expire on January 1, 20102009. Sections 902.1, 903 and 903.1 shall revert to and be as such  
7 sections read immediately prior to the amendments enacted by this ordinance on and after  
8 January 1, 20102009; provided, that Sections 902.1, 902.2, 903, 903.1 and 906.1, as  
9 amended and added by this ordinance, shall continue to apply and be operative on and after  
10 January 1, 20102009 for the limited purpose of Payroll Expense Taxes imposed under Article  
11 12-A for tax years commencing on or after January 1, 2005 and ending on or before  
12 December 31, 20102009, and any interest and penalties attributable thereto. Sections 902.1,  
13 902.2, 903, 903.1 and 906.1, as amended and added by this ordinance, shall read as follows:

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15           SEC. 902.1. PAYROLL EXPENSE. (a) The term "Payroll Expense" means the  
16 compensation paid to, on behalf of, or for the benefit of an individual *or pass-through entity*,  
17 including salaries, wages, bonuses, commissions, property issued or transferred in exchange  
18 for the performance of services (including but not limited to stock options), *compensation for*  
19 *services to owners of pass-through entities* and any other form of compensation, who *or that*,  
20 during any tax year, performs work or renders services, in whole or in part in the City; and if  
21 more than one individual *or pass-through entity* during any tax year performs work or renders  
22 services in whole or in part in the City, the term "Payroll Expense" means the total  
23 compensation paid including salaries, wages, bonuses, commissions, property issued or  
24 transferred in exchange for the performance of services (including but not limited to stock  
25

1 options), compensation for services to owners of pass-through entities and any other form of  
2 compensation for services, to all such individuals and pass-through entities.

3 (b) Any person that grants a service provider a right to acquire an ownership  
4 interest in such person in exchange for the performance of services shall include in its payroll  
5 expense for the tax year in which such right is exercised an amount equal to the excess of (i)  
6 the fair market value of such ownership interest on the date such right is exercised over (ii)  
7 the price paid for such interest.

8 (c) Any individual compensated in his or her capacity as a real estate salesperson  
9 or mortgage processor shall be deemed an employee of the real estate broker or mortgage  
10 broker for or under whom such individual performs services, and any compensation received  
11 by such individual, including compensation by way of commissions, shall be included in the  
12 payroll expense of such broker. For purposes of this Section, "real estate broker" and  
13 "mortgage broker" refer to any individual licensed as such under the laws of the State of  
14 California who engages the services of salespersons or a salesperson, or of mortgage  
15 processors or a mortgage processor, to perform services in the business which such broker  
16 conducts under the authority of his or her license; a "salesperson" is an individual who is  
17 engaged by a real estate broker to perform services, which may be continuous in nature, as a  
18 real estate salesperson under an agreement with a real estate broker, regardless of whether  
19 the individual is licensed as a real estate broker under the laws of the State of California; a  
20 "mortgage processor" is an individual who is engaged by a real estate broker or mortgage  
21 broker to perform services, which may be continuous in nature, as a mortgage processor  
22 under an agreement with such real estate broker or mortgage broker, regardless of whether  
23 the mortgage processor is also licensed as a mortgage broker under the laws of the State of  
24 California.

1           (d) All compensation, including all pass-through compensation for services paid to, on  
2 behalf of, or for the benefit of owners of a pass-through entity, shall be included in the calculation of  
3 such entity's payroll expense for purposes of determining such entity's tax liability under this Article.  
4 For purposes of this section, the "pass-through compensation for services" of a pass-through entity  
5 shall be the aggregate compensation for personal services rendered by all such owners, and shall not  
6 include any return on capital investment. Pass-through entities, at their option, may calculate the  
7 amount of "pass-through compensation for services" for any given tax year using one of the following  
8 methods:

9           (1) The amount of such entity's net earnings from self-employment for federal  
10 income tax purposes; or

11           (2) Ninety percent (90%) of all amounts paid to, on behalf of, or for the benefit of all  
12 the owners of such entity; or

13           (3) For each such owner, an amount that is one hundred and fifty percent (150%) of  
14 the average annual compensation paid to, on behalf of, or for the benefit of all employees of the  
15 pass-through entity whose compensation is in the top quartile (i.e., 25%) of the entity's highest  
16 paid employees who are based in the City; provided, the total number of employees of the entity  
17 based in the City is not less than twenty.

18           (e) If a pass-through entity establishes to the satisfaction of the Tax Collector that all of the  
19 methods set forth in Subsection (d) are inapplicable and/or overstate the amount of compensation  
20 reasonably attributable to work performed or services rendered by such owners because of the  
21 particular nature of the services rendered or work performed, or on account of the unusual basis of  
22 such compensation, or for any other reason, then the amount of pass-through compensation shall be  
23 determined on the basis of all relevant facts and circumstances of the particular case, in accordance  
24 with any rulings or regulations issued or promulgated by the Tax Collector for such purpose or with  
25 the written approval of the Tax Collector.

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2           SEC. 902.2. PASS-THROUGH ENTITY. The term "pass-through entity" includes a trust,  
3 partnership, corporation described in Subchapter S of the Internal Revenue Code of 1986, as amended,  
4 limited liability company, limited liability partnership, professional corporation, and any other person  
5 or entity which is not subject to the income tax imposed by Subtitle A, Chapter 1 of the Internal  
6 Revenue Code of 1986, as amended, or which is allowed a deduction in computing such tax for  
7 distributions to the owners or beneficiaries of such person or entity. Any person exempt from  
8 payment of the Payroll Expense Tax under Section 954 of this Article shall not be disqualified  
9 from or denied such exemption as a result of being a "pass-through entity" under this Section.

10  
11           SEC. 903. IMPOSITION OF PAYROLL EXPENSE TAX. (a) A tax for general  
12 governmental purposes is hereby imposed upon every person engaging in business within the  
13 City as defined in Section 6.2-12 of Article 6; provided, that such tax shall be levied only upon  
14 that portion of the person's payroll expense that is attributable to the City as set forth in  
15 Section 904.

16           (b) The Payroll Expense Tax is imposed for general governmental purposes and in  
17 order to require commerce and the business community to carry a fair share of the costs of  
18 local government in return for the benefits, opportunities and protections afforded by the City.  
19 Proceeds from the tax shall be deposited in the City's general fund and may be expended for  
20 any purposes of the City.

21           (c) The voters intend by approving this measure to authorize application of the Payroll  
22 Expense Tax in the broadest possible manner consistent with the provisions of this Article and the  
23 requirements of California Constitution Article XIIC, the United States Constitution and any other  
24 applicable provision of federal and state law.

1           (d) The Tax Collector may promulgate all reasonable regulations and issue all reasonable  
2 rules, determinations and interpretations necessary or appropriate to implement and administer the  
3 Payroll Expense Tax upon all commerce and business activities occurring within, attributable to or  
4 having sufficient nexus with the City to lawfully impose the tax, regardless of the form (corporate or  
5 otherwise) of the person or other legal entity engaging in business in the City.

6           (e) The Payroll Expense Tax imposed hereunder is in addition to the Business Tax imposed  
7 under Article 12-A-1. Persons not otherwise exempt from the Payroll Expense Tax or Business Tax  
8 shall pay both taxes. Persons exempt from either the Business Tax or Payroll Expense Tax, but not  
9 both, shall pay the tax from which not exempt.

10  
11           SEC. 903.1. RATE OF PAYROLL EXPENSE TAX. The rate of the payroll expense tax  
12 shall be 1-1/2 percent. The amount of a person's liability for the payroll expense tax shall be  
13 the product of such person's taxable payroll expense multiplied by 0.015. ~~The amount of such~~  
14 ~~tax for Associations shall be 1-1/2 percent of the payroll expense of such Association, plus 1-1/2~~  
15 ~~percent of the total distributions made by such Association by way of salary to those having an~~  
16 ~~ownership interest in such Association. Amounts paid or credited to those having an ownership~~  
17 ~~interest in such Association prior and in addition to the distribution of ownership profit or loss shall be~~  
18 ~~presumed to be distributions "by way of salary" and for personal services rendered, unless the taxpayer~~  
19 ~~proves otherwise by clear and convincing evidence.~~

20  
21           ~~SEC. 906.1. BIOTECHNOLOGY EXCLUSION. (a) Any person engaging in business~~  
22 ~~within the City may exclude from the person's payroll expense all compensation paid to, on~~  
23 ~~behalf of, or for the benefit of all individuals and pass-through entities who or that perform~~  
24 ~~substantially all work or render substantially all services in direct support of such person's~~  
25 ~~biotechnology business, subject to the conditions and limitations set forth in this Section. For~~

1 ~~purposes of this Section, "biotechnology business" means conducting biotechnology research~~  
2 ~~and experimental development, and operating laboratories for biotechnology research and~~  
3 ~~experimental development, using recombinant DNA, cell fusion, and bioprocessing~~  
4 ~~techniques, as well as the application thereof to the development of diagnostic products~~  
5 ~~and/or devices to improve human health, animal health, and agriculture.~~

6 (b) ~~Unless exempted under Sections 906 of this Article, every person engaging in~~  
7 ~~the biotechnology business in the City shall pay the tax imposed under this Article on the full~~  
8 ~~amount of the person's payroll expense attributable to the City from and after the expiration of~~  
9 ~~this Section.~~

10 (c) ~~If a person's calculated liability for the Payroll Expense Tax does not exceed~~  
11 ~~\$2,500 for the tax year after applying the biotechnology exclusion under this Section, the~~  
12 ~~person shall be exempt from payment of the Payroll Expense Tax for that tax year as provided~~  
13 ~~in Section 905-A.~~

14  
15 Section ~~56~~. The San Francisco Business and Tax Regulations Code is hereby  
16 amended by amending Sections 6.1-1, 6.2-12, 6.2-17, 6.6-1, 6.8-1, 6.9-1, 6.9-3, 6.9-5, and  
17 6.21-1, of Article 6 (Common Administrative Provisions), and by adding Sections 6.2-9.4, 6.2-  
18 9.5, 6.2-10.5, and 6.5-1.5, as follows:

19  
20 SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS. (a) Except where the  
21 specific language of the Business and Tax Regulations Code or context otherwise requires,  
22 these common administrative provisions shall apply to Articles 6, 7, 9, 10, 10A, 11, 12, 12-A,  
23 12-A-1 and 12-B of such Code.

24 (b) Unless expressly provided otherwise, all statutory references in this Article and  
25 the Articles set forth in Subsection (a) shall refer to such statutes as amended from time to

1 time and shall include successor provisions. For purposes of collecting the Emergency  
2 Response Fee under Article 10A, any reference to a "tax" in this Article shall include the  
3 Emergency Response Fee where appropriate; provided, however that nothing in the operation  
4 of this provision shall affect the underlying legal character of the Emergency Response Fee or  
5 suggest that the fee is a tax.

6 (c) For purposes of this Article, a domestic partnership established pursuant to  
7 Chapter 62 of the San Francisco Administrative Code shall be treated the same as a married  
8 couple.

9  
10 SEC. 6.2-9.4. BUSINESS TAX ORDINANCE; BUSINESS TAX. "Business Tax Ordinance"  
11 means Article 12-A-1 of the Business and Tax Regulations Code; "Business Tax" means the tax  
12 imposed thereunder.

13  
14 SEC. 6.2-9.5. INDEPENDENT CONTRACTOR. "Independent Contractor" means any entity,  
15 other than an individual, that performs services for a principal; and any individual who performs  
16 services for a principal for a specified recompense for a specified result, under control of the principal  
17 as to the result of the work only and not as to the means by which such result is accomplished. An  
18 independent contractor receives income that should be reported to the Internal Revenue Service by the  
19 principal on IRS Form 1099, should report the income to the Internal Revenue Service on IRS Form  
20 1040, Schedule C and may deduct the cost of the use of a home for business purposes on Schedule C.  
21 Factors which indicate status as an independent contractor are if an individual:

22 (1) Is not required to follow instructions on how to perform services;

23 (2) Possesses the skills necessary to perform the task and does not need additional training;

24 (3) Performs services that are not essential to the principal's business or are not  
25 incorporated into the product or services sold by the principal;

1           (4) Should be able to subcontract all or a portion of the project;

2           (5) Can hire and supervise his or her own employees, but should not supervise, or be  
3 supervised by, the principal's employees;

4           (6) Generally works on one project and moves on, acquiring additional projects when and if  
5 he or she is available;

6           (7) Establishes his or her hours of work, working as necessary to accomplish the end result;

7           (8) Usually has the right to work simultaneously for the principal and others, as long as the  
8 end result is achieved;

9           (9) Should be able to choose where to perform some, if not all, of the services;

10          (10) Can control the manner and method of performing the services;

11          (11) Is responsible only for the end result, and is not required to submit interim reports;

12          (12) Generally is paid a flat rate for the completion of the project;

13          (13) Is expected to assume the burden of business expenses;

14          (14) Should have the tools and equipment necessary to perform the services independently;

15          (15) Makes as an investment in tools, business equipment, publications and supplies  
16 appropriate for his or her business;

17          (16) Accepts both the benefits and risks of a business transaction, in that he or she has the  
18 opportunity to profit from the project price and risks a loss if the end result is unacceptable or costs  
19 exceed the project price;

20          (17) Can and does work for multiple firms simultaneously;

21          (18) Offers his or her services to the general public;

22          (19) Can be terminated only according to the terms of an agreement, and could recover  
23 damages for breach of contract if termination is outside the scope of the agreement; and

24          (20) Has as an obligation to complete the work under contract.

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1           SEC. 6.2-10.5. INDUSTRY CODE. "Industry Code" means the industrial classification  
2 number assigned to an industry in the North American Industry Classification System (NAICS) by the  
3 Executive Office of the President, Office of Management and Budget.  
4

5           SEC. 6.2-12. NEXUS: "ENGAGING IN BUSINESS WITHIN THE CITY." ~~(a)~~ The taxes  
6 imposed by Article 12-A (Payroll Expense Tax Ordinance) and Article 12-A-1 (Business Tax  
7 Ordinance), and the registration fee imposed by Article 12 (Business Registration Ordinance),  
8 shall apply to any person engaging in business within the City unless exempted therefrom  
9 under such Articles. A person is "engaging in business within the City," within the meaning of  
10 this Article, if that person meets one or more of the following conditions:

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

12           (2)     An employee, representative or agent of the person maintains a fixed place of  
13 business within the City for the benefit or partial benefit of the person; or

14           (3)     The person or one or more of the person's employees, representatives or  
15 agents owns, rents, leases, or hires real or personal property within the City for business  
16 purposes for the benefit or partial benefit of the person; or

17           (4)     The person or one or more of the person's employees, representatives or  
18 agents regularly maintains a stock of tangible personal property within the City, for sale in the  
19 ordinary course of the person's business; or

20           (5)     The person or one or more of the person's employees, representatives or  
21 agents employs or loans capital on property within the City for the benefit or partial benefit of  
22 the person; or

23           (6)     The person or one or more of the person's employees, representatives or  
24 agents solicits business within the City for all or part of any seven days during a tax year; or  
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1 (7) The person or one or more of the person's employees, representatives or  
2 agents performs work or renders services within the City for all or part of any seven days  
3 during a tax year; or

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

7 (9) The person or one or more of the person's employees, representatives or  
8 agents exercises corporate or franchise powers within the City for the benefit or partial benefit  
9 of the person; or

10 (10) The person or one or more of the person's employees, representatives or  
11 agents liquidates a business when the liquidators thereof hold themselves out to the public as  
12 conducting such business.

13  
14 SEC. 6.2-17. RETURN. The term "return" means any written statement required to be  
15 filed pursuant to Articles 6, 7, 9, 10, 10A, 11, 12, 12-A or 12-A-1.

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17 SEC. 6.5-1.5. AUTHORITY OF CONTROLLER TO REQUIRE INFORMATION FROM  
18 TAXPAYERS; CONFIDENTIALITY THEREOF. (a) In addition to any information or records the Tax  
19 Collector may require from any person on any return or statement, or pursuant to a request under  
20 Section 6.5-1 or otherwise, the Controller may require any person engaging in business in the City to  
21 furnish information and records regarding the particulars of the person's business or businesses. Such  
22 particulars may include but are not limited to the person's gross receipts, income, payroll expenses,  
23 payments to independent contractors, costs for materials and other business expenses, industry codes,  
24 business and industrial classification(s), ownership and management structure of the business,  
25 ownership interests in other legal entities, businesses and joint ventures, federal and state tax filing

1 status, and other information the Controller deems necessary or appropriate for purposes of evaluating  
2 business activities in the City, tax and economic policies and practices, revenue projections and trends,  
3 and other matters.

4 (b) The Controller may require information and records under Subsection (a) as part of  
5 annual, quarterly, monthly or per event tax returns or statements filed with Tax Collector pursuant to  
6 Article 6, or otherwise. The Tax Collector shall provide all necessary cooperation and assistance to  
7 effectuate the collection of information and records as directed by the Controller pursuant to this  
8 Section.

9 (c) The Controller and all City officials and employees shall maintain the confidentiality of  
10 trade secrets and other confidential taxpayer information and records obtained pursuant to this  
11 Section, and may disclose such trade secrets and confidential taxpayer information and records only as  
12 permitted or required by Section 6.22-1 of Article 6 or other applicable law.

13  
14 **SEC. 6.6-1. CERTIFICATE OF AUTHORITY FOR THIRD-PARTY TAXES.** (a) These  
15 additional provisions shall apply to operators under the transient hotel occupancy tax (Article  
16 7), the parking space occupancy tax (Article 9), the utility users tax (Article 10) and the  
17 emergency response fee (Article 10A).

18 (b) Every operator engaging in or about to engage in business within the City who is  
19 required to collect or remit any third-party tax shall immediately apply to the Tax Collector for  
20 a certificate of authority on a form provided by the Tax Collector.

21 (c) The application for a certificate of authority shall set forth the name under which  
22 the person transacts or intends to transact business, the location of each of the person's  
23 places of business in the City, and such other information as the Tax Collector may require.  
24 The application shall be signed by the owner if a sole proprietor, by a member or partner, in  
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1 the case of an association, or by an executive officer or some person specifically authorized  
2 by the corporation to sign the application, in the case of a corporation.

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1 (d) Except as provided in Subsections (f), (g) and (h) below, the Tax Collector,  
2 within 30 days after the application is complete, shall issue without charge a separate  
3 certificate of authority to the operator to collect third party taxes from customers for each  
4 location at which the operator is required to collect such taxes. Each certificate shall state the  
5 location of the place of business to which it applies and shall be prominently displayed at such  
6 location in plain view of all customers. Certificates of authority may not be assigned or  
7 transferred. The operator shall immediately surrender to the Tax Collector the certificate for  
8 that location upon the operator's cessation of business at that location or upon the sale or  
9 transfer of the business.

10 (e) The holder of a certificate of authority to collect parking taxes under Article 9  
11 shall remain presumptively liable for the collection of parking taxes at the location named in  
12 the certificate, and for the reporting and remittance of such taxes to the Tax Collector, unless  
13 and until the holder of the certificate both (i) notifies the Tax Collector in writing that the holder  
14 has ceased to conduct a parking business at such location, and (ii) surrenders the certificate  
15 for that location to the Tax Collector.

16 (f) The Tax Collector may refuse to issue the certificate where, within the 30-day  
17 period referred to in Subsection (d) above, the Tax Collector determines that the operator, or  
18 any signatory to the application, or any person holding a 10 percent or greater legal or  
19 beneficial interest in said operator ("10% owner") is not in compliance with any provision of  
20 Articles 6, 7, 9, 10, 10A, 12, 12-A or 12-A-1. Solely for purposes of determining under this  
21 Section whether any such operator, signatory or 10% owner is not in compliance with such  
22 Articles, the Tax Collector may disregard any corporation or association owned or controlled,  
23 directly or indirectly, by any such operator, signatory or 10% owner and consider such  
24 corporation or association's operations and liabilities as conducted by or as owned by any one  
25 or more of such corporation or association's officers, directors, partners, members or owners.

1 For purposes of this Section, (i) the term "owned" means ownership of 50 percent or more of  
2 the outstanding ownership interests in such corporation or association, and (ii) the term  
3 "controlled" includes any kind of control, whether direct or indirect, whether legally  
4 enforceable, and however exercisable or exercised over such corporation or association. A  
5 presumption of control arises if the operator, signatory or 10% owner is (or was) an officer,  
6 director, partner or member of such corporation or association.

7 (g) Further, if any person subject to this Section violates any provision of Articles 6,  
8 7, 9, 10, 10A, 12, 12-A or 12-A-1, or a rule or regulation promulgated by the Tax Collector,  
9 including but not limited to failing to maintain accurate registration information, failure to sign  
10 any return or pay any tax when due, failure to timely respond to any request for information,  
11 order for records or subpoena, or for any person subject to Article 9 for failure to comply with  
12 the requirements of Article 49 of the Police Code, the Tax Collector may, after serving the  
13 person with written notice of his or her determination in the manner provided in Section 6.11-2  
14 and an opportunity to be heard pursuant to the notice and review provisions of Sections 6.13-  
15 1 et seq., revoke or suspend that person's certificate of authority. The Tax Collector may  
16 refuse to issue that person a new certificate of authority or to withdraw the suspension of an  
17 existing certificate until the person, signatory to the application for the certificate revoked or  
18 suspended, signatory to the application for a new certificate or withdrawal of the suspension,  
19 and all 10% owners have complied with the provisions of Articles 6, 7, 9, 10, 10A, 12, 12-A or  
20 12-A-1 and corrected the original violation to the satisfaction of the Tax Collector.

21 (h) Before any certificate of authority shall be issued to any applicant to engage in  
22 the business of renting parking space in a parking station in this City, such applicant shall file  
23 with the Tax Collector a bond naming the City as exclusive beneficiary, at all times the  
24 applicant engages in such business. For any parking station with annual gross receipts less  
25 than \$100,000, such bond shall be in the amount of \$5,000. For any parking station with

1 annual gross receipts of \$100,000 or more, such bond shall be in the amount of \$25,000.  
2 Such bond shall be executed by the applicant as principal, and by a corporation or association  
3 which is licensed by the Insurance Commissioner of this State to transact the business of  
4 fidelity and surety insurance, as surety. The applicant shall keep the bond in full force and  
5 effect for the duration of the certificate of authority and all renewals thereof issued to such  
6 applicant. If the bond provides that the term thereof shall be continuous until cancelled, the  
7 applicant shall provide the Tax Collector with certification from the surety of the renewal or  
8 continuation of the bond: (i) when applying for renewal of an existing certificate of authority, (ii)  
9 when requesting the withdrawal of a suspension of an existing certificate of authority, or (iii)  
10 upon written request of the Tax Collector.

11 The bond shall contain conditions that require the applicant to comply fully with all the  
12 provisions of Business and Tax Regulations Code concerning the collection of third-party  
13 taxes from occupants of parking stations and the remittance of such taxes to the Tax  
14 Collector. The bond shall be payable to this City in the amount of all unpaid parking taxes on  
15 amounts of taxable rents collected by the applicant, together with all administrative collection  
16 costs, interest, penalties, and other costs and charges applicable thereto; provided, however,  
17 that the aggregate liability of the surety for any and all claims which may arise under such  
18 bond shall in no event exceed the face amount of such bond regardless of the amount due  
19 and owing to the City. The City may bring an action upon the bond for the recovery of any  
20 unpaid parking taxes, administrative collection costs, interest, penalties and other costs and  
21 charges at any time prior to the expiration of the period of limitations applicable to the  
22 collection of such unpaid taxes by the Tax Collector.

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1           SEC. 6.8-1. CITY, PUBLIC ENTITY AND CONSTITUTIONAL EXEMPTIONS. Nothing  
2 in Articles 6, 7, 10, 10A, 11, 12, 12-A or 12-A-1 shall be construed as imposing a tax upon:

3           (1)     The City;

4           (2)     The State of California, or any county, municipal corporation, district or other  
5 political sub-division of the State, except where any constitutional or statutory immunity from  
6 taxation is waived or is not applicable;

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

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

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12           SEC. 6.9-1. DETERMINATIONS, RETURNS AND PAYMENTS; DUE DATE OF  
13 TAXES. Except for jeopardy determinations under Section 6.12-2, and subject to  
14 prepayments required under Section 6.9-2, all amounts of taxes and fees imposed by Articles  
15 6, 7, 9, 10, 10A, 11, 12-A and 12-A-1 are due and payable, and shall be delinquent if not paid  
16 to the Tax Collector on or before the following dates:

17           (a)     For the transient hotel occupancy tax (Article 7) and the parking space  
18 occupancy tax (Article 9), for each calendar quarter, on or before the last day of the month  
19 following each respective quarterly period;

20           (b)     For the payroll expense tax (Article 12-A) *and Business Tax (Article 12-A-1)*, on or  
21 before the last day of February of each year;

22           (c)     For the utility users taxes (Article 10) and the emergency response fee (Article  
23 10A), for each monthly period, on or before the last day of the following month; and

24           (d)     For the stadium operator admission tax (Article 11), within five days after the  
25 event, subject to the provisions of Article 11, Section 804.



1  
2 SEC. 6.9-3. DETERMINATIONS, RETURNS AND PAYMENTS; PREPAYMENTS.

3 (a) Prepayments. Notwithstanding the due dates otherwise provided in Section 6.9-  
4 1, taxpayers shall make prepayments of taxes and third party taxes ("tax prepayments") to the  
5 Tax Collector as follows:

6 (1) Hotel and Parking Taxes. The Hotel Tax (Article 7) and the Parking Tax (Article  
7 9) shall be paid in monthly installments. Such monthly installments shall be due and payable  
8 to the Tax Collector on or before the last day of the month immediately following the month for  
9 which the prepayment is due. Taxes paid in the first two monthly installments of any quarterly  
10 period shall be a credit against the total liability such third party taxes for the quarterly period.  
11 Estimated tax prepayments shall be computed based on the estimated tax accrued during the  
12 month in question, but in no instance shall a prepayment be equal to a sum less than 30  
13 percent of the tax collected in the immediately preceding quarterly period. If the taxpayer can  
14 establish by clear and convincing evidence that the amount of any prepayment will exceed the  
15 total tax liability for the quarterly period for which the tax prepayment becomes due, the Tax  
16 Collector may, in writing, adjust the amount of the tax prepayment. The third monthly  
17 installment of any quarterly period shall be in an amount equal to the total tax liability for the  
18 quarterly period, less the amount of any tax prepayments actually paid.

19 (2) Payroll Expense Tax *and Business Tax*. The Payroll Expense Tax (Article 12-A)  
20 *and Business Tax (Article 12-A-1)* shall be paid in biannual or quarterly installments as follows:

21 (A) Small Firm Prepayments. Every person liable for payment of a total Payroll  
22 Expense Tax in excess of \$2,500 *or a total Business Tax in excess of \$500*, but less than *a*  
23 *combined total of \$50,000 for both such taxes*, for any tax year shall pay such taxes for the  
24 following tax year in two installments. The first installment shall be due and payable, and shall  
25 be delinquent if not paid on or before, August 1st. The first installment shall be a credit against

1 the person's total liability under the Payroll Expense Tax and Business Tax for the tax year in  
2 which the first installment is due. The first installment shall be in an amount equal to one-half  
3 (1/2) of the person's estimated total liability under the Payroll Expense Tax and Business Tax for  
4 such tax year. The estimated liability for a tax year shall be computed by using ~~52~~102% of the  
5 person's total taxable payroll expense (as defined in Section ~~902.2~~ 902.1 of Article 12-A) and  
6 taxable gross receipts (as defined in Section 952.23 of Article 12-A-1) for the preceding tax year,  
7 and the corresponding rates of tax applicable to the tax year in which the first installment is  
8 due. The second installment shall be reported and paid on or before the last day of February  
9 of the following year. The second installment shall be in an amount equal to the person's  
10 combined total liability under the Payroll Expense Tax and Business Tax for the subject tax year,  
11 less the amount of the first installment and other tax prepayments for such tax year, if any,  
12 actually paid. The estimated liability for the 2005 tax year shall be computed by using 102% of the  
13 person's taxable payroll expense for the 2004 tax year, plus the person's estimated taxable gross  
14 receipts for the 2005 tax year.

15 (B) Large Firm Prepayments. Every person liable for payment of a combined total  
16 Payroll Expense Tax and Business Tax in excess of \$50,000 for any tax year shall pay such tax  
17 for the following tax year in four quarterly installments. The first, second and third quarterly  
18 installments shall be due and payable, and shall be delinquent if not paid on or before, May  
19 1st, August 1st and November 1st, respectively. The first, second and third quarterly  
20 installments shall be a credit against the person's total liability under the Payroll Expense Tax  
21 and Business Tax for the tax year in which such first, second and third quarterly installments are  
22 due. Such quarterly installments each shall be in an amount equal to one-quarter (1/4) of the  
23 person's estimated total liability under the Payroll Expense Tax and Business Tax liability for  
24 such tax year. The estimated liability for such tax year shall be computed by using ~~104~~102%  
25 of the person's total taxable payroll expense (as defined in Section 902.1 of Article 12-A) and

1 taxable gross receipts (as defined in Section 952.23 of Article 12-A-1) for the preceding tax year,  
2 and the rate<sub>s</sub> of tax applicable to the tax year in which the first, second and third quarterly  
3 installments are due. The fourth installment shall be reported and paid on or before the last  
4 day of February of the following year. The fourth quarterly installment shall be in an amount  
5 equal to the person's total combined liability under the Payroll Expense Tax and Business Tax  
6 liability for the subject tax year, less the amount of the first, second and third quarterly  
7 installments and other tax prepayments, if any, actually paid. The estimated liability for the 2005  
8 tax year shall be computed by using 102% of the person's taxable payroll expense for the 2004 tax  
9 year, plus the person's estimated taxable gross receipts for the 2005 tax year.

10 (b) Tax Prepayment Penalties. Every person who fails to pay any tax prepayment  
11 required under this Section before the relevant delinquency date shall pay a penalty in the  
12 amount of five percent (5%) of the amount of the delinquent tax prepayment per month, or  
13 fraction thereof, up to twenty percent (20%) in the aggregate, and shall also pay interest on  
14 the amount of the delinquent tax prepayment from the date of delinquency at the rate of one  
15 percent (1%) per month, or fraction thereof, for each month the prepayment is delinquent, until  
16 paid.

17 (c) Hotel and Parking Taxes. Upon commencing business, an operator subject to  
18 the Hotel Tax (Article 7) or the Parking Tax (Article 9) shall have the option of making  
19 prepayments in the amount of the actual tax owed or making an estimate of the prepayment  
20 for the month based on the estimated tax accrued during the month in question. Once the  
21 operator has selected an option, the operator must continue to follow that procedure unless  
22 prior written permission to use the alternative procedure has been obtained from the Tax  
23 Collector.

24 In no instance shall an estimated prepayment of hotel or parking taxes be less than 30  
25 percent of such tax collected in the immediately preceding quarterly period. If such estimated

1 prepayment is less than 30 percent of the tax collected in such preceding quarterly period, the  
2 operator shall be subject to penalties and interest for the deficiency pursuant to Section 6.17-  
3 1. If a prepayment based on actual tax owed is less than 90 percent of the actual liability for  
4 the month, the operator shall be subject to penalties and interest for the deficiency pursuant to  
5 Section 6.17-1.

6 (d) Forms and Adjustments. Tax prepayments required under this Section shall be  
7 accompanied by a tax prepayment form prepared by the Tax Collector, but failure of the Tax  
8 Collector to furnish the taxpayer with a tax prepayment form shall not relieve the taxpayer  
9 from any tax prepayment obligation. The Tax Collector may, in writing, adjust the amount of a  
10 tax prepayment if the taxpayer can establish by clear and convincing evidence that the first  
11 installment of biannual tax prepayments, or first, second or third monthly installment of a  
12 quarterly tax prepayment, will amount to more than one half or one quarter, respectively, of  
13 the person's total tax liability for the tax year in which the installment is due.

14  
15 SEC. 6.9-5. DETERMINATIONS, RETURNS AND PAYMENTS; CREDITS AND  
16 EXEMPTIONS. The credits and exemptions set forth in Articles 7, 9, 10, 10A, 11, 12, 12-A  
17 and 12-A-1 are provided on the assumption that the City has the power to offer such credits  
18 and exemptions. If a credit or exemption is invalidated by a court of competent jurisdiction, the  
19 taxpayer must pay any additional amount that the taxpayer would have owed but for such  
20 invalid credit or exemption. Amounts owed as a result of the invalidation of a credit or  
21 exemption that are paid within three years after the decision of the court becomes final shall  
22 not be subject to interest or penalties.

1           SEC. 6.21-1. TRANSFEREE AND SUCCESSOR LIABILITY. (a) The liability at law or  
2 in equity of a successor, transferee or alter ego of any taxpayer or other person determined to  
3 be liable for any tax, interest, cost or penalty subject to this Article, imposed upon a taxpayer  
4 shall be determined, collected and paid in the same manner and subject to the same  
5 provisions and limitations as in the case of a deficiency determination pursuant to Sections  
6 6.12-1 et seq. and 6.13-1 et seq. Nothing in this subsection shall be construed to limit the  
7 rights or procedures available to the Tax Collector to collect from any successor, transferee or  
8 alter ego, at law or in equity, as may be provided by statutory or decisional law.

9           (b) No person shall purchase or acquire an interest in a business subject to any tax  
10 imposed under Articles 7, 9, 12-A or 12-A-1 without first obtaining either a receipt from the Tax  
11 Collector showing that all of the seller's taxes on the business have been paid, or a certificate  
12 stating that no amount is due. For purposes of this Section, "purchase" shall include any other  
13 voluntary transfer for consideration of a business, except for purchase of stock of a publicly-  
14 traded company.

15           (c) The Tax Collector shall issue such a receipt or certificate, or a notice of the  
16 amount that must be paid as a condition of issuing the certificate, to the buyer within 30 days  
17 after receiving a written request. However, failure of the Tax Collector to timely mail the notice  
18 will not release the buyer from his or her obligations under this Section, except to the extent of  
19 penalties and interest in the event that the Tax Collector enforces the buyer's obligation in a  
20 civil action authorized pursuant to the Business and Tax Regulations Code.

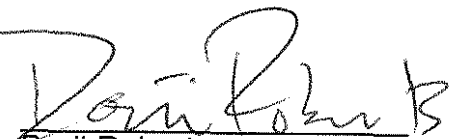
21           (d) If the buyer purchases or acquires an interest in a business owing any taxes,  
22 interest or penalties imposed under Articles 7, 9, 12-A or 12-A-1, the buyer shall withhold from  
23 the purchase price and pay to the Tax Collector a sufficient amount to satisfy said taxes,  
24 interest and penalties.

1 (e) If the buyer purchases or acquires an interest in a business in violation of this  
2 Section, the buyer shall become personally liable for the amount of taxes, interest and  
3 penalties owed on the business.

4 (f) The buyer's obligations shall accrue at the time the business is purchased or the  
5 interest acquired, or at the time the Tax Collector determines the seller's final liability,  
6 whichever is later.

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8  
9 APPROVED AS TO FORM:  
10 DENNIS J. HERRERA, City Attorney

11  
12 By:



13 Dorji Roberts  
14 Deputy City Attorney  
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Mayor Gavin Newsom



# City and County of San Francisco

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

## Tails

### Ordinance

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**File Number:** 040758

**Date Passed:**

Ordinance amending the Business and Tax Regulations Code to: (1) enact a new Article 12-A-1 (Business Tax Ordinance), as specified, to impose a business tax for four years on all persons engaging in business in San Francisco measured by the gross receipts of the business at the rate of one tenth of one percent (0.1%) for the 2005 tax year and, if Business Tax revenues collected in such year exceed \$30 million, a lower rate for the 2006, 2007 and 2008 tax years, as specified; (2) amend Article 12-A (Payroll Expense Tax Ordinance), as specified, to: (i) conform Article 12-A with the enactment of the Business Tax Ordinance, (ii) clarify the payroll expense of partnerships, Subchapter S corporations, limited liability companies, limited liability partnerships and other persons or entities not subject to federal income tax or which are allowed a deduction in computing such tax for distributions to the owners or beneficiaries of such persons or entities ("pass-through entities"), and (3) amend Article 6 (Common Administrative Provisions), as specified, to add definitions and conform common administrative provisions with the enactment of the Business Tax Ordinance and amendments to the Payroll Expense Tax Ordinance.

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June 8, 2004 Mayor — SUBSTITUTED

July 13, 2004 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Peskin, Sandoval

July 13, 2004 Board of Supervisors — CONTINUED AS AMENDED ON FIRST READING

Ayes: 10 - Alioto-Pier, Ammiano, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Peskin, Sandoval

Noes: 1 - Daly

July 20, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 8 - Alioto-Pier, Ammiano, Dufty, Ma, Maxwell, McGoldrick, Peskin, Sandoval

Noes: 3 - Daly, Gonzalez, Hall

July 27, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 8 - Alioto-Pier, Ammiano, Dufty, Ma, Maxwell, McGoldrick, Peskin, Sandoval

Noes: 3 - Daly, Gonzalez, Hall

File No. 040758

I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on July 27, 2004 by  
the Board of Supervisors of the City and  
County of San Francisco.

JUL 30 2004

\_\_\_\_\_  
Date Approved

*Kay Gulbargan*  
\_\_\_\_\_  
for Gloria L. Young  
Clerk of the Board

*[Signature]*  
\_\_\_\_\_  
Mayor Gavin Newsom