SAN FRANCISCO
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DEPARTMENT OF ELECTIONS

Ordinance Amending the Business and Tax Regulations Code and the Administrative Code of the City and County of San Francisco at an election to be held on November 8, 2022, to modify the Rates Applicable to Businesses That Transport, Deliver, or Ship Goods That Are Not Purchased in Person on Premises to Addresses Within the City and County of San Francisco.

NOTE: Unchanged Code text and uncodified text are in plain font. Additions to Codes are in *single-underline italics*. Deletions from Codes are in ~~strikethrough italics~~.

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

Section 1. Title.

This Initiative shall be known and may be cited as the "Retail Fairness and Guaranteed Income Tax Act" (referred to hereinafter as the "Initiative").

Section 2. Findings and Purposes.

(a) In 2012, San Francisco voters adopted Proposition E, which approved a shift from the payroll expense tax to one based on gross receipts. The change was intended to promote economic growth, greater revenue stability, and better equity in the business tax system.

(b) In 2020, San Francisco voters adopted Proposition F, which completed the City's transition from a payroll expense tax and increased the gross receipts tax rates across most industries while providing relief to certain industries and small businesses. Under Proposition F, the applicable tax rate for taxing gross receipts varies depending on the business activity in question. For example, the applicable tax rate for gross receipts derived from retail activities is significantly lower than the applicable tax rate for gross receipts derived from transportation and warehousing.

(c) Retail establishments are vital to the economy of the City and County, provide employment for thousands of City residents, and serve the everyday needs of all residents. Maintaining the viability of small retail businesses is especially important for the City's communities. Thus, the City's retail stores and shops should not be taxed at any higher rate now. However, some businesses that engage in warehouse retailing or wholesaling may be invoking the lower tax rate for retail activities when they enjoy the low overhead associated with warehouse retailing, resulting in an unfair financial advantage.

(d) This measure would ensure that the business activity of warehouse retailing or wholesaling over $2,500,000 would be subject to the same tax rate applicable to large-scale transportation and warehousing.

(e) The proceeds from this tax would be used to support an income-distribution program that provides individuals with a fixed amount of money each month to cover basic living expenses. Poverty affects 1 out of 10 residents in the City and County of San Francisco. Older residents (those 65 and over) are more likely to be in poverty than other age groups. Poverty rates also vary by race and ethnicity; most notably, Black and African American residents of San Francisco experience poverty at nearly three times the average rate. Women still experience poverty at a higher rate than men. Too many working adults in San Francisco are unable to support their families with full-time work alone.

(f) The goal of a guaranteed income is to prevent people from becoming poor or remaining in poverty, and consequently to promote a more just society. Participants in guaranteed income programs have been found to be healthier, showing less depression and anxiety and enhanced wellbeing. A guaranteed income can alleviate financial insecurity, creating new opportunities for self-determination, choice, goal-setting, and risk-taking that benefits the economy. Guaranteed income programs may reduce new homelessness by reducing month-to-month income volatility and helping recipients to pay rent. Recipients of guaranteed income funds are able to pull themselves out of poverty and create economic stability for themselves and their families. Recipients of guaranteed income funds obtain full-time jobs at a higher rate than non-recipients, experience less depression and anxiety, and are better prepared to cover unexpected costs.

(g) This measure would direct that a guaranteed income program be established by City ordinance and further provides that all monies collected under this Initiative be deposited to the credit of a Guaranteed Income Fund that would be maintained separate and apart from all other City funds and shall be subject to appropriation. This measure will require that the monies in this fund be predominantly used to create and support a program that provides a guaranteed income to City residents based on considerations that may include, but are not limited to, combating displacement, unemployment, domestic violence, structural inequities, financial insecurity, economic disadvantage, income inequality, discrimination, and housing insecurity. The

measure will also require that portions of the monies in this fund be used to create and support programs supporting the economic stability and civic economic benefit of locally-owned small businesses in the City and to support the City General Fund.

Section 3. Business and Tax Regulations Code Amendment.

The Business and Tax Regulations Code is hereby amended by adding Sections 953.7-1, 953.7-2, 953.7-3, and 953.7-4, and revising Sections 953, 953.1, 953.9, and 956 of Article 12-A-1, to read as follows:

SEC. 953. IMPOSITION OF GROSS RECEIPTS TAX.

(a) Except as otherwise provided under this Article 12-A-1, the City imposes and every person engaging in business within the City shall pay an annual gross receipts tax measured by the person's gross receipts from all taxable business activities attributable to the City. A person's liability for the gross receipts tax shall be calculated according to Sections 953.1 through *953.7-1*~~953.7~~.

(b) The gross receipts tax is a privilege tax imposed upon persons engaging in business within the City for the privilege of engaging in a business or occupation in the City. The gross receipts tax is imposed for general governmental purposes. Proceeds from the tax shall be deposited in the City's general fund and may be expended for any purposes of the City*; however, any proceeds collected under Section 953.7-1 shall be deposited to the credit of a Guaranteed Income Fund as set forth in Section 953.7-2*.

(c) The voters intend by adopting this measure to authorize application of the gross receipts tax in the broadest manner consistent with the provisions of this Article 12-A-1 and the requirements of the California Constitution, the United States Constitution, and any other applicable provision of federal and state law.

(d) The tax on Administrative Office Business Activities imposed by Section 953.8 is intended as a complementary tax to the gross receipts tax, and shall be considered a gross receipts tax for purposes of this Article 12-A-1.

SEC. 953.1. GROSS RECEIPTS TAX APPLICABLE TO RETAIL TRADE; WHOLESALE TRADE; AND CERTAIN SERVICES.

(a) The gross receipts tax rates applicable to the business activities of retail trade, wholesale trade, and certain services are:

...

(4) Notwithstanding the foregoing, retail and wholesale trade that is subject to Section 953.7-1 shall be taxed at the rates required by that section.

...

SEC. 953.7-1 GROSS RECEIPTS TAX APPLICABLE TO CERTAIN BUSINESSES THAT TRANSPORT, DELIVER, OR SHIP GOODS TO A PURCHASER WITHIN THE CITY AND COUNTY FOR PURCHASES MADE OFF-PREMISES.

(a) For the tax years beginning on or after January 1, 2023, for persons or combined groups having total gross receipts over $2,500,000, the gross receipts tax rate applicable to the business activity of engaging in either retail trade or wholesale trade, that also involves transporting, delivering, or shipping goods to an address within the City, is the rate set forth for the business activities of transportation and warehousing in Section 953.2(a)(3) for taxable gross receipts over $25,000,000. If the Board of Supervisors reduces the rate for the business activities of transportation and warehousing for taxable gross receipts over $25,000,000, then the tax rate applicable to the business activity described in this section shall be the rate in effect on January 1, 2023.

(b) For purposes of calculating the Homelessness Gross Receipts Tax under Business and Tax Regulations Code Section 2804(b), the tax rate applicable to the person or combined group's taxable gross receipts in excess of $50,000,000 shall be the rate corresponding to Section 953.2.

(c) This Section does not apply to gross receipts derived from any order placed in-person at the premises of a business engaging in retail trade or wholesale trade.

(d) This Section does not apply to gross receipts derived from the transportation, delivery, or shipment of food products, health products, products regulated by the California Department of Cannabis Control, products regulated by the California Public Utilities Commission, or medical products to an address within the City, regardless of where the order for such goods is placed.

(e) The amount of gross receipts from all business activities described in this Section subject to the gross receipts tax shall be one-half of the amount determined under Section 956.1 plus one-half of the amount determined under Section 956.2.

SEC. 953.7-2. DEPOSIT OF PROCEEDS.

All monies collected under Section 953.7-1 shall be deposited to the credit of the Guaranteed Income Fund, established in Administrative Code Section 10.100-378. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be carried forward and accumulated in the Fund for the purposes described in Section 953.7-3 of this Article 12-A-1.

SEC. 953.7-3. EXPENDITURE OF PROCEEDS.

Monies in the Guaranteed Income Fund shall be used exclusively for the purposes specified in this Section 953.7-3. Subject to the budgetary and fiscal provisions of the Charter, monies in the Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following purposes:

(a) Refunds of any overpayments of the Retail Fairness and Guaranteed Income Tax imposed by Section 953.7-1;

(b) Fifteen percent of all amounts remaining after application of subsection (a) to the General Fund, to be expended for any purposes of the City;

(c) Fifteen percent of all amounts remaining after application of subsection (a) to funding, including administrative costs, the creation and support of programs supporting the economic stability and civic economic benefit of locally-owned small businesses in San Francisco, to be established by City ordinance; and

(d) All remaining amounts to funding, including administrative costs, the creation and support of a program, to be established by City ordinance that provides guaranteed income to City residents based on considerations that may include, but are not limited to, combating displacement, unemployment, domestic violence, structural inequities, financial insecurity, economic disadvantage, income inequality, discrimination, and housing insecurity. Prior to considering the City ordinance described by this subsection, the City shall conduct a community engagement process to solicit recommendations on drafting the ordinance. The community engagement process shall include, at minimum, an opportunity to provide written recommendations from organizations serving or representing populations experiencing displacement, unemployment, domestic violence, structural inequities, financial insecurity, economic disadvantage, income inequality, discrimination, and housing insecurity. Recommendations received by the City shall be made publicly available on the City's website.

(e) Annual Reports. Commencing with a report filed no later than February 15, 2025, covering the Fiscal Year ending on June 30 2024, the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a report containing the amount of monies collected in and expended from the Fund during the prior Fiscal Year, the status of the programs identified in subdivisions (c) and (d), and such other information as the Controller, in the Controller's sole

discretion, shall deem relevant to the operation of the Retail Fairness and Guaranteed Income Tax, and to the Guaranteed Income Fund.

(f) Administration of Fund. The Fund shall be maintained by the Controller's Office, which shall record all receipts and expenditures.

SEC. 953.7-4. EFFECT OF STATE AND FEDERAL AUTHORIZATION.

To the extent that the City's authorization to impose or collect any tax imposed under Section 953.7-1 is expanded or limited as a result of changes in state or federal statutes, regulations, or other laws, or judicial interpretations of those laws, no amendment or modification of Section 953.7-1 shall be required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with those changes, and the Tax Collector shall collect them to the full extent of the City's authorization up to the full amount and rate of the taxes imposed under this Article.

SEC. 953.9. PERSONS OR COMBINED GROUPS ENGAGED IN MULTIPLE BUSINESS ACTIVITIES.

If a person, or a combined group as described in Section 956.3, engages in business activities described in more than one of Sections 953.1 through 953.7-*1*, inclusive, or engages in business activities listed in more than one of subsections 953.1(a)(2), 953.1(a)(3), 953.2(a)(2), 953.2(a)(3), 953.2(a)(4), 953.2(a)(5), 953.3(a)(2), 953.3(a)(3), 953.4(a)(2), 953.4(a)(3), 953.6(a)(2), 953.6(a)(3), *and 953.7-1,* the rate or rates of gross receipts tax to be applied to that person or combined group, and the method for determining gross receipts in the City, shall be determined as follows:

(a) If more than 80% of its gross receipts, determined in accordance with Section 956, are derived from business activities described in only one of Sections 953.1 through 953.7-*1*, inclusive, then the rules of that applicable Section apply to all of its gross receipts derived from all business activities. If the Section from which the person or combined group derived more than 80% of its gross receipts includes different rates for different business activities described in that Section, then the rates applicable to the gross receipts that are deemed to be from business activities described in that Section shall be the rates that apply to the business activities within that Section from which the person or combined group derived the most taxable gross receipts, or if there is not a single business activity within that Section from which the person or combined group derived the most taxable gross receipts because the person or combined group derived the same amount of taxable gross receipts from one or more business activities within the Section, then the rates applicable to the gross receipts that are deemed to be from business activities described in that Section shall be the highest rates within that Section that apply to business activities from which the person or combined group derived the same amount of taxable gross receipts.

(b) If its business activities in the City are described in more than one of Sections 953.1 through 953.7-*1*, inclusive, or are listed in more than one of subsections 953.1(a)(2), 953.1(a)(3), 953.2(a)(2), 953.2(a)(3), 953.2(a)(4), 953.2(a)(5), 953.3(a)(2), 953.3(a)(3), 953.4(a)(2), 953.4(a)(3), 953.6(a)(2), and 953.6(a)(3), and, after applying subsection (a) of this Section 953.9, the person or combined group remains subject to the rates in more than one of Sections 953.1 through 953.7-*1*, inclusive, or more than one of subsections 953.1(a)(2), 953.1(a)(3), 953.2(a)(2), 953.2(a)(3), 953.2(a)(4), 953.2(a)(5), 953.3(a)(2), 953.3(a)(3), 953.4(a)(2), 953.4(a)(3), 953.6(a)(2), and 953.6(a)(3), then such person or combined group shall separately compute the gross receipts tax for each set of business activities as provided in the Section or subsection applicable to that particular set of business activities, modified as follows:

(1) if the set of business activities described in any of Sections 953.1 through 953.7-*1*, inclusive, generates less than 20% of the total gross receipts of the person or combined group, then the receipts and payroll of any such set of activities may be combined for all purposes related to computing the gross receipts tax with whichever set of that person's or combined group's activities are taxed at the highest rate;

(2) the small business exemption provided in Section 954.1 shall apply only if the sum of receipts within the City from all sets of business activities does not exceed the applicable threshold in Section 954.1 in total;

(3) the progressive rates described in Sections 953.1 through 953.7-*1*, and the subsections within those Sections, apply on an aggregate basis for businesses with multiple sets of activities;

(4) the applicable rate for each set of business activities shall be determined in numbered order of the Sections and subsections describing each set of business activities; e.g., the gross receipts and tax for business activities described in subsection 953.1(a)(2) should be determined first, subsection 953.1(a)(3) second, subsection 953.3(a)(2) third, and so on;

(5) the rate(s) applicable to any set of activities after the first shall be determined by adding together the gross receipts determined for all previous sets of activities and applying the rate scale commencing with the total gross receipts so determined; and

(6) the gross receipts tax liability for the person or combined group shall be the sum of the liabilities for each set of business activities.

SEC. 956. ALLOCATION AND APPORTIONMENT FOR ALL PERSONS DERIVING GROSS RECEIPTS FROM BUSINESS ACTIVITIES BOTH WITHIN AND OUTSIDE THE CITY.

All persons deriving gross receipts from business activities both within and outside the City shall allocate and/or apportion their gross receipts to the City, using the rules set forth in Section 956.1 and 956.2, in the manner directed in Sections 953.1 through *953.7-1*~~953.7~~, inclusive, and in Section 953.9 of this Article.

Section 4. Administrative Code Amendment.

The Administrative Code is hereby amended by adding Section 10.100-378, to read as follows:

SEC. 10.100-378. GUARANTEED INCOME FUND.

(a) Establishment of Fund. The Guaranteed Income Fund ("Fund") is established as a category four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all taxes, penalties, interest, and fees collected from the tax imposed under Section 953.7-1 of Article 12-A-1 of the Business and Tax Regulations Code.

(b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the Fund shall be used exclusively for the purposes described in Section 953.7-3 of Article 12-A-1 of the Business and Tax Regulations Code.

(c) The Controller shall report to the Board of Supervisors as required by subsection (e) of Section 953.7-3 of the Business and Tax Regulations Code.

Section 5. Appropriations Limit Increase.

Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 8, 2022, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the tax imposed under this ordinance.

Section 6. Scope of Measure.

In enacting this measure, the People of the City and County of San Francisco intend to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this measure as additions or deletions, in accordance with the "Note" that appears under the official title of the measure.

Section 7. Severability.

If any section, subsection, sentence, clause, phrase, or word of this measure, or any application thereof of any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this measure. The People of the City and County of San Francisco hereby declare that they would have adopted this measure and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this measure or application thereof would be subsequently declared invalid or unconstitutional.

Section 8. No Conflict with Federal or State Law.

Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 9. Effective and Operative Date.

The effective date of this ordinance shall be ten days after the date the official vote count is declared by the Board of Supervisors. This ordinance shall become operative on January 1, 2023.