

# CITY AND COUNTY OF SAN FRANCISCO

## Claim For Business Tax Refund

Before completing this form, please read the instructions on the back. You have **one year** from the date of payment, the date the return accompanying the payment was due, or the date on which the amount requested on an amended return or request for refund form timely filed with the Tax Collector was denied or deemed denied under section 6.15--1(g) of Article 6 of the Business and Tax

Regulations Code, whichever is later, to submit this form and supporting documentation to:

**CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7<sup>TH</sup> FLOOR, SAN FRANCISCO, CA 94102--5402.**

You must file a separate claim for business tax refund for each type of tax.

<b>1. CLAIMANT'S NAME.</b> <u>Twilio Inc.</u> DBA (if applicable): _____ Address: <u>375 Beale St. Suite 300</u> <u>San Francisco, CA 94105</u> Telephone: _____	<b>2. IF CLAIMANT IS A BUSINESS:</b> Type of Ownership Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Other: _____
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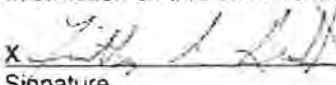

<b>3. FEDERAL TAXPAYER ID #</b> <u>26-2574840</u>
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4. TAX PAID INFORMATION					
Business Account Number	Paid By	Date Paid	Receipt No.	Amount Paid	Period Covered
a. 0447370	Twilio Inc.	July 2 2020	84015172363	\$16,466,754.11	05/01/2009 - 12/31/2018
b. 0447370	Twilio Inc.	April 2 2018		\$387,977.89	01/01/2009 - 12/31/2017
c.					

<b>5. BASIS OF CLAIM:</b> State all facts that support your refund claim. If your claim applies to only a portion of the tax paid, please explain the portion to which it applies.  <div style="border: 1px solid black; padding: 5px; min-height: 100px;">         Please see attached.       </div>	<b>Applicable Tax (check one)</b> <input type="checkbox"/> Payroll Expense Tax <input type="checkbox"/> Gross Receipts Tax <input type="checkbox"/> Registration Fee <input type="checkbox"/> Homelessness Gross Receipts Tax <input type="checkbox"/> Commercial Rents Tax <input type="checkbox"/> Traffic Congestion Mitigation Tax <input type="checkbox"/> Tourism Improvement District Fee <input type="checkbox"/> Moscone Expansion District Fee <input type="checkbox"/> Transient Occupancy Tax <input type="checkbox"/> Parking Tax <input type="checkbox"/> Access Line Tax <input type="checkbox"/> Utility Users Tax (other than T.U.T.) <input type="checkbox"/> Cigarette Litter Abatement Fee <input checked="" type="checkbox"/> Telephone Users Tax (T.U.T.) <input type="checkbox"/> Stadium Operator Admission Tax <input type="checkbox"/> Sugary Drinks Tax
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<b>6. REFUND AMOUNT REQUESTED: \$</b> <u>18,854,732</u>
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<b>7. DATE AMOUNT REQUESTED FROM THE TAX COLLECTOR WAS DENIED OR DEEMED DENIED (IF APPLICABLE):</b> <u>N/A</u>
----------------------------------------------------------------------------------------------------------------

<b>8. SIGNATURE OF CLAIMANT OR REPRESENTATIVE:</b> I certify under penalty of perjury that I am the taxpayer (including an officer, general partner, member manager, executor, trustee, fiduciary, or other individual with authority to bind the taxpayer), or agent of the taxpayer authorized to sign this form on behalf of the taxpayer (attach authorization), and that the information on this Claim for Business Tax Refund form is, to the best of my knowledge and belief, true and correct.	
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">             Signature         </div> <div style="text-align: center;"> <u>July 2 2020</u>            Date         </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;"> <u>Timothy A. Gustafson</u>            Print Name         </div> <div style="text-align: center;"> <u>Director, Office of the Controller</u>            Title         </div> </div>	<div style="text-align: center; margin-top: 20px;">             Title         </div>

**Exhibit F**

EVERSHEDS  
SUTHERLAND

**Eversheds Sutherland (US) LLP**  
999 Peachtree St., N.E., Suite 2300  
Atlanta, GA 30309-3996

D: +1 404.853.8579  
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erictresh@  
eversheds-sutherland.com

July 20, 2020

Controller's Office  
Claims Division  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102-5402

**Re: Power of Attorney Declaration to Represent Twilio Inc.**  
FEIN #: 26-2574840  
Business Account #: 0447370

To Whom it May Concern:

This letter is to certify that Twilio Inc. ("Twilio") authorizes the following attorneys as its representatives with regard to Twilio's Claims for Business Tax Refund for Telephone Users Tax and Access Line Tax:

Name	Address	Phone Number	Email
Eric S. Tresh	Eversheds Sutherland (US) LLP 999 Peachtree St. NE, Suite 2300 Atlanta, GA 30309	(404) 853-8579	<a href="mailto:erictresh@eversheds-sutherland.com">erictresh@eversheds-sutherland.com</a>
Timothy A. Gustafson	Eversheds Sutherland (US) LLP 500 Capitol Mall, #1750 Sacramento, CA 95814	(916) 844-2826	<a href="mailto:timgustafson@eversheds-sutherland.com">timgustafson@eversheds-sutherland.com</a>
Elizabeth S. Cha	Eversheds Sutherland (US) LLP 700 6 <sup>th</sup> Street NW Washington, D.C. 20001	(202) 383-0533	<a href="mailto:lizcha@eversheds-sutherland.com">lizcha@eversheds-sutherland.com</a>

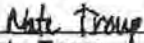
Twilio authorizes the above representatives to perform any action Twilio itself may perform to resolve issues with the San Francisco Controller's Officer for the taxes and tax periods listed below:

- Telephone Users Tax: January 1, 2009 - December 31, 2018
- Access Line Tax: January 1, 2009 - December 31, 2018

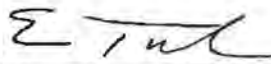
EVERSHEDS  
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Controller's Office  
July 20, 2020  
Page 2

Please contact Liz Cha at (202) 383-0533 or [lizcha@eversheds-sutherland.com](mailto:lizcha@eversheds-sutherland.com) if you have any questions or require additional information related to this matter.

DocuSigned by:  
  
Nate Tresh  
Controller, Twilio Inc.

20-Jul-2020  
Date

  
Eric Tresh  
Partner, Eversheds Sutherland  
(US) LLP

July 20, 2020  
Date

**Twilio Inc.  
Attachment for Claim for Refund**

Pursuant to San Francisco Business and Tax Regulations Code Sections<sup>1</sup> 6.13-5 and 6.15-1, Twilio Inc. ("Taxpayer" or "Twilio") submits this Claim for Refund ("Claim") for \$16,854,732. Of this amount, \$16,466,754.11 is related to erroneously and illegally assessed Telephone Users Tax ("TUT"), interest, and penalties paid on July 2, 2020 pursuant to the San Francisco Tax Collector's Decision on Petition for Redetermination dated May 22, 2020, and \$387,977.89 is related to erroneously paid TUT and interest paid on April 2, 2018. The tax periods for which the Taxpayer claims a refund are June 1, 2009 through December 31, 2018 ("Period in Issue"). A copy of the Tax Collector's Decision is attached as **Exhibit A**.

Concurrent with this request, Taxpayer is filing a claim for refund with the Controller for Access Line Tax ("ALT") erroneously and illegally assessed against Taxpayer and paid pursuant to the Tax Collector's Decision on Petition for Redetermination. Because the claim for refund for ALT involves similar facts and issues, Taxpayer requests that this Claim and the claim for ALT be evaluated concurrently.

**1. Procedural Background**

Twilio contacted the City of San Francisco (the "City") in 2016 to obtain confirmation that the TUT did not apply to its services. Following a series of discussions, on November 18, 2016, Twilio submitted a letter to the City requesting written confirmation that the TUT does not apply to Twilio's services. A copy of the letter is attached as **Exhibit B**. This letter provided a detailed explanation of Twilio's services, and explained why the TUT is not applicable.

On October 6, 2017, Twilio agreed to participate in the City's voluntary compliance program whereby, in a good faith attempt to avoid a dispute with the City, Twilio agreed to pay the TUT on a small portion of its services, notwithstanding Twilio's position that the TUT did not apply at all. As part of the program, the City requested additional data and Twilio responded to the City's information requests on February 13, 2018, February 23, 2018, and October 1, 2018. Twilio also filed monthly TUT returns for tax periods January 1, 2009 through December 31, 2017 and submitted a check in the amount of \$387,977.89 as payment for TUT and interest for these tax periods.

Twilio subsequently met with representatives from the City to continue to discuss why its services were not subject to the TUT. During this meeting, despite multiple requests, the City audit staff did not explain why the City believed the TUT applied to Twilio's services.

After the meeting, the City notified Twilio's representatives by email that the City would be preparing a Notice of Tax Deficiency ("Notice") for Twilio for the Period in Issue. Twilio's representatives inquired whether the City would also be providing a detailed description in writing of the City's position. On January 28, 2019, the City responded that it would be preparing a Notice of Tax Determination, after which Twilio would have 30 days to petition for redetermination and request a hearing with the Tax Collector. On July 18, 2019, the City issued a Notice for the Period in Issue. The Notice asserted a TUT payment deficiency of \$15,672,004.64, including penalties and interest.

On August 15, 2019, Twilio filed a petition for redetermination with the Tax Collector and a hearing was held on December 19, 2019. At the hearing, the Tax Collector requested additional documentation which Twilio provided on January 31, 2020. The City did not respond to the additional documentation and on May 22, 2020, the Tax Collector issued his Decision on Petition for Redetermination. The Tax Collector reaffirmed the City's prior position with an updated assessment, including additional interest, of \$16,466,754.11.

<sup>1</sup> All statutory references are to the San Francisco Business and Tax Regulations Code unless otherwise indicated.



## **2. Statement of Facts**

Twilio's primary service is to provide access to cloud software platforms featuring Twilio's proprietary application programming interfaces ("APIs"). An API is software consisting of a set of routines and protocols that streamline software-to-software interactions by specifying "ground rules" or "a common language" through which software components interact. Twilio's APIs are not user interfaces, but rather they are "building blocks" upon which a third-party developer may program user-facing software applications, including mobile, web-based and desktop applications. The purpose of Twilio's APIs is to simplify and facilitate the development and integration of various capabilities, including communications capabilities, into software applications, which the developers may then market and distribute to end users or businesses. Twilio's platform provides developers with access to its APIs, pre-defined software libraries and sample code.

Twilio does not own any physical telecommunications network infrastructure or telecommunications network switches. Any communications services that are used as part of the provision of Twilio's services are developed, maintained and sold by third-party telecommunications providers for use by Twilio's customers, or Twilio's customer's customers. Twilio has agreements with telecommunications carriers, mobile network operators, and real-time data information service providers that facilitates connections to and from Twilio's APIs.

The Twilio platform provides APIs and libraries that enable developers to create applications using the following services:

- 1) **Voice:** Twilio provides APIs and software development kits that enable developers to build calling capabilities within web and mobile applications.
- 2) **Messaging:** With Twilio's API platform, developers can program SMS and MMS functionality into their applications.
- 3) **Video:** With Twilio's API platform, developers can add voice and video to web and mobile applications.
- 4) **Numbers:** The phone numbers product line offers customers programmatic methods of purchasing, configuring, and using phone numbers for making and receiving phone calls or sending and receiving text messages.
- 5) **Authentication:** Twilio provides APIs that enable developers to incorporate secure authentication measures into their web and mobile applications.

Twilio charges no upfront fees – developers pay solely for their respective customers' usage of applications built using Twilio's platform and APIs. Twilio charges its customers for the amount of API service they require based on how often they use the APIs. Twilio's pricing encourages innovation by offering a level playing field of access to Twilio's small and large business customers. Customers only pay for the amount of API service they use. This pricing arrangement also protects Twilio from having any one customer monopolize its cloud platform resources.

Twilio also resells telephone numbers to its customers at a flat rate (similar to companies like Oracle and Cisco that provide "session manager" and "session border controller" software). From June 1, 2009 until August 2018, when purchasing telecommunications services, Twilio paid TUT to telecommunications service providers for services and numbers in the amounts indicated on invoices provided to the City.

In 2017, Twilio engaged Deloitte to determine what portion of its services could be deemed associated with the costs that Twilio incurs for telecommunications services, which costs are passed through to its customers. Deloitte determined that the value Twilio provides to its customers is primarily contained within its APIs, which bridge its customer's software applications with third-party telecommunications services. Deloitte determined that 95 percent of Twilio's revenues are related to

its API and platform services, and 5 percent of Twilio's revenues contain what might be considered a telecommunications component. Deloitte further determined that Twilio's costs and value associated with its telephone number resale services resides in the "session manager" service and not the phone number. Deloitte determined 90 percent of the charge to customers for such services relates not to the phone number but to the "session manager" component of the service. Twilio could sell the APIs on a stand-alone basis and require its customers to purchase access to telecommunications services directly from third-party providers. Additional information regarding the cost structure of Twilio's services is contained in the Deloitte study, a copy of which is attached hereto as **Exhibit C** and made a part hereof.

### **3. Arguments in Support of Claim for Refund**

Twilio disagrees with the Tax Collector's Decision on Petition for Redetermination, which alleges the understated measure of tax, penalties, and interest in the amount of \$16,854,732 as being contrary to the TUT ordinance, San Francisco Business and Tax Reg. Code, Art. 10, § 701 *et seq.*

The grounds in support of this Claim include, but are not limited to, the following:

#### **A. Twilio's APIs Are Not "Telephone Communications Services" and Not Subject to the TUT**

Twilio's API services are not "telephone communications services" as that term is defined in Section 703(j) of the City's TUT ordinance.<sup>2</sup> Twilio's primary service, and the reason why customers engage Twilio, is the provision its cloud software platform and its proprietary APIs. The APIs are not telephone communications services but instead are building blocks that enable developer-customers to create applications with communication functions. While Twilio's APIs assist developers with building communication functionality into their software applications, the APIs do not transmit or convey voice, data, audio, video, or any other information using wire, fiber optic, coaxial cable, power line transmission, light wave, laser, microwave, radio wave, satellite or any other form of wireless transmission.

End users of software applications that utilize Twilio's APIs may use the application to transmit data via telecommunications networks that are owned and maintained by third-party providers. Twilio's APIs provide components that allow for the reformatting of data so that it may be transmitted, but the APIs do not themselves perform the transmission and Twilio does not support the networks by which the transmission takes place. Twilio's APIs do not directly provide end users with connectivity, but rather provide a bridge through which third-party software and telecommunications networks may interact.

Twilio provides a software product and its customers integrate that product into applications such that data may be received and reformatted for transmission. Similar to installing an outlet to receive energy from an electrical company, or installing a faucet to use water from a water company, Twilio's customers seek out the APIs for the ability to integrate communication capabilities into the customers' software applications; they do not seek out Twilio for access to telephone communications services.

Lastly, the definition of "Telephone Communications Services" in the TUT ordinance includes "Ancillary Telephone Communications Services," which is defined as "services associated with or incidental to the provision, use or enjoyment of telephone communications services."<sup>3</sup> Because Twilio's API services do not qualify as "Telephone Communications Services," the services cannot qualify as

<sup>2</sup> The TUT's definition of "Telephone Communications Services" means "transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used, including without limitation wire, fiber optic, coaxial cable, power line transmission, light wave, laser, microwave, radio wave, satellite or any other form of wireless transmission." San Francisco Business and Tax Reg. Code, Art. 10, § 703(j).

<sup>3</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 701(a).

"ancillary telephone communications services." Ancillary telephone communications services can only exist to the extent a taxpayer is also providing telephone communications services. Twilio's API services likewise do not fall under the definition of ancillary services and therefore are not subject to the TUT.

#### **B. Twilio's Services Are Not Provided or Used within the City of San Francisco**

The City lacks jurisdiction to tax Twilio's services under the plain language of the TUT ordinance, the Mobile Telecommunications Sourcing Act of 2000 ("MTSA"), and Constitutional law. It is well established that "the power to levy a tax must be drawn from express statutory authority and the statute must be strictly construed in favor of the taxpayer and against the taxing body."<sup>4</sup> In almost all scenarios, the location of use of Twilio's services (including the telecommunications services which Twilio passes on to its customers) is not San Francisco and therefore Twilio's services cannot be subject to the TUT.

The City imposes TUT on "every person, other than a telephone communications service supplier, who uses telephone communications service in the City" and the TUT applies to "all charges for telephone communications service within the City's tax jurisdiction."<sup>5</sup> However, the telecommunications services provided to Twilio that are then used by Twilio's customers are not used in the City. In order to use Twilio's API services, an end user must first utilize a device that has telecommunications connectivity. The connectivity and services utilized by such device are provided by a third-party telecommunications service provider to the device user. To be clear, these are not the telecommunications services that are purchased by Twilio and passed on to Twilio's customers; these telecommunications services are purchased directly from telecommunications carriers by end users. When the end user receives a phone call from a hired driver or a text message from a restaurant indicating that a table is ready, the end user is only able to connect to such services and receive such communications because of the telecommunications services that it contracts for directly with third-party telecommunications service providers. If such an end user has a telephone account with a situs in the City, the City applies the TUT to charges for telecommunications services billed to that account.

In each instance, the end users of these services speak, type or otherwise communicate through their connected device to generate a series of signals. Those signals are then sent through telephone lines, internet routers and other hardware that make up the national and international patchwork of telecommunications infrastructure. If the end user is using services that interact with Twilio's APIs, the signals are routed to Twilio's servers which are hosted by Amazon Web Services that are located in Virginia. It is only after these signals reach the servers that Twilio's APIs perform their services of receiving, interpreting, routing or responding to these signals. Twilio pays third-party telecommunications service providers to provide connectivity and other telecommunications services to these servers.

Hence, use of telecommunications services purchased by Twilio is almost exclusively used outside the City. The City has made no showing that Twilio's services are used in the City. Instead, the City relies on the "rebuttable presumption" provided in the TUT ordinance that "service billed to a billing address or provided to a service address in the City is used, in whole or in part, within the City's boundaries" and that such service is subject to the TUT.<sup>6</sup> Twilio has provided the City with sufficient facts to affirmatively rebut this presumption. Applying these facts, the plain language of the TUT ordinance precludes its application to Twilio's services.

Further, the scope of services subject to the TUT is federally preempted and limited by the MTSA.<sup>7</sup> Under the MTSA, telecommunications services are "sourced" to the customer's "place of primary

<sup>4</sup> *Los Angeles Brewing Co. v. City of Los Angeles*, 8 Cal.App.2d 379, 384 (1935) (citing *R.C.A. Photophone, Inc., v. Huffman*, 42 P.2d 1059 (Cal. App. 1935)).

<sup>5</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 703(a).

<sup>6</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 703(a).

<sup>7</sup> The language of the TUT ordinance acknowledges this preemption, stating that it would apply to "all charges for telephone communications service within the City's tax jurisdiction, such as charges billed



use," which is defined as the customer's residential or primary business address, which must be located in the service provider's licensed service area. The term "licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer. As noted above, Twilio does not own or operate any telecommunications facilities, and is not authorized by law or contract to provide commercial mobile radio service. Therefore, Twilio does not have a "licensed service area" for the purposes of the MTSA.

Even if a portion of Twilio's services can be characterized as telecommunications service, under the MTSA the taxing jurisdiction in which the "place of primary use" is located is the only jurisdiction that may tax the telecommunications service, regardless of where the mobile telecommunication services originate, terminate, or pass through.<sup>8</sup> The City's Notice is not based on the "place of primary use" of these end users, as required by the MTSA. Thus, there is insufficient jurisdictional support for the City's Notice.

Moreover, the application of TUT to Twilio's API services conflicts with Constitutional principles. Under the four-pronged test originated in *Complete Auto Transit, Inc. v. Brady*, a state tax will withstand scrutiny under the Commerce Clause only if "the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State."<sup>9</sup> Here, there is insufficient nexus between Twilio's API services and the City to support the City's assessment even for San Francisco-based users of apps that rely on Twilio's API services. An individual must use a third-party telecommunications or Internet access service for Twilio's API services to function. The third-party telecommunications or Internet service links the app to Twilio's API services, which run on servers outside of the City, and the APIs then send data back to third-party telecommunications or Internet service. None of Twilio's API services occur in the City and the City lacks sufficient nexus to impose TUT on a service that takes place wholly outside of its borders.

Additionally, the City's imposition of the TUT is not fairly apportioned for the purposes of the *Complete Auto* test.<sup>10</sup> As applied to Twilio's services, the TUT is not internally consistent because it would subject Twilio to double-taxation in San Francisco and Virginia, where the API servers are located, if Virginia were to impose an identical tax. Further, because Twilio's API services occur entirely outside of the City, the TUT is not externally consistent because it seeks to tax more than the portion of the revenues from the interstate activity which reasonably reflects the in-City component of the activity being taxed.<sup>11</sup>

Finally, under *Goldberg v. Sweet*, for a taxing authority to have sufficient nexus over telecommunication services, there must be an origination or termination of the service in the jurisdiction and a billing or service address in the jurisdiction.<sup>12</sup> Here, Twilio's services take place at Amazon Web Services in Virginia and before delivery via third-party telecommunications providers. Therefore, Twilio's services lack the necessary "origination" or "termination" in the City to support nexus for the purposes of the TUT. Accordingly, there is only a remote risk that additional TUT is due on Twilio's services.

### **C. Twilio Purchases Telecommunications Services From Unrelated Telecommunications Companies, Pays Applicable TUT and Passes These Costs Through to its Customers**

Twilio is not a user of the telecommunications services that it purchases from third-party telecommunications service providers and consequently is not obligated to pay the TUT as a service

to a telephone account having a situs in the City as permitted by the [MTSA]." San Francisco Business and Tax Reg. Code, Art. 10, § 703(a).

<sup>8</sup> 4 U.S.C. § 117(b).

<sup>9</sup> *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 278-279 (1977).

<sup>10</sup> *Id.*

<sup>11</sup> *Goldberg v. Sweet*, 488 U.S. 252, 262 (1989) (citation omitted).

<sup>12</sup> *Id.* at 263.

user. The telecommunications services that Twilio purchases from third-party telecommunications service providers are passed through to Twilio's customers who then integrate such functionality into software applications which are then marketed and distributed by Twilio's customers to end users. However, for a majority of the Period in Issue, Twilio paid the TUT when it purchased telecommunications services from third-party telecommunications service providers and Twilio passed on to its customers the costs charged by the third-party telecommunications service providers for the services and the TUT charge.

Twilio purchases telecommunications services from third-party telecommunications service providers and then passes these services on to its customers. From June 1, 2009 until August 2018, the third-party telecommunications service providers calculated TUT obligations for the telecommunications services that were sold to Twilio and charged such TUT obligation to Twilio, which charges were separately stated in the invoices provided to Twilio. Twilio paid the full amount of these invoices, including TUT charges associated with these telecommunications services. On January 31, 2020, Twilio submitted sample invoices from third-party telecommunications service providers, Inteliquent and Bandwidth, showing payment of TUT by Twilio during the Period in Issue. Inteliquent and Bandwidth are just two of the many carriers Twilio contracts with for telecommunications services. A copy of the invoices are attached as **Exhibit D**.<sup>13</sup>

Twilio does not consume or use up any portion of the telecommunications services that it purchases and merely passes on such services to its customers. Charges from third-party service providers, including the TUT charges paid by Twilio to such providers, are directly related to telecommunications services that Twilio passes on to its customers.

Pursuant to the TUT ordinance, the TUT is paid based upon the provision of telecommunications services to a user.<sup>14</sup> Telecommunications services are subject to the TUT when they are sold for consumption by a user. Thus, when the same services are sold multiple times through resellers and retailers of services, the TUT should be applied and collected only once, and the TUT should be collected only at the point when the services are sold for use. Although Twilio is not a user of these telephone communication services, the payment made by Twilio to the third-party providers satisfies any obligation that Twilio or any user of such telecommunications services would have to pay TUT for such services.

#### **D. Twilio is Not a Telephone Communications Services Supplier**

Twilio is not a "telephone communications service supplier" under the definition in Section 703(k) or a "service supplier" under the definition in Section 703(h) and is not obligated to collect the TUT from service users.

Twilio purchases telecommunications services from third-party telecommunications service providers, but Twilio does not provide those services to the end users of such services. Twilio's customers are developers that are seeking to build communication functionality into software applications. Twilio's customers are not the primary users of such applications and these communication functions. The applications and rights to their use, including the communications functionality, are marketed and distributed by Twilio's customers to end users. Twilio does not participate in the provision of the applications or their services to end users. As a result, Twilio is not a telephone communications service supplier.

To the extent that the Tax Collector asserts that Twilio is a telephone communications service supplier because it is required to collect and remit the TUT, such assertion is circular and void.

<sup>13</sup> Upon receipt of these invoices showing that the TUT already had been paid on the third-party telecommunications services, the City did not reduce its assessment against Twilio, therefore resulting in the same telecommunications services being taxed twice.

<sup>14</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 703(a).



**E. Applying the TUT to Twilio's API Services is Inconsistent with the History and Intent of the TUT**

The history of the TUT demonstrates that the TUT should not apply to Twilio's software services. The TUT, first imposed in 1970, is the City's utility users tax for telephone services. The current ordinance was approved by voters in 2008. The impetus for the 2008 TUT changes was the U.S. Treasury Department's issuance of Revenue Notice 2006-50 on May 25, 2006, announcing that the Internal Revenue Service would no longer interpret the Federal Excise Tax, 26 United States Code § 4251 ("FET") to apply to toll telephone services billed on the basis of time only, and to certain other "bundled" services. Revenue Notice 2006-50 presented potential revenue issues for the City because the original TUT ordinance referred to the FET for identifying the taxable types of Telephone Communication Services, and the types of services that were exempt from the TUT.<sup>15</sup> The purpose of the 2008 TUT amendment was to retain the status quo that existed prior to the issuance of Revenue Notice 2006-50.<sup>16</sup> The San Francisco Board of Supervisors specifically interpreted the 2008 TUT changes as not including any additional Telephone Communication Services that were not subject to the TUT before.<sup>17</sup> There is no indication that the TUT was ever intended to apply to software services. This is why the definition of "Telephone Communications Service" specifically does not include Internet access services to the extent they are exempt from taxation under the Internet Tax Freedom Act, 47 U.S.C. 151, video programming services, and digital downloads, such as downloads of books, music, video, ringtones, games and similar digital products.<sup>18</sup>

**F. Applying the TUT to Twilio's API Services Violates Proposition 218**

The City did not provide any workpapers or explanation with the Notice showing the basis for and calculations supporting its assessment. Nevertheless, the City issued the Notice which applied the TUT to a percentage of Twilio's revenues. The City's attempted imposition of TUT to Twilio's services is contrary to the TUT ordinance and is a change in methodology that results in a higher amount of tax levied on Twilio's customers. This is therefore a "local tax increase" for the purposes of Proposition 218 that cannot be asserted unless it is approved by a majority of voters.<sup>19</sup>

**G. The TUT Does Not Apply to Twilio's Services Under California's "True Object" Test**

To the extent that Twilio's services contain a telecommunications component, the TUT does not apply because telecommunications services is not the "true object" of the transaction between Twilio and its customers but rather a *de minimis* and incidental portion thereof.

California has adopted the "true object" test in determining whether a bundled transaction involves the taxable sale of tangible personal property for sales tax purposes or the transfer of tangible personal property incidental to the performance of a nontaxable service.<sup>20</sup> If the true object of the contract is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred.<sup>21</sup> Pursuant to Cal. Admin. Code, tit. 18, § 1501, the key factor in the true object

<sup>15</sup> See Ordinance No. 145-08 (2008), Final Legislative Amendments, File No. 080792 (July 14, 2018).

<sup>16</sup> *Id.* at 12-13.

<sup>17</sup> *Id.*

<sup>18</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 703(f).

<sup>19</sup> Proposition 218, which added Article XIII C to the California Constitution, requires any local tax increase to be approved by a majority of the voters. Cal. Const. Art. XIII C, § 2(b). A tax is "increased" if a city either increases any applicable rate used to calculate the tax, or revises the methodology by which the tax is calculated if that revision results in an increased amount being levied on any person or parcel. Cal. Gov. Code § 53750(h)(1).

<sup>20</sup> Cal. Admin. Code, tit. 18, § 1501; see also *Navistar Int'l Trans. Corp. v. State Bd. of Equalization*, 8 Cal. 4th 868, 875-876 (1994) (holding that the true object test did not apply to a taxpayer's purchase of documents for their own sake and not incidental to a service).

<sup>21</sup> *Id.*

test is determining "the real object sought by the buyer the service per se or the property produced by the service."<sup>22</sup> Although state regulations and cases for the treatment of bundled sales for sales tax purposes are not controlling as to the application of San Francisco's TUT, they are relevant to ensuring the consistent treatment of software service transactions across different tax types.<sup>23</sup>

The TUT ordinance provides the ability to unbundle taxable and nontaxable services that are billed together so long as the seller's books and records indicate which portions of a transaction are subject to TUT.<sup>24</sup> To the extent that the true object of a transaction is a non-taxable service, the transaction should not be taxable notwithstanding any other rules regarding bundled transactions. Instead, the entire invoice would be non-taxable.

The true object of Twilio's transactions with customers is access to Twilio's APIs and software services. When Twilio resells telephone numbers to its customers, the costs and value associated with the service resides in the "session manager" service and not the phone number. Twilio's customers are able to purchase telephone numbers directly from the telecommunications service provider. As stated in the Deloitte report, 90 percent of the charge to customers relates not to the phone number but to the nontaxable "session manager" service. Therefore, the phone number is an incidental component of the service package provided by Twilio and Twilio's services should not be subject to the TUT for these reasons.

#### **H. Application of the TUT to Twilio's Services is Preempted by the Internet Tax Freedom Act Because Such Application of the TUT Would Discriminate Against Electronic Commerce**

Applying the TUT to Twilio's APIs discriminates against electronic commerce in violation of the Internet Tax Freedom Act ("ITFA") because it would apply a tax to the APIs, which provide services via software, that is not applied to similar services provided via hardware. ITFA, as relevant to this matter, prohibits state or local governments from imposing: 1) taxes on Internet access; and 2) discriminatory taxes on electronic commerce.<sup>25</sup> ITFA's ban on discriminatory taxation of electronic commerce prohibits states and localities from imposing tax on electronic commerce that is not imposed on "transactions involving similar property, goods, services, or information accomplished through other means," or imposing tax on electronic commerce at a higher rate.<sup>26</sup> This provision is generally understood as prohibiting state and local taxing authorities from imposing discriminatory taxes on electronic commerce that would thereby stifle its development (e.g., the sale of a book from a brick-and-mortar store from being taxed at a lower rate than the sale of an e-book).

The TUT is not currently applied to routing and "session manager" services provided by companies such as Oracle and Cisco. If applied to the APIs, the TUT would be applied to such services only in the instance that those services are provided via a cloud-based platform. Therefore, application of the TUT to the APIs places a greater tax burden on companies that provide cloud based services, and thus, discriminates against a form of electronic commerce.

The true indication that Twilio provides the same services as its competitors is that Twilio's solutions are replacements, not complements, of its competitors' traditional solutions. Twilio's customer base includes numerous "takeouts," or customers that have switched from competitors' solutions to

<sup>22</sup> *Id.*

<sup>23</sup> See *Microsoft Corp. v. Franchise Tax Bd.*, 212 Cal.App.4th 78, 90 (2012) (finding that sales tax regulations which characterized software licenses as intangible personal property were relevant to the characterization of the same licenses for franchise tax purposes).

<sup>24</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 703(f).

<sup>25</sup> ITFA § 1101(a)(1)-(2).

<sup>26</sup> *Id.* at § 1105(2)(A).

solutions provided by Twilio. Twilio is able to offer the same services, but at a more competitive price, since the customer does not need to procure hardware and storage space to receive these capabilities.

**I. The TUT Ordinance is Void for Vagueness and thus Unconstitutional and Unenforceable**

The TUT ordinance violates due process of law because the definitional sections of the ordinance are vague and circular.

"A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual."<sup>27</sup> A vagueness challenge will be rejected if the challenged ordinance "(1) gives fair notice of the practice to be avoided, and (2) provides reasonably adequate standards to guide enforcement."<sup>28</sup>

However, an ordinance imposing a tax will be found to be unconstitutionally vague if it is not sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to such tax. An ordinance is not sufficiently explicit where the definitions used in determining parties subject to the tax are circular.<sup>29</sup>

The TUT is imposed "every person, other than a telephone communications service supplier, who uses telephone communications service in the City."<sup>30</sup> However, a "service user" is defined as "a person required to pay a tax imposed under the provisions of this Article."<sup>31</sup> Equally circular, the TUT is to be collected from the service user by the telephone communications service supplier. "Telephone communications service supplier" is then defined as "any person who provides telephone communications service to a user of such service within the City."<sup>32</sup>

Both the obligation for payment of the TUT and the obligation for collection of the TUT are dependent upon the definition of a "service user." However, such definition is circular in that it refers back to any person on which the tax is imposed. For this reason, the TUT ordinance is unconstitutionally vague and thus void.

**J. In the Alternative, and to the Extent the TUT Applies to any of Twilio's Products and Services, the TUT Applies Only to that Portion of the Product or Service that Qualifies as Telephone Communication Services**

To the extent the TUT applies to any of Twilio's products and services, it only applies to the portion of a specific product or service that qualifies as telephone communication services. The TUT ordinance provides that a taxpayer may unbundle nontaxable components from taxable components, which are billed together under a single charge, by "reasonably" identifying actual charges for services not subject to the TUT.<sup>33</sup> To accomplish this, a taxpayer may use books and records that are kept in the regular course of the taxpayer's business and in a manner consistent with generally accepted

<sup>27</sup> *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.

<sup>28</sup> *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 702.

<sup>29</sup> *City of San Bernardino Hotel/Motel Assn. v. City of San Bernardino*, 59 Cal.App.4th 237, 249 ("Hotel" is defined to include structures used or intended to be used by 'transients,' and 'transient' is defined to be a person who exercises 'occupancy,' which is defined to be the use of a room in a 'hotel.'").

<sup>30</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 703(a).

<sup>31</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 701(g).

<sup>32</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 701(k).

<sup>33</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 703(f).

accounting principles.<sup>34</sup> San Francisco has not issued guidance regarding its "reasonable" standard or what counts as books and records of the taxpayer.

To satisfy the City's requirement for reasonable identification of nontaxable components, Twilio engaged Deloitte to perform a revenue segregation study to identify revenue possibly attributable to telecommunications services. Deloitte's valuation study bifurcates Twilio's APIs and third-party telecommunications services based upon the nature of the bundled services provided by Twilio to its customers, the nature and value added by the APIs, and what portion of the cost of goods sold could be attributed to the APIs and the third-party telecommunications services. Based on the Deloitte study, approximately 5% of Twilio's revenue is attributable to the third-party telecommunications services.

Accordingly, the Deloitte study supports the unbundling of any taxable components from Twilio's non-taxable products and services. On a segregated basis, the value of any telephone communication services component is at most approximately 5% of the charges which Twilio receives from its customers.

#### **K. Conclusion**

For the reasons discussed above, Twilio respectfully requests that the Tax Collector issue a determination granting Twilio's claim for refund of TUT erroneously paid.

<sup>34</sup> *Id.*

# **EXHIBIT G**



July 21, 2020

**Via Priority Mail**  
**Return Receipt Requested**  
Controller's Office  
Claims Division  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102-5402

**Re: Claim for Refund of Access Line Tax for Twilio, Inc.**  
**Tax Periods: January 1, 2009 through December 31, 2018**

To Whom it May Concern:

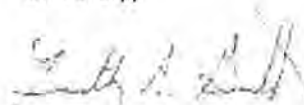
Enclosed please find the following:

- a Claim for Business Tax Refund (including exhibits) for San Francisco Access Line Tax in the amount of \$22,308,977.99 paid by Twilio Inc. ("Twilio") (one original, one copy without exhibits);
- a letter certifying that Twilio authorizes the attorneys named therein as its representatives with regard to its Claim for Business Tax Refund; and
- a self-addressed stamped envelope.

Please time stamp and return the copy of the Claim for Business Tax Refund using the enclosed envelope.

Please contact Liz Cha at (202) 383-0533 or [lizcha@eversheds-sutherland.com](mailto:lizcha@eversheds-sutherland.com) if you have any questions or require additional information related to this matter.

Sincerely,



Timothy A. Gustafson

Encls.

# CITY AND COUNTY OF SAN FRANCISCO

## Claim For Business Tax Refund

Before completing this form, please read the instructions on the back. You have **one year** from the date of payment, the date the return accompanying the payment was due, or the date on which the amount requested on an amended return or request for refund form timely filed with the Tax Collector was denied or deemed denied under section 6.15--1(g) of Article 6 of the Business and Tax Regulations Code, whichever is later, to submit this form and supporting documentation to

**CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7<sup>TH</sup> FLOOR, SAN FRANCISCO, CA 94102--5402.**

You must file a separate claim for business tax refund for each type of tax.

<b>1. CLAIMANT'S NAME:</b> <u>Twilio Inc.</u>  DBA (if applicable): _____  Address: <u>375 Beale St. Suite 300</u> <u>San Francisco, CA 94105</u>  Telephone: _____	<b>2. IF CLAIMANT IS A BUSINESS:</b>  Type of Ownership Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Other: _____
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------


<b>3. FEDERAL TAXPAYER ID #</b> <u>26-2574840</u>
---------------------------------------------------

4. TAX PAID INFORMATION					
Business Account Number	Paid By	Date Paid	Receipt No.	Amount Paid	Period Covered
a <u>0447370</u>	<u>Twilio Inc.</u>	<u>July 2, 2020</u>	<u>84015172365</u>	<u>\$22,308,977.99</u>	<u>06/01/2009 - 12/31/2018</u>
b _____	_____	_____	_____	_____	_____
c _____	_____	_____	_____	_____	_____

<b>5. BASIS OF CLAIM:</b> State all facts that support your refund claim. If your claim applies to only a portion of the tax paid, please explain the portion to which it applies.  <div style="border: 1px solid black; padding: 5px; min-height: 100px;">                 Please see attached             </div>	<b>Applicable Tax (check one)</b> <input type="checkbox"/> Payroll Expense Tax <input type="checkbox"/> Gross Receipts Tax <input type="checkbox"/> Registration Fee <input type="checkbox"/> Homelessness Gross Receipts Tax <input type="checkbox"/> Commercial Rents Tax <input type="checkbox"/> Traffic Congestion Mitigation Tax <input type="checkbox"/> Tourism Improvement District Fee <input type="checkbox"/> Moscone Expansion District Fee <input type="checkbox"/> Transient Occupancy Tax <input type="checkbox"/> Parking Tax <input checked="" type="checkbox"/> Access Line Tax <input type="checkbox"/> Utility Users Tax (other than TUT) <input type="checkbox"/> Cigarette Litter Abatement Fee <input type="checkbox"/> Telephone Users Tax (TUT) <input type="checkbox"/> Stadium Operator Admission Tax <input type="checkbox"/> Sugary Drinks Tax
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>6. REFUND AMOUNT REQUESTED:</b> \$ <u>22,308,977.99</u>
------------------------------------------------------------

<b>7. DATE AMOUNT REQUESTED FROM THE TAX COLLECTOR WAS DENIED OR DEEMED DENIED (IF APPLICABLE):</b> <u>N/A</u>
----------------------------------------------------------------------------------------------------------------

<b>8. SIGNATURE OF CLAIMANT OR REPRESENTATIVE:</b> I certify under penalty of perjury that I am the taxpayer (including an officer, general partner, member manager, executor, trustee, fiduciary, or other individual with authority to bind the taxpayer), or agent of the taxpayer authorized to sign this form on behalf of the taxpayer (attach authorization), and that the information on this Claim for Business Tax Refund form is, to the best of my knowledge and belief, true and correct	
Signature: <u></u>  Print Name: <u>Timothy A. Gustafson</u>	Date: <u>July 21, 2020</u>  Title: <u>Managing Director, Finance &amp; Administration</u>

EVERSHEDS  
SUTHERLAND

**Eversheds Sutherland (US) LLP**  
999 Peachtree St., N.E., Suite 2300  
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F: +1 404.853.8806

erictresh@  
eversheds-sutherland.com

July 20, 2020

Controller's Office  
Claims Division  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102-5402

**Re: Power of Attorney Declaration to Represent Twilio Inc.**  
FEIN #: 26-2574840  
Business Account #: 0447370

To Whom it May Concern:

This letter is to certify that Twilio Inc. ("Twilio") authorizes the following attorneys as its representatives with regard to Twilio's Claims for Business Tax Refund for Telephone Users Tax and Access Line Tax:

Name	Address	Phone Number	Email
Eric S. Tresh	Eversheds Sutherland (US) LLP 999 Peachtree St. NE, Suite 2300 Atlanta, GA 30309	(404) 853-8579	<a href="mailto:erictresh@eversheds-sutherland.com">erictresh@eversheds-sutherland.com</a>
Timothy A. Gustafson	Eversheds Sutherland (US) LLP 500 Capitol Mall, #1750 Sacramento, CA 95814	(916) 844-2826	<a href="mailto:timgustafson@eversheds-sutherland.com">timgustafson@eversheds-sutherland.com</a>
Elizabeth S. Cha	Eversheds Sutherland (US) LLP 700 6 <sup>th</sup> Street NW Washington, D.C. 20001	(202) 383-0533	<a href="mailto:lizcha@eversheds-sutherland.com">lizcha@eversheds-sutherland.com</a>

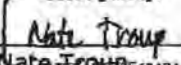
Twilio authorizes the above representatives to perform any action Twilio itself may perform to resolve issues with the San Francisco Controller's Officer for the taxes and tax periods listed below:

- Telephone Users Tax: January 1, 2009 - December 31, 2018
- Access Line Tax: January 1, 2009 - December 31, 2018

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Controller's Office  
July 20, 2020  
Page 2

Please contact Liz Cha at (202) 383-0533 or [lizcha@eversheds-sutherland.com](mailto:lizcha@eversheds-sutherland.com) if you have any questions or require additional information related to this matter.

DocuSigned by:  
  
Nate Trapp  
Controller, Twilio Inc.

20-Jul-2020  
Date

  
Eric Tresh  
Partner, Eversheds Sutherland  
(US) LLP

July 20, 2020  
Date

**Twilio Inc.**  
**Attachment for Claim for Refund**

Pursuant to San Francisco Business and Tax Regulations Code Sections<sup>1</sup> 6.13-5 and 6.15-1, Twilio Inc. ("Taxpayer" or "Twilio") submits this Claim for Refund ("Claim") for \$22,308,977.99 related to erroneously and illegally assessed Access Line Tax ("ALT"), interest, and penalties, which were paid pursuant to the San Francisco Tax Collector's Decision on Petition for Redetermination dated May 22, 2020. The tax periods for which the Taxpayer claims a refund are June 1, 2009 through December 31, 2018 ("Period in Issue"). A copy of the Tax Collector's Decision is attached as **Exhibit A**.

Concurrent with this request, Taxpayer is filing a claim for refund with the Controller for Telephone Users Tax ("TUT") erroneously and illegally assessed against Taxpayer and paid pursuant to the Tax Collector's Decision on Petition for Redetermination. Because the claim for refund for TUT involves similar facts and issues, Taxpayer requests that this Claim and the claim for TUT be evaluated concurrently.

**1. Procedural Background**

Twilio contacted the City of San Francisco (the "City") in 2016 to obtain confirmation that the TUT did not apply to its services. Following a series of discussions, on November 18, 2016, Twilio submitted a letter to the City requesting written confirmation that the TUT does not apply to Twilio's services. A copy of the letter is attached hereto as **Exhibit B**. This letter provided a detailed explanation of Twilio's services, and explained why the TUT is not applicable.

On October 6, 2017, Twilio agreed to participate in the City's voluntary compliance program whereby, in a good faith attempt to avoid a dispute with the City, Twilio agreed to pay the TUT on a small portion of its services, notwithstanding Twilio's position that the TUT did not apply at all. As part of the program, the City requested additional data and Twilio responded to the City's information requests on February 13, 2018, February 23, 2018, and October 1, 2018. The City's November 8, 2017 correspondence also requested information related to the ALT. This was the first time the ALT had been brought to Twilio's attention as Twilio did not believe that the ALT could be applied to its services.

At the City's direction, Twilio began filing ALT returns on the basis that the tax applied to some of its offerings that related to emergency services for the periods January 1, 2018 through March 31, 2018 and submitted payment for \$89.96. However, upon further review of the ALT in the context of Twilio's services, Twilio determined that its services are not subject to the ALT for the reasons further discussed below. Thus, Twilio filed zero returns for the remaining tax periods of the Period in Issue.

Twilio subsequently met with representatives from the City to continue to discuss why its services were not subject to the ALT. During this meeting, despite multiple requests, the City's audit staff did not explain why the City believed the ALT applied to Twilio's services.

After the meeting, the City notified Twilio's representatives by email that the City would be preparing a Notice of Tax Deficiency ("Notice") for Twilio for the Periods in Issue. Twilio's representatives inquired whether the City would also be providing a detailed description in writing of the City's position. On January 28, 2019, the City responded that it would be preparing a Notice of Tax Determination, after which Twilio would have 30 days to petition for redetermination and request a hearing with the Tax Collector. On July 18, 2019, the City issued a Notice for the Period in Issue. The Notice asserted an ALT payment deficiency of \$21,252,373.06, including penalties and interest.

On August 15, 2019, Twilio filed a petition for redetermination with the Tax Collector and a hearing was held on December 19, 2019. At the hearing, the Tax Collector requested additional documentation which Twilio provided on January 31, 2020. The City did not respond to the additional documentation and on May 22, 2020, the Tax Collector issued his Decision on Petition for

<sup>1</sup> All statutory references are to the San Francisco Business and Tax Regulations Code unless otherwise indicated.



Redetermination. The Tax Collector reaffirmed the City's prior position with an updated assessment, including additional interest, of \$22,308,977.99.

## **2. Statement of Facts**

Twilio's primary service is to provide access to cloud software platforms featuring Twilio's proprietary application programming interfaces ("APIs"). An API is software consisting of a set of routines and protocols that streamline software-to-software interactions by specifying "ground rules" or "a common language" through which software components interact. Twilio's APIs are not user interfaces, but rather they are "building blocks" upon which a third-party developer may program user-facing software applications, including mobile, web-based and desktop applications. The purpose of Twilio's APIs is to simplify and facilitate the development and integration of various capabilities, including communications capabilities, into software applications, which the developers may then market and distribute to end users or businesses. Twilio's platform provides developers with access to its APIs, pre-defined software libraries and sample code.

Twilio does not own any telecommunications network infrastructure or telecommunications network switches. Any communications services that are used as part of the provision of Twilio's services are developed, maintained and sold by third-party telecommunications providers for use by Twilio's customers, or Twilio's customer's customers. Twilio has agreements with telecommunications carriers, mobile network operators, and real-time data information service providers that facilitate connections to and from Twilio's APIs.

The Twilio platform provides APIs and libraries that enable developers to create applications using the following services:

- 1) **Voice:** Twilio provides APIs and software development kits that enable developers to build calling capabilities within web and mobile applications.
- 2) **Messaging:** With Twilio's API platform, developers can program SMS and MMS functionality into their applications.
- 3) **Video:** With Twilio's API platform, developers can add voice and video to web and mobile applications.
- 4) **Numbers:** The phone numbers product line offers customers programmatic methods of purchasing, configuring, and using phone numbers for making and receiving phone calls or sending and receiving text messages.
- 5) **Authentication:** Twilio provides APIs that enable developers to incorporate secure authentication measures into their web and mobile applications.

Twilio charges no upfront fees – developers pay solely for their respective customers' usage of applications built using Twilio's platform and APIs. Twilio charges its customers for the amount of API service they require based on how often they use the APIs. Twilio's pricing encourages innovation by offering a level playing field of access to Twilio's small and large business customers. Customers only pay for the amount of API service they use. This pricing arrangement also protects Twilio from having any one customer monopolize its cloud platform resources.

Twilio also resells telephone numbers to its customers at a flat rate (similar to companies like Oracle and Cisco that provide "session manager" and "session border controller" software). From June 1, 2009 until August 2018, when purchasing telecommunications services, Twilio paid TUT to telecommunications service providers for services and numbers in the amounts indicated on invoices provided to the City.

In 2017, Twilio engaged Deloitte to determine what portion of its services could be deemed associated with the costs that Twilio incurs for telecommunications services, which costs are passed

through to its customers. Deloitte determined that the value Twilio provides to its customers is primarily contained within its APIs, which bridge its customer's software applications with third-party telecommunications services. Deloitte determined that 95 percent of Twilio's revenues are related to its API and platform services, and 5 percent of Twilio's revenues contain what might be considered a telecommunications component. Deloitte further determined that Twilio's costs and value associated with its telephone number resale services resides in the "session manager" service and not the phone number. Deloitte determined 90 percent of the charge to customers for such services relates not to the phone number but to the "session manager" component of the service. Twilio could sell the APIs on a stand-alone basis and require its customers to purchase access to telecommunications services directly from third-party providers. Additional information regarding the cost structure of Twilio's services is contained in the Deloitte study, a copy of which is attached hereto as **Exhibit C** and made a part hereof.

Twilio filed ALT Tax Statements in early 2018 in a good faith effort to come into compliance with the City's tax laws. Upon researching the history of the ALT provisions, Twilio initially determined that if the ALT applied at all to its services, it would apply in a manner similar to the City's prior Emergency Response Fee, which the ALT was intended to replace. After having had the opportunity to fully analyze the ALT provisions in the context of Twilio's operations, Twilio determined that its services are not subject to the ALT and accordingly filed zero ALT returns for the tax periods covered by the audit period.

### **3. Arguments in Support of Claim for Refund**

Twilio disagrees with the Tax Collector's Decision on Petition for Redetermination, which alleges the understated measure of tax, penalties, and interest in the amount of \$22,308,977.99 as being contrary to the ALT ordinance, San Francisco Business and Tax Reg. Code, Art. 10, § 780 *et seq.*

The grounds in support of this Claim include, but are not limited to, the following:

#### **A. Twilio's Services Do Not Include the Provision of An "Access Line" to Telephone Communications Service Subscribers**

Twilio does not sell or provide access to an "access line" as that term is defined in Section 781(a) of the City's ALT ordinance. Twilio's primary service, and the reason why customers engage Twilio, is the provision of its cloud software platform and its proprietary APIs. Twilio's APIs assist developers with building communication functionality into their software applications but the APIs are not a connection from a customer location to a provider of telephone communications services. Twilio does not provide "access lines," "trunk lines," or "high capacity trunk lines" as those terms are defined by the City's ALT ordinance.<sup>2</sup> Twilio does not own any physical telecommunications network infrastructure or telecommunications network switches, and therefore cannot provide its customers with "trunk lines" or "high capacity trunk lines."<sup>3</sup> Twilio also does not provide "access lines" because its API services do not constitute a "connection whether by wire or wireless technology, from a customer location to a provider of Telephone Communications Services offered to the public for compensation."<sup>4</sup> Instead, Twilio's customers (or end users) must purchase or otherwise have their own telecommunications services to use Twilio's services.

The term "access line" as defined in the City ordinance includes the assignment of a 10-digit telephone number under the North American Numbering Plan ("NANP") for the purpose of providing telephone communications services.<sup>5</sup> However, Twilio does not assign telephone numbers under the NANP and does not resell numbers to its customers for the purpose of providing a Telephone Communication Service. Twilio lacks authorization from the FCC to request telephone numbers under the NANP. The FCC does not require Twilio to file a Numbering Resource Utilization/Forecast ("NRUF")

<sup>2</sup> San Francisco Business and Tax Reg. Code, Art. 10B, § 781(a), (k).

<sup>3</sup> San Francisco Business and Tax Reg. Code, Art. 10B, § 781(k).

<sup>4</sup> San Francisco Business and Tax Reg. Code, Art. 10B, § 781(a).

<sup>5</sup> *Id.*

Report on Form 502, or provide any other documentation for NRUF reporting. The FCC does not require Twilio to fund NANP fees.

Twilio's numbering product line offers customers programmatic methods of purchasing, configuring, and using phone numbers alongside its software so that the software can automatically contact one of Twilio's customers' customers by voice or text. Twilio's customers cannot use these numbers "as is" to make a phone call, send a text or perform any other type of communication. Any ability for the software to be able to place an automated call or text results from customer-created software applications, not anything Twilio does or provides.

#### **B. Twilio's Services Are Not Provided or Used within the City of San Francisco**

Even if Twilio's services are considered telecommunications services, San Francisco lacks jurisdiction to tax Twilio's services under the plain language of the ALT ordinance, the Mobile Telecommunications Sourcing Act of 2000 ("MTSA"), and Constitutional law. It is well established that "the power to levy a tax must be drawn from express statutory authority and the statute must be strictly construed in favor of the taxpayer and against the taxing body."<sup>6</sup> In almost all scenarios, the location of use of Twilio's services (including the telecommunications services which Twilio passes on to its customers) is not San Francisco and therefore Twilio's services cannot be subject to the ALT.

The City imposes ALT on "every person who subscribes to telephone communications services within the City and County of San Francisco, to the extent permitted by Federal and State law" and the ALT applies to "each access line within the City's tax jurisdiction."<sup>7</sup> However, the telecommunications services provided to Twilio that are then used by Twilio's customers are not based in the City and do not use access lines within the City's jurisdiction. In order to use Twilio's API services, an end user must first utilize a device that has telecommunications connectivity. The connectivity and services utilized by such device are provided by a third-party telecommunications service provider to the device user. To be clear, these are not the telecommunications services that are purchased by Twilio and passed on to Twilio's customers; these telecommunications services are purchased directly from telecommunications carriers by end users. When the end user receives a phone call from a hired driver or a text message from a restaurant indicating that a table is ready, the end user is only able to connect to such services and receive such communications because of the telecommunications services that it contracts for directly with third-party telecommunications service providers. If such an end user has a telephone account with a situs in the City, the City applies the ALT to charges for access lines billed to that account.

In each instance, the end users of these services speak, type or otherwise communicate through their connected device to generate a series of signals. Those signals are then sent through telephone lines, internet routers and other hardware that make up the national and international patchwork of telecommunications infrastructure. If the end user is using services that interact with Twilio's APIs, the signals are routed to Twilio's servers which are hosted by Amazon Web Services that are located in Virginia. It is only after these signals reach the servers that Twilio's APIs perform their services of receiving, interpreting, routing or responding to these signals. Twilio pays third-party telecommunications service providers to provide connectivity and other telecommunications services to these servers.

Hence, use of telecommunications services purchased by Twilio is almost exclusively used outside the City. The City has made no showing that Twilio's services are used in the City or that the access lines used are within the City's tax jurisdiction. Instead, the City relies on the "rebuttable presumption" provided in the ALT ordinance that "service billed to a billing address in the City is used, in whole or in part, within the City's boundaries" and that such service is subject to the ALT.<sup>8</sup> Twilio has provided the City with sufficient facts to affirmatively rebut this presumption. Applying these facts, the

<sup>6</sup> *Los Angeles Brewing Co. v. City of Los Angeles*, 8 Cal.App.2d 379, 384 (1935) (citing *R.C.A. Photophone, Inc., v. Huffman*, 42 P.2d 1059 (Cal. App. 1935)).

<sup>7</sup> San Francisco Business and Tax Reg. Code, Art. 10B, § 782(a).

<sup>8</sup> San Francisco Business and Tax Reg. Code, Art. 10B, § 782(a).



plain language of the ALT ordinance precludes its application to Twilio's services. Further, the scope of services subject to the ALT is federally preempted and limited by the MTSA.<sup>9</sup> Under the MTSA, telecommunications services are "sourced" to the customer's "place of primary use," which is defined as the customer's residential or primary business address, which must be located in the service provider's licensed service area.<sup>10</sup> The term "licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.<sup>11</sup> As noted above, Twilio does not own or operate any telecommunications facilities, and is not authorized by law or contract to provide commercial mobile radio service. Therefore, Twilio does not have a "licensed service area" for the purposes of the MTSA.

Even if a portion of Twilio's services can be characterized as telecommunications service, under the MTSA the taxing jurisdiction in which the "place of primary use" is located is the only jurisdiction that may tax the telecommunications service, regardless of where the mobile telecommunication services originate, terminate, or pass through.<sup>12</sup> The City's Notice is not based on the "place of primary use" of these end users, as required by the MTSA. Thus, there is insufficient jurisdictional support for the City's Notice.

Moreover, the application of ALT to Twilio's services conflicts with Constitutional principles. Under the four-pronged test originated in *Complete Auto Transit, Inc. v. Brady*, a state tax will withstand scrutiny under the Commerce Clause only if "the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State."<sup>13</sup> Here, there is insufficient nexus between Twilio's services and the City to support the City's assessment even for San Francisco-based users of Twilio's numbering products and apps that rely on Twilio's API services. An individual must use a third-party telecommunications or Internet access service for Twilio's services to function. The third-party telecommunications or Internet service links apps and phone numbers to Twilio's API services, which run on servers outside of the City. The APIs then send data back to third-party telecommunications or Internet service for delivery to the end user. None of Twilio's API services occur in the City and the City lacks sufficient nexus to impose ALT on a service that takes place wholly outside of its borders.

Additionally, the City's imposition of the ALT is not fairly apportioned for the purposes of the *Complete Auto* test.<sup>14</sup> The City's Notice appears to assess ALT on a portion of Twilio's services, without the prerequisite finding that taxable access lines exist within the City's jurisdiction. Therefore, as applied to Twilio's services, the ALT is not internally consistent because it would subject Twilio to double-taxation in San Francisco and Virginia, where the API servers are located, if Virginia were to impose an identical tax. Further, because Twilio's API services occur entirely outside of the City, the ALT is not externally consistent because it seeks to tax more than the portion of the revenues from the interstate activity which reasonably reflects the in-City component of the activity being taxed.<sup>15</sup>

Finally, under *Goldberg v. Sweet*, for a taxing authority to have sufficient nexus over telecommunication services, there must be an origination or termination of the service in the jurisdiction *and* a billing or service address in the jurisdiction.<sup>16</sup> Here, Twilio's services take place at

<sup>9</sup> The language of the ALT ordinance acknowledges this preemption, stating that it would apply to applies "to each access line within the City's tax jurisdiction, including, without limitation, access lines billed to a telephone account having a situs in the City, as permitted by the [MTSA]." San Francisco Business and Tax Reg. Code, Art. 10B, § 782(a).

<sup>10</sup> 4 U.S.C. §§ 122(a), 124(8).

<sup>11</sup> 4 U.S.C. § 124(6).

<sup>12</sup> 4 U.S.C. § 117(b).

<sup>13</sup> *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 278-279 (1977).

<sup>14</sup> *Id.*

<sup>15</sup> *Goldberg v. Sweet*, 488 U.S. 252, 262 (1989) (citation omitted).

<sup>16</sup> *Id.* at 263.

Amazon Web Services in Virginia before delivery via third-party telecommunications providers. Therefore, Twilio's services lack the necessary "origination" or "termination" in the City to support nexus for the purposes of the ALT.

**C. Twilio is Not a Telephone Communications Services Supplier**

Twilio is not a "Service Supplier" under the definition in Section 781(i) because Twilio's APIs are not "Telephone Communications Services" under the definition in Section 703(j). Twilio sells software and its APIs are used as building blocks that enable developer-customers to create applications that can perform communication functions. At no time does Twilio perform these communications functions for its customers.

The City's definition of "Telephone Communications Services" applies to the transmission of data, not the compilation of the data to be transmitted. Twilio's APIs do not "transmit or convey voice, data, audio, video, or any other information using wire, fiber optic, coaxial cable, power line transmission, light wave, laser, microwave, radio wave, satellite or any other form of wireless transmission."<sup>17</sup> Additionally, Twilio's APIs do not transmit, convey, or route voice, data, audio, video, or any other information or signals between or among points.

Twilio provides a software product and the customers integrate that product into applications such that data may be received and reformatted for transmission. Similar to installing an outlet to receive energy from an electrical company, or installing a faucet to use water from a water company, Twilio's customers seek out the APIs for the ability to integrate communication capabilities into their applications; they do not seek out Twilio to directly provide Telephone Communications Services.

Data sent by end users of the customer's application is transmitted via a third party telephone communications supplier's network. Although Twilio's APIs provide components that allow for the formatting of data so that it may be transmitted, the APIs do not themselves perform the transmission. This is similar to how electrical outlets and water faucets do not work without an underlying utility service. Thus, in the chain of transmission of the data, Twilio's services do not directly provide end users with connectivity, but rather provide a bridge through which end users communicate by packaging data.

While Twilio purchases telecommunications services from third-party telecommunications service providers, Twilio does not provide those services to the end users of such services. Twilio's customers are developers that are seeking to build communication functionality into software applications. Twilio's customers are not the primary users of such applications and these communication functions. The applications and rights to their use, including the communications functionality, are marketed and distributed by Twilio's customers to end users. Twilio does not participate in the provision of the applications or their services to end users. Thus, Twilio is not a telephone communications service supplier.

To the extent that the Tax Collector asserts that Twilio is a telephone communications service supplier because it is required to collect and remit the ALT, such assertion is circular and void.

**D. Twilio is Not a Subscriber of Telephone Communications Services**

The ALT is imposed on "every person who subscribes to telephone communications services within the City and County of San Francisco."<sup>18</sup> Twilio is not a subscriber of the telecommunications services that it purchases from third-party telecommunications service providers and thus it is not obligated to pay the ALT on the services it purchases from third-party telecommunications service providers. The telecommunications services that Twilio purchases from third-party telecommunications

<sup>17</sup> San Francisco Business and Tax Reg. Code, Art. 10, § 701(j).

<sup>18</sup> San Francisco Business and Tax Reg. Code, Art. 10B, § 782(a).



service providers are passed through to Twilio's customers who then integrate such functionality into software applications which are then marketed and distributed by Twilio's customers to end users.

Twilio does not consume or use up any portion of the telecommunications services that it purchases and merely passes on such services to its customers. Twilio passes on to its customers the full cost charged by the third-party telecommunications service providers for such services. Thus, Twilio is not a subscriber of these telephone communication services.

To the extent that the Tax Collector asserts that Twilio is a telephone communications service subscriber because it is required to pay the ALT, such assertion is circular and thus void.

#### **E. Twilio's Services Are Post-Paid Calling Services and Not Subject to the ALT**

To the extent that Twilio passes through telecommunications services to its customers, Twilio provides such telecommunications services as post-paid calling services. Consequently, the services are not subject to the ALT. The ALT does not apply to "post-paid calling services," which the ALT ordinance defines as "telecommunications service obtained by making a payment on a call-by-call basis . . . by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service without the provisioning of an access line."<sup>19</sup>

Twilio purchases telecommunications services from third-party telecommunications service providers and passes those services through to Twilio's customers, developers that are seeking to build communication functionality into software applications. Twilio charges no upfront fees for such services and developers pay for services based solely on end users' usage of applications built using Twilio's platform and APIs. Twilio then charges its customers based on such usage. To the extent end users of the telecommunications services use telephone numbers provided by Twilio, the telephone numbers are not directly associated with the location of the end users and thus such numbers are not associated with the origination or termination of the telecommunications service. Thus, to the extent that Twilio passes through telecommunications services, such services are provided as post-paid calling services not subject to the ALT.

#### **F. Twilio Purchases Access Lines from Unrelated Telecommunications Companies, Pays Applicable ALT and Passes These Costs Through to its Customers**

Twilio purchases access lines from third-party telecommunications service providers and then passes these services on to its customers. From June 1, 2009 until August 2018, the third-party telecommunications service providers calculated ALT obligations for the access lines that were sold to Twilio and charged such ALT obligation to Twilio, which charges were separately stated in the invoices provided to Twilio. Twilio paid the full amount of these invoices, including ALT charges associated with these access lines.

On January 31, 2020, Twilio submitted sample invoices from third-party telecommunications service providers, Inteliquent and Bandwidth, showing payment of ALT by Twilio during the Period in Issue. Inteliquent and Bandwidth are just two of the many carriers Twilio contracts with for telecommunications services. A copy of the invoices are attached as **Exhibit D**.<sup>20</sup>

#### **G. The ALT Does Not Apply to Twilio's Services Under California's "True Object" Test**

<sup>19</sup> San Francisco Business and Tax Reg. Code, Art. 10B, § 781(f).

<sup>20</sup> Upon receipt of these invoices showing that the ALT already had been paid on the third-party access lines, the City did not reduce its assessment against Twilio, therefore resulting in the same access lines being taxed twice.

Even if Twilio's services were determined to contain an access line component, the ALT does not apply because any such access line is not the "true object" of the transaction between Twilio and its customers but rather a *de minimis* and incidental portion thereof.

California has adopted the "true object" test in determining whether a bundled transaction involves the taxable sale of tangible personal property for sales tax purposes or the transfer of tangible personal property incidental to the performance of a nontaxable service.<sup>21</sup> If the true object of the contract is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred.<sup>22</sup> Pursuant to Cal. Admin. Code, tit. 18, § 1501, the key factor in the true object test is determining "the real object sought by the buyer the service per se or the property produced by the service."<sup>23</sup> Although state regulations and cases for the treatment of bundled sales for sales tax purposes are not controlling as to the application of San Francisco's ALT, they are relevant to ensuring the consistent treatment of software service transactions across different tax types.<sup>24</sup>

The true object of Twilio's transactions with customers is access to Twilio's APIs and software services. When Twilio resells telephone numbers to its customers, the costs and value associated with the service resides in the "session manager" service and not the phone number. Twilio's customers are able to purchase telephone numbers directly from the telecommunications service provider. As stated in the Deloitte report, 90 percent of the charge to customers relates not to the phone number but to the nontaxable "session manager" service. Therefore, the phone number is an incidental component of the service package provided by Twilio and Twilio's services should not be subject to the ALT for these reasons.

#### **H. Applying the ALT to Twilio's API Services is Inconsistent with the History and Intent of the ALT**

The ALT was not intended to apply to services such as Twilio's API services. Proposition O, which was the proposition presented to the electorate by public vote to approve the ALT, states that "the City and County desires to apply the ALT in the same manner as the [Emergency Response Fee ("ERF")], which the ALT replaced. Both the ALT and the ERF are imposed on telephone access lines. Both the ALT and the ERF provide for exemptions for low-income telecommunications customers who receive discounted "Lifeline" telecommunications services. The ERF was only applied to telecommunications services that provided emergency-related service features. This utility excise tax on telephone services was never intended to apply to software or digital services. This is why the definition of "Telephone Communications Service" does not include internet access services to the extent they are exempt from taxation under the Internet Tax Freedom Act, 47 U.S.C. 151, video programming services, and digital downloads, such as downloads of books, music, video, ringtones, games and similar digital products. Accordingly, if the ALT applies at all to Twilio's services, the ALT should only apply to Twilio's emergency-related service features, which are sold on an a la carte basis.

#### **I. Applying the ALT to Twilio's API Services Violates Proposition 218**

The City did not provide any workpapers or explanation with the Notice showing the basis for and calculations supporting its assessment. Nevertheless, the City appears to have calculated the ALT based on a percentage of Twilio's revenues rather than using a count of access lines as required by the

<sup>21</sup> Cal. Admin. Code, tit. 18, § 1501; *see also Navistar Int'l Trans. Corp. v. State Bd. of Equalization*, 8 Cal. 4th 868, 875-876 (1994) (holding that the true object test did not apply to a taxpayer's purchase of documents for their own sake and not incidental to a service).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *See Microsoft Corp. v. Franchise Tax Bd.*, 212 Cal.App.4th 78, 90 (2012) (finding that sales tax regulations which characterized software licenses as intangible personal property were relevant to the characterization of the same licenses for franchise tax purposes).

statute.<sup>25</sup> This constitutes "a local tax increase" for the purposes of Proposition 218 because it is a change in methodology by which the ALT is calculated and the change increases the amount of tax levied on Twilio's customers.<sup>26</sup> The City may only impose ALT on Twilio's services by submitting this change in methodology to a public vote.<sup>27</sup> Without such public approval, calculating the ALT in such a manner is a violation of Proposition 218.

**J. Application of the ALT is Preempted by the Internet Tax Freedom Act ITFA Because It Would Discriminate Against Electronic Commerce**

Applying the ALT to Twilio's API services or numbering services violates the Internet Tax Freedom Act ("ITFA") because it discriminates against electronic commerce by applying a tax to the APIs that is not applied to businesses that provide similar services. ITFA, as relevant to this matter, prohibits state or local governments from imposing: 1) taxes on Internet access; and 2) discriminatory taxes on electronic commerce.<sup>28</sup> ITFA's ban on discriminatory taxation of electronic commerce prohibits states and localities from imposing tax on electronic commerce that is not imposed on "transactions involving similar property, goods, services, or information accomplished through other means," or imposing tax on electronic commerce at a higher rate.<sup>29</sup> This provision is generally understood as prohibiting state and local taxing authorities from imposing discriminatory taxes on electronic commerce that would thereby stifle its development (e.g., the sale of a book from a brick-and-mortar store from being taxed at a lower rate than the sale of an e-book).

The ALT is not currently applied to routing and session manager services provided by Twilio's competitor companies such as Oracle and Cisco. These competitors have traditionally provided call control services and media services through solutions that combine hardware and software. Customers purchasing such services would be required to separately procure telephone connectivity from third-party telecommunications service providers. The customer then would connect the competitors' hardware and software to the telephone connection endpoint (sometimes with the assistance of the competitors).

Twilio provides the same services as these competitors. However, Twilio utilizes a cloud-based solution instead of a solution that depends on a customer's purchase of specific software-embedded hardware. Twilio's cloud-based APIs remove the need for a customer to develop its own physical infrastructure comprised of hardware components that it either purchases or rents. The physical infrastructure needed to provide the call control services and media services is housed by Twilio (whether owned or rented) and the capabilities are provided to the customer via the cloud from locations outside of the City.

If applied to Twilio's APIs, the ALT would be applied to such services only in the instance that those services are provided via a cloud-based platform. Therefore, application of the ALT to the APIs is a violation of ITFA because it places a greater tax burden on companies that provide cloud-based services, and thus, discriminates against a form of electronic commerce.

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<sup>25</sup> In addition to violating Proposition 218, such an approach is contrary to the ALT statute, which applies the tax to "each access line", not a percentage of revenues. San Francisco Business and Tax Reg. Code, Art. 10B, § 782(a).

<sup>26</sup> Proposition 218, which added Article XIII C to the California Constitution, requires any local tax increase to be approved by a majority of the voters. Cal. Const. Art. XIII C, § 2(b). A tax is "increased" if a city either increases any applicable rate used to calculate the tax, or revises the methodology by which the tax is calculated if that revision results in an increased amount being levied on any person or parcel. Cal. Gov. Code § 53750(h)(1).

<sup>27</sup> Cal. Const. Art. XIII C, § 2(b).

<sup>28</sup> ITFA § 1101(a)(1)-(2).

<sup>29</sup> *Id.* at § 1105(2)(A).

**K. The ALT Ordinance is Void for Vagueness and thus Unconstitutional and Unenforceable**

The ALT ordinance violates due process of law because the definitional sections of the ordinance are vague and circular.

"A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual."<sup>30</sup> A vagueness challenge will be rejected if the challenged ordinance "(1) gives fair notice of the practice to be avoided, and (2) provides reasonably adequate standards to guide enforcement."<sup>31</sup>

However, an ordinance imposing a tax will be found to be unconstitutionally vague if it is not sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to such tax. An ordinance is not sufficiently explicit where the definitions used in determining parties subject to the tax are circular.<sup>32</sup> The ALT is imposed "on every person who subscribes to telephone communications services within the City and County of San Francisco."<sup>33</sup> However, a "telephone communications service subscriber" is defined as "any person required to pay a tax under this Article."<sup>34</sup> Equally circular, the ALT is to be collected from the telephone communications service subscriber by the service supplier. "Service Supplier" is then defined as "any person supplying an access line to any telephone communications service subscriber within the City and County of San Francisco or the billing agent of any such person."<sup>35</sup>

Both the obligation for payment of the ALT and the obligation for collection of the ALT are dependent upon the definition of a "telephone communications service subscriber." However, such definition is circular in that it refers back to any person on which the tax is imposed. For this reason, the ALT ordinance is unconstitutionally vague and thus void.

**L. Conclusion**

For the reasons discussed above, Twilio respectfully requests that the Tax Collector issue a determination granting Twilio's claim for refund of ALT erroneously paid.

<sup>30</sup> *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.

<sup>31</sup> *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 702.

<sup>32</sup> *City of San Bernardino Hotel/Motel Assn. v. City of San Bernardino*, 59 Cal.App.4th 237, 249 ("Hotel" is defined to include structures used or intended to be used by 'transients,' and 'transient' is defined to be a person who exercises 'occupancy,' which is defined to be the use of a room in a 'hotel.'").

<sup>33</sup> San Francisco Business and Tax Reg. Code, Art. 10B, § 782(a).

<sup>34</sup> San Francisco Business and Tax Reg. Code, Art. 10B, § 781(j).

<sup>35</sup> San Francisco Business and Tax Reg. Code, Art. 10B, § 781(i).



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ELECTRONICALLY

**FILED**

Superior Court of California,  
County of San Francisco

11/04/2022

Clerk of the Court

BY: VANESSA WU

Deputy Clerk

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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO  
and DOES 1 through 20, inclusive,

Defendants

) Case No.: CGC-22-598342  
) [Unlimited Civil Action]

) **FIRST AMENDED COMPLAINT**  
) **FOR A TAX REFUND**

Plaintiff International Business Machines Corporation (hereinafter "IBM" or "Plaintiff").  
alleges as follows:

**PARTIES**

1. IBM is a New York corporation which is authorized to do business in the State of California.

2. Defendant City and County of San Francisco (hereinafter "City") is, and at all times herein relevant was, a consolidated city and county of the State of California.

3. The true names and capacities, whether individual, corporate, associate, or otherwise, or the type of political entity thereof, if any, of the Defendants named herein as DOES 1 through 20, inclusive, who therefore sues such Defendants by their fictitious names pursuant to Code of Civil



1 Procedure §474. Plaintiff will amend this Complaint to state the true names and capacities of such  
2 Defendants if and when they become known. Each of said Defendants are responsible for the acts  
3 herein alleged and are liable to Plaintiff for the refunds herein alleged.

4 NATURE OF ACTION

5 4. This action concerns City business taxes paid by IBM for the year 2018, which were  
6 overpaid in error.

7 5. IBM has timely sought a refund of the overpaid taxes from City but City has, to date,  
8 failed and refused to refund the overpaid amounts.

9 6. As hereinafter alleged, IBM presented a timely claim for refund with respect to the  
10 overpaid amounts, which claim was deemed denied by operation of law. This action is filed within  
11 the statutory period for the commencement of such actions after denial of the claim.

12 PRESENTATION OF CLAIMS –

13 GOVERNMENT CLAIMS ACT

14 7. The general procedure for the presentation of claims against, inter alia, cities and  
15 counties is the Government Claims Act (“GCA”), Government Code section 810 et seq. (Civ. Proc.  
16 Code § 313.) That general procedure applies to tax refund claims against municipal entities.  
17 (*McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 617.)

18 8. On February 12, 2021, Plaintiff served a Claim for Money pursuant to Government  
19 Code §§901 and 910, for a refund of the overpaid portion of IBM’s Payroll Expense Tax to City for  
20 the year 2018, in the amount of \$394,952 (“the Payroll Tax Overpayment Claim”). A true and  
21 correct copy of the Payroll Tax Overpayment Claim is attached hereto as Exhibit 1.

22 9. On February 12, 2021, Plaintiff served a Claim for Money pursuant to Government  
23 Code §§901 and 910, for a refund of the overpaid portion of IBM’s Gross Receipts Tax to City for  
24 the year 2018, in the amount of \$2,577,526 (“the Gross Receipts Tax Overpayment Claim”). A true  
25 and correct copy of the Gross Receipts Tax Overpayment Claim is attached hereto as Exhibit 2.

26 10. City did not take action (such as to allow or reject the claim) with respect either to the  
27 Payroll Tax Overpayment Claim or to the Gross Receipts Tax Overpayment Claim within the time  
28 provided by Government Code section 912.4, or at all, and said claims were accordingly deemed to

1 have been rejected by City on the 45th day after presentation (Gov. Code § 912.4, subd. (c)).

2 11. This action is timely filed thereafter within two years of the accrual of the cause of  
3 action (Gov. Code § 945.6, subd. (a)(2)) with respect to each of the Payroll Tax Overpayment Claim  
4 and the Gross Receipts Tax Overpayment Claim.

5 12. This First Amended Complaint is filed pursuant to Code of Civil Procedure § 472  
6 (amendment prior to answer) and alleges, in addition, claims based upon a subsequently filed Claim  
7 for Refund, submitted on March 18, 2022, as more fully alleged below.

8 FACTS COMMON TO ALL CLAIMS

9 13. IBM is a publicly traded multinational technology and consulting company  
10 headquartered in New York with operations throughout the US and in over 175 countries. IBM  
11 produces and sells computer hardware, middleware and software, and provides hosting and  
12 consulting services in areas ranging from mainframe computers to nanotechnology. IBM is also a  
13 major research organization.

14 14. At times material to this Complaint, IBM's operations consisted of five major  
15 business segments: Cognitive Solutions, Global Business Services, Technology Services & Cloud  
16 Platforms, Systems, and Global Financing. IBM revenue streams are principally derived from the  
17 sales of hardware, licensing and royalty income from software and intellectual property, the  
18 provision of various services, and financing. Outside of the United States, IBM's foreign affiliates  
19 engage in similar activities with similar revenue streams.

20 15. IBM is a "water's-edge" tax filer for purposes of the election provided by California  
21 Revenue & Taxation Code section 25110 et seq.

22 16. In 2018, IBM was engaged in business in the City and generated revenue from  
23 business activity within the City.

24 17. Pursuant to Sections 903 and 933 of the San Francisco Municipal Code ("SFMC), and  
25 at all times herein relevant, City imposes and collects (a) a gross receipts tax upon every person  
26 engaged in business within the City measured by the person's gross receipts from all taxable  
27 business activities attributable to the City; and (b) a payroll expense tax on persons engaged in  
28 business in the City on the portion of that person's payroll expense that is attributable to the City.

1           18.     (The payroll expense tax was subsequently repealed on November 3, 2020, by  
2 Proposition F, which became operative on January 1, 2021, but the repeal is not applicable here.)

3           19.     With respect to the 2018 tax year, IBM timely (pursuant to an extension) filed its  
4 combined 2018 Payroll Expense Tax and Gross Receipts Tax Return on May 24, 2019 ("the  
5 Combined Return").

6           20.     Pursuant to the Combined Return, IBM paid \$478,117 for and on account of the 2018  
7 Payroll Expense Tax; and \$2,823,724, for and on account of the 2018 Gross Receipts Tax; for a  
8 combined total paid to City of \$3,301,841.

9           21.     Said amounts were calculated and paid in error. The Combined Return was  
10 erroneously filed based upon (a) IBM's worldwide income as reported in its annual report, rather  
11 than its gross income as reported for federal income tax and California corporation income tax  
12 purposes in accordance with IBM's "water's edge" election; and (b) a single NAICS (North  
13 American Industry Classification System) business-classification code (and associated business tax  
14 rate), rather than under each of the various NAICS business-classification codes (and their associated  
15 tax rates) applicable to the types of business actually conducted by IBM within the City.

16           22.     IBM amended the Combined Return ("the Amended Return") on February 27, 2020,  
17 when the errors were discovered and when the true gross receipts, payroll and other calculations had  
18 been made.

19           23.     As properly set forth in the Amended Return, the true Payroll Expense Tax for 2018  
20 was \$83,165; and the true Gross Receipts Tax for 2018 was \$246,198; for a total combined tax of  
21 \$329,364.

22           24.     The corrected tax due shown as reported on the Amended Return resulted in an  
23 overpayment (when compared to the taxes actually paid with the Combined Return) for the Payroll  
24 Expense Tax (2018) in the amount of \$394,952; and an overpayment of the Gross Receipts Tax  
25 (2018) of \$2,577,526; for a total overpayment of the combined taxes paid of \$2,972,478.

25. For ease of reference, a recapitulation of the total overpayment is set forth below:

2018 Gross Receipts Tax Paid (Combined Return): \$ 2,823,724

2018 Payroll Expense Tax Paid (Combined Return):\$ 478,117

Total Paid	\$ 3,301,841
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2018 Gross Receipts Tax (Amended Return): \$ (246,198)

2018 Payroll Expense Tax (Amended Return):      \$ (83,165)

Total Payable (Amended Return)	\$ (329,364)
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2018 Gross Receipts Tax (Overpaid):	\$ 2,577,526
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2018 Payroll Expense Tax (Overpaid): \$ 394.952

Total (Overpaid)	\$ 2,972,478
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26. As a result of the mistake alleged herein, IBM overpaid Gross Receipts Tax (2018) and Payroll Expense Tax (2018) in the total amount of \$2,972,478, which amount is within the amount subject to refund as claimed by the Payroll Tax Overpayment Claim and the Gross Receipts Tax Overpayment Claim, in combination with each other.

27. No part of said amount has been refunded to IBM by City.

28. The Amended Return remained, and remains, subject to City's audit and review processes. Despite the pendency of the audit review process, IBM was required by the operation of the Government Claims Act to commence this action. IBM requested a tolling agreement from City but City declined to provide such an agreement.

29. In connection with the City's audit and review process, City agreed that IBM had overpaid 2018 Payroll Expense Tax, but only to the extent of \$105,513.30. But City also denied any grounds for a refund in any amount with respect to the 2018 Gross Receipts Tax and, further, found an alleged deficiency in the (overpaid) Gross Receipts Tax of an additional \$1,694,054.43. The net difference between (i) the overpayment of the 2018 Payroll Expense Tax, to the extent acknowledged by the audit (\$105,513.30), and the (ii) newly found audit deficiency (underpayment) of the 2018 Gross Receipts Tax (\$1,694,054.43), equals \$1,588,541.13.

30. As a result of those audit findings, disputed by IBM, City issued a Notice of Tax Audit Deficiency to IBM on February 26, 2021 in the (net) amount of \$1,588,541.13.



31. Thereafter, IBM sought an administrative redetermination (Petition for Redetermination) of the result of the audit, pertaining to the 2018 tax year. The Petition set forth various errors of the auditor leading to the deficiency assessment.

32. After IBM had filed its Petition for Redetermination, City's Tax Collector issued a decision dated February 23, 2022, which reduced the previously asserted audit deficiency for the 2018 Payroll Expense Tax and 2018 Gross Receipts Tax, combined, from \$1,588,541.13 (as alleged above) to \$309,340.03. The alleged deficiency, as so redetermined, arises solely in reference to the 2018 Gross Receipts Tax.

33. IBM paid the alleged deficiency in the amount stated in the Tax Collector Decision on Petition for Redetermination and thereafter served a Claim for Money pursuant to Government Code §§ 901 and 910, for a refund of \$309,340.03, on March 18, 2022. A true and correct copy of the subsequent (March 2022) claim for refund is attached hereto as Exhibit 3. Said amount was overpaid for the reasons set forth in Exhibit 3, which are incorporated herein by the reference.

34. The total amount overpaid with respect to 2018 Gross Receipts Tax and 2018 Payroll Expense Tax is accordingly the sum of \$2,972,478 (paragraph 25) and \$309,340 (paragraph 34), namely, \$3,281,818.

### FIRST CAUSE OF ACTION

(For Refund of Overpayments - Payroll Expense Tax and Gross Receipts Tax, 2018)

35. The facts alleged hereinabove are incorporated by reference as though fully set forth herein.

36. This is a claim for recovery of taxes illegally or erroneously collected, in excess of the lawful amount.

37. IBM erroneously overpaid \$3,281,818, combined, for Payroll Expense Tax and Gross Receipts Tax in connection with its 2018 Combined Return. Having discovered the error or errors, IBM timely amended its tax return for those tax payments for the year 2018, and the amount of the overpayment or overpayments has been determined to be in the amount stated above; after which IBM was erroneously assessed a purported deficiency payment in the amount set forth above.





1 38. IBM is entitled to a refund of \$3,281,818, combined, for Payroll Expense Tax and  
2 Gross Receipts Tax in connection with its 2018 Combined Return, with interest from the date or  
3 dates of payment.

4 SECOND CAUSE OF ACTION

5 (For Unjust Enrichment)

6 39. The facts alleged hereinabove are incorporated by reference as though fully set forth  
7 herein.

8 40. The amount due from IBM to City for and on account of Payroll Expense Tax and  
9 Gross Receipts Tax for the year 2018 is less than the amount actually paid in the amount of  
10 \$3,281,818.

11 41. City continues to the present date to unjustly retain said sum.

12 42. IBM is therefore entitled to a judgment in the amount of \$3,281,818, plus interest at  
13 the prejudgment rate from the date or dates of payment.

14 THIRD CAUSE OF ACTION

15 (For Money Had and Received and Account Stated against City)

16 43. The facts alleged hereinabove are incorporated by reference as though fully set forth  
17 herein.

18 44. The amount due from IBM to City for and on account of Payroll Expense Tax and  
19 Gross Receipts Tax for the year 2018 is less than the amount actually paid in the amount of  
20 \$3,281,818.

21 45. The sum of money erroneously collected constitutes money of IBM had and received  
22 by City to which it has no claim or ownership, according to the corrected account in effect.

23 46. IBM is therefore entitled to a judgment in the amount of \$3,281,818, plus interest at  
24 the prejudgment rate from the date or dates of payment.

25 WHEREFORE, IBM prays for judgment against City as follows:

26 1. For a refund of 2018 Payroll Expense Tax in the amount of \$394,952; plus interest at  
27 the legal rate from the date of payment to the date of judgment;

28 2. For a refund of 2018 Gross Receipts Tax in the amount of \$2,577,526; plus interest at

1 the legal rate from the date of payment to the date of judgment:

2 3. For a refund of the alleged deficiency for the combined 2018 Gross Receipts Tax in  
3 the amount of \$309,340; plus interest at the legal rate from the date of payment to the date of  
4 judgment;

5 4. For costs of suit incurred:

6 5. For such other and further relief as the Court deems just and proper.

7 DATED: November 4, 2022

8 LEIGHTON M. ANDERSON  
9 JASON C. DEMILLE  
10 JOSEPH A. VINATIERI  
11 BEWLEY LASSLEBEN & MILLER LLP

12 By: 

13 Leighton M. Anderson  
14 Attorneys for Plaintiff International Business  
15 Machines Corporation  
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# EXHIBIT 1



**BEWLEY LASSLEBEN & MILLER LLP**

*Legal Excellence Since 1888*

13215 PENN STREET, SUITE 510, WHITTIER, CA 90602-1797 562.698.9771

JASON C. DEMILLE

CALIFORNIA STATE AND LOCAL TAX GROUP

JOSEPH A. VINATIERI      RICHARD L. DEWBERRY  
JASON C. DEMILLE      MICHAEL T. LEBEAU  
LEIGHTON M. ANDERSON      PATRICIA VERDUGO

February 11, 2021

Office of the County Clerk  
City and County of San Francisco  
City Hall, Room 168  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4678

Re: International Business Machines Corporation (Business Account No. 0014245)  
Claim for Money (Government Code §§901, 910)

Dear Sir/Madam,

Enclosed please find a Claim for Money – Business Tax Overpayment (Payroll Expense Tax)  
pursuant to the Government Claims Act.

If you have any questions regarding the claim, please feel free to contact me.

Very truly yours,

BEWLEY LASSLEBEN & MILLER LLP



JASON C. DEMILLE  
Direct Line: 562.907.2028  
Direct Fax: 562.907.2019  
e-mail: [jason.demille@bewleylaw.com](mailto:jason.demille@bewleylaw.com)

JCD:jas

cc: June Hooks, IBM  
Joseph A. Vinatieri  
Leighton M. Anderson

Controller's Office  
Claims Division  
1390 Market Street, 7th Floor  
San Francisco, CA 94102

Office of the County Clerk  
City and County of San Francisco  
City Hall, Room 168  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4678

With a copy to:

Controller's Office  
Claims Division  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102

**CLAIM FOR MONEY – BUSINESS TAX OVERPAYMENT (PAYROLL EXPENSE  
TAX)**

(Government Code §§ 901, 910)

Claimant International Business Machines Corporation ("Claimant") presents this claim ("Claim") to the City and County of San Francisco, as follows:

1. Postal address of Claimant:

International Business Machines Corporation  
150 Kettletown Road  
Southbury, CT 06488

2. Name and address of persons to whom notices should be sent:

Jason C. DeMille (SBN 143270)  
Joseph A. Vinatieri (SBN 079565)  
BEWLEY, LASSLEBEN & MILLER, LLP  
13215 Penn Street, Suite 510  
Whittier, CA 90602-1797

3. Date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted:

This Claim is a claim for the refund of an overpayment of Claimant's 2018 Annual Gross Receipts Tax as reported in Claimant's 2018 return dated May 29, 2019. The overpayment occurred as a result of an error and the refund was the subject of a Claim for Business Tax Refund (Payroll Expense Tax) dated February 28, 2020; and a prior Amended Return dated February 27, 2020. This Claim is being presented under the Government Claims Act, Government Code § 810 et seq. *McWilliams v. City of Long Beach*, 56 Cal. 4th 613 (2013).

Claimant's mistaken overpayment of the 2018 Payroll Expense Tax arose because

Claimant erroneously relied on its global/worldwide expenses, including payroll expenses, as reported in its annual report, instead of relying on its US "water's edge" expenses for federal income and California franchise tax purposes, and end of year 2017 San Francisco head count, to calculate payroll expenses. As a result, the 2018 Payroll Expense Tax was overstated.

Based on its original 2018 return, Claimant paid Payroll Expense Tax in the amount of \$478,117. After discovery of the above-referenced errors an amended return was filed for the 2018 tax year on February 27, 2020, which amended return reports that the correct amount of Payroll Expense Tax owed for 2018 was \$83,165.41, resulting in an overpayment of \$394,951.69.

4. A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

Claimant is owed a refund of Payroll Expense Tax in the amount of \$394,951.69, plus interest, as established by law.

5. The name or names of the public employee or employees causing the injury, damage, or loss, if known:

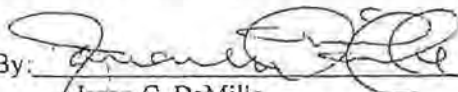
Unknown.

6. Amount claimed if less than \$10,000:

The amount claimed exceeds \$10,000.

DATED: February 11, 2021

Jason C. DeMille (SBN 143270)  
Joseph A. Vinatieri (SBN 079565)  
BEWLEY, LASSLEBEN & MILLER, LLP

By:   
Jason C. DeMille  
Attorneys for Claimant

# EXHIBIT 2



**BEWLEY LASSLEBEN & MILLER LLP**

*Legal Excellence Since 1888*

13215 PENN STREET, SUITE 510, WHITTIER, CA 90602-1797 562.698.9771

JASON C. DEMILLE

CALIFORNIA STATE AND LOCAL TAX GROUP

JOSEPH A. VINATIERI

RICHARD L. DEWDERRY

JASON C. DEMILLE

MICHAEL T. LEBEAU

LEIGHTON M. ANDERSON

PATRICIA VERDUGO

February 11, 2021

Office of the County Clerk  
City and County of San Francisco  
City Hall, Room 168  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4678

Re: International Business Machines Corporation (Business Account No. 0014245)  
Claim for Money (Government Code §§901, 910)

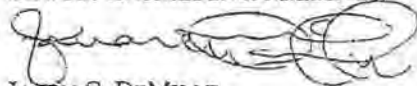
Dear Sir/Madam,

Enclosed please find a Claim for Money – Business Tax Overpayment (Gross Receipts Tax)  
pursuant to the Government Claims Act.

If you have any questions regarding the claim, please feel free to contact me.

Very truly yours,

BEWLEY LASSLEBEN & MILLER LLP



JASON C. DEMILLE

Direct Line: 562.907.2028

Direct Fax: 562.907.2019

e-mail: [jason.demille@bewleylaw.com](mailto:jason.demille@bewleylaw.com)

JCD:jas

cc: June Hooks, IBM  
Joseph A. Vinatieri  
Leighton M. Anderson

Controller's Office  
Claims Division  
1390 Market Street, 7th Floor  
San Francisco, CA 94102

Office of the County Clerk  
City and County of San Francisco  
City Hall, Room 168  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4678

With a copy to:

Controller's Office  
Claims Division  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102

**CLAIM FOR MONEY – BUSINESS TAX OVERPAYMENT (GROSS RECEIPTS TAX)**  
(Government Code §§ 901, 910)

Claimant International Business Machines Corporation ("Claimant") presents this claim ("Claim") to the City and County of San Francisco, as follows:

1. Postal address of Claimant:

International Business Machines Corporation  
150 Kettletown Road  
Southbury, CT 06488

2. Name and address of persons to whom notices should be sent:

Jason C. DeMille (SBN 143270)  
Joseph A. Vinatieri (SBN 079565)  
BEWLEY, LASSLEBEN & MILLER, LLP  
13215 Penn Street, Suite 510  
Whittier, CA 90602-1797

3. Date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted:

This Claim is a claim for the refund of an overpayment of Claimant's 2018 Annual Gross Receipts Tax as reported in Claimant's 2018 return dated May 29, 2019. The overpayment occurred as a result of an error and the refund was the subject of a Claim for Business Tax Refund (Gross Receipts Tax) dated February 28, 2020; and a prior Amended Return dated February 27, 2020. This Claim is being presented under the Government Claims Act, Government Code § 810 et seq. *McWilliams v. City of Long Beach*, 56 Cal. 4th 613 (2013).

Claimant's mistaken overpayment of the 2018 Gross Receipts Tax arose because Claimant erroneously relied on its worldwide income as reported in its annual report, rather than on its gross

income as reported for federal income and California franchise tax purposes based upon Claimant's "water's-edge" election. As a result, the 2018 Gross Receipts Tax was significantly overstated. In addition, Claimant's business activity was erroneously characterized under a single NAICS category (i.e. NAICS Codes 5400-5499). However, Claimant's business activity in San Francisco is properly characterized under several NAICS categories (i.e. NAICS Codes 5400-5499, 5300-5399 and 4400-4599), some of which are subject to tax at a lesser rate than the single NAICS category which was originally reported.

Based on its original 2018 return, Claimant paid Gross Receipts Tax in the amount of \$2,823,724.22. After discovery of the above-referenced errors an amended return was filed for the 2018 tax year on February 27, 2020, which amended return reports that the correct amount of Gross Receipts Tax owed for 2018 was \$246,198.25, resulting in an overpayment of \$2,577,525.97.

4. A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

Claimant is owed a refund of Gross Receipts Tax in the amount of \$2,577,525.97, plus interest, as established by law.

5. The name or names of the public employee or employees causing the injury, damage, or loss, if known:


Unknown.

6. Amount claimed if less than \$10,000:

The amount claimed exceeds \$10,000.

DATED: February 11, 2021

Jason C. DeMille (SBN 143270)  
Joseph A. Vinatieri (SBN 079565)  
BEWLEY, LASSLEBEN & MILLER, LLP

By:   
Jason C. DeMille  
Attorneys for Claimant

# **EXHIBIT 3**

# BEWLEY LASSLEBEN & MILLER LLP

*Legal Excellence Since 1888*

13215 PENN STREET, SUITE 510, WHITTIER, CA 90602-1797 562.698.9771

JASON C. DEMILLE, ESQ.

CALIFORNIA STATE AND LOCAL TAX GROUP

JOSEPH A. VINATIERI      LEIGHTON M. ANDERSON  
JASON C. DEMILLE      MICHAEL T. LEBEAU  
PATRICIA VERDUGO

March 18, 2022

Office of the County Clerk  
City and County of San Francisco  
City Hall, Room 168  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4678

Re: International Business Machines Corporation (Business Account No. 0014245)  
Claim for Money (Government Code §§901, 910)

Dear Sir/Madam,

Enclosed please find a Claim for Money – Business Tax Overpayment (Gross Receipts Tax) pursuant to the Government Claims Act.

If you have any questions regarding the claim, please feel free to contact me.

Very truly yours,

BEWLEY LASSLEBEN & MILLER LLP



JASON C. DEMILLE

Direct Line: 562.907.2028

Direct Fax: 562.907.2019

e-mail: [jason.demille@bewleylaw.com](mailto:jason.demille@bewleylaw.com)

JCD:jas

cc: June Hooks, IBM  
Joseph A. Vinatieri  
Leighton M. Anderson  
Kerne H. O. Matsubara, by email at [Kerne.Matsubara@sfcityattv.org](mailto:Kerne.Matsubara@sfcityattv.org)

Controller's Office  
Claims Division  
1390 Market Street, 7th Floor  
San Francisco, CA 94102



Office of the County Clerk  
City and County of San Francisco  
City Hall, Room 168  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4678

With a copy to:

Controller's Office  
Claims Division  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102

**CLAIM FOR MONEY – BUSINESS TAX OVERPAYMENT (GROSS RECEIPTS TAX)**

(Government Code §§ 901, 910)

Claimant International Business Machines Corporation ("Claimant") presents this claim ("Claim") to the City and County of San Francisco ("City"), as follows:

1. Postal address of Claimant:

International Business Machines Corporation  
150 Kettletown Road  
Southbury, CT 06488

2. Name and address of persons to whom notices should be sent:

Jason C. DeMille (SBN 143270)  
Joseph A. Vinatieri (SBN 079565)  
BEWLEY, LASSLEBEN & MILLER, LLP  
13215 Penn Street, Suite 510  
Whittier, CA 90602-1797

3. Date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted:

This Claim is a claim for the refund of an overpayment relating to Claimant's 2018 Annual Gross Receipts Tax as reported in its 2018 Payroll Expense Tax and Gross Receipts Tax Return dated May 24, 2019. That return resulted in an overpayment of tax as a result of an error which Claimant corrected by filing an Amended Return dated February 27, 2020. As a result of an audit of the Amended Return, a Notice of Deficiency ("NOD") was issued

on February 26, 2021, which NOD was timely petitioned. Following a hearing on the Petition, a Tax Collector Decision on Petition for Redetermination was issued on February 23, 2022, reducing the NOD's outstanding liability for the Gross Receipts and Payroll Expense Tax to \$309,340.03. Claimant paid this amount in full on March 4, 2022.

This Claim is being presented under the Government Claims Act, Government Code § 810 et seq. *McWilliams v. City of Long Beach*, 56 Cal. 4th 613 (2013).

The \$309,340.03 overpayment arises because of the following reasons:

(1) Claimant engages in four core business activities in City as follows: hardware sales, as described by NAICS codes 42 and 44; software and information services, as described by NAICS code 51; professional services, as described by NAICS codes 53 and 54; and financing, as described by NAICS code 52. It also derives a substantial revenue stream from royalties it receives from leasing/licensing its intellectual property (NAICS code 53).

Section 953(a) of the Gross Receipts Tax Ordinance imposes an annual gross receipts tax "measured by the person's gross receipts from all taxable business activities attributable to the City" which is to be calculated according to Sections 953.1 through 953.7. City has erroneously determined that Claimant's sole business activity was personal services, which category is taxed at the highest rate under the Ordinance.

(2) City has erroneously included dividends from IBM's controlled foreign corporations ("CFC's). Dividend income is not the result of any services provided; and the CFC's have no nexus with California/San Francisco. Section 952.3(d) of the Ordinance excludes dividends as "investment receipts." Specifically, "gross receipts shall not include any investment receipts" and "'investment receipts' includes . . . dividends."

(3) City has erroneously included royalty income from IBM's CFC's, which income was received from the licensing of IBM's Intellectual Property that is located in foreign jurisdictions. Section 953.7(c) excludes rental and leasing receipts "derived from or related to properties located or used outside the City."

4. A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

Claimant is owed a refund in the amount of \$309,340.03, plus interest, as established by law.

5. The name or names of the public employee or employees causing the injury, damage, or loss, if known:


Unknown.

6. Amount claimed if less than \$10,000:

The amount claimed exceeds \$10,000.

DATED: March 18, 2022

Jason C. DeMille (SBN 143270)  
Joseph A. Vinatieri (SBN 079565)  
BEWLEY, LASSLEBEN & MILLER, LLP

By:   
Jason C. DeMille  
Attorneys for Claimant

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PROOF OF SERVICE

I am a citizen of the United States. My business address is 13215 Penn Street, Suite 510, Whittier, California 90602-1797. I am employed in the county of Los Angeles where this service occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On November 4, 2022, I served the foregoing document described as **FIRST AMENDED COMPLAINT FOR A TAX REFUND** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

David Chiu, Esq., City Attorney Scott Reiber, Esq., Chief Tax Attorney Kerne Matsubara, Esq. Natassia Kwan, Esq., Deputy City Attorneys Fox Plaza 1390 Market Street, Sixth Floor San Francisco, CA 94102-5408  Telephone: (415) 554-4631 [Matsubara] Telephone: (415) 554-4272 [Kwan] Facsimile: (415) 554-3837 E-mail: kerne.matsubara@sfcityatty.org Natassia.kwan@sfcityatty.org	Attorneys for Defendant  CITY AND COUNTY OF SAN FRANCISCO
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------

- ☐ (BY FAX) by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- ☐ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Whittier, California.
- ☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).
- ☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.
- ☐ (BY E-MAIL) from e-mail address – Norma.Morales@Bewleylaw.com: I transmitted true copies of such document(s) via e-mail to the interested parties at the e-mail addresses set forth on the above service list on this date before 5:00 p.m..
- ☒ (BY ELECTRONIC FILE SERVICE) I caused such document(s) to be served via e-mail to the interested parties at the e-mail addresses set forth on the above service list by using San Francisco County Superior Court's electronic filing system (EFS) and eServe electronic service operated by Janney and Janney Legal Support Service on this date before 5:00 p.m..

1 I declare under penalty of perjury under the laws of the State of California that the foregoing  
2 is true and correct.

3 Executed on November 4, 2022, at Whittier, California.

4   
5 Norma J. Morales





**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

Oct-20-2014 3:16 pm

Case Number: CGC-14-542271

Filing Date: Oct-20-2014 3:10

Filed by: MARYANN E. MORAN

Juke Box: 001 Image: 04660745

COMPLAINT

PILLSBURY WINTHROP SHAW PITTMAN, A DELAWARE VS. CITY AND  
COUNTY OF SAN FRANCISCO ET AL

001C04660745

**Instructions:**

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) <b>PILLSBURY WINTHROP SHAW PITTMAN LLP</b> <b>JEFFREY M. VESELY #67895; RICHARD E. NIELSEN #72104</b> Four Embarcadero Center, 22nd Floor P.O. Box 2824, San Francisco, CA 94126-2824 TELEPHONE NO. (415) 983-1000 FAX NO. (415) 983-1200 ATTORNEY FOR (Name): Plaintiff, Pillsbury Winthrop Shaw Pittman LLP	FOR COURT USE ONLY  <h1 style="margin: 0;">FILED</h1> Superior Court of California County of San Francisco  OCT 20 2014  CLERK OF THE COURT BY: <u>Maya R. Moran</u> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS 400 McAllister Street MAILING ADDRESS CITY AND ZIP CODE San Francisco, CA 94102 BRANCH NAME	
CASE NAME Pillsbury Winthrop Shaw Pittman LLP v. City/Cty of San Francisco, et al	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER <b>CGC 14-542271</b> JUDGE DEPT

Items 1-6 below must be completed (see instructions on page 2)

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |                                                                                                                                |                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties                                                     | d. <input type="checkbox"/> Large number of witnesses                                                                                                      |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence                                                         | f. <input type="checkbox"/> Substantial postjudgment judicial supervision                                                                                  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case (You may use form CM-015.)

Date: 12/20/14  
 Richard E. Nielsen

(TYPE OR PRINT NAME)

Richard E. Nielsen  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code) (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

# SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

City and County of San Francisco and Jose Cisneros, Treasurer and Tax Collector of the City and County of San Francisco

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Pillsbury Winthrop Shaw Pittman LLP, a Delaware Limited Liability Partnership

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO.** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court of the State of California  
City and County of San Francisco, Unlimited Jurisdiction  
400 McAllister Street, San Francisco, California 94102

CASE NUMBER:  
(Número del Caso)

**CGC 14-542271**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Richard E. Nielsen, Pillsbury Winthrop Shaw Pittman LLP, P.O. Box 2824, San Francisco, CA 94126-2824

DATE:

(Fecha) **OCT 20 2014**

CLERK OF THE COURT

Clerk, by

(Secretario)

**M.A. MORAN**

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

- 1 ☐ as an individual defendant.
- 2 ☐ as the person sued under the fictitious name of (specify)
- 3 ☒ on behalf of (specify): City and County of San Francisco  
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☒ other (specify): CCP 416.50 (public entity)
- 4 ☒ by personal delivery on (date):

1 PILLSBURY WINTHROP SHAW PITTMAN LLP  
JEFFREY M. VESELY 67895  
2 RICHARD E. NIELSEN 72104  
Four Embarcadero Center, 22<sup>nd</sup> Floor  
3 Post Office Box 2824  
San Francisco, CA 94126-2824  
4 Telephone: (415) 983-1000  
Facsimile No.: (415) 983-1200  
5  
Attorneys for Plaintiff  
6 PILLSBURY WINTHROP SHAW PITTMAN LLP

**FILED**  
Superior Court of California  
County of San Francisco

OCT 20 2014

CLERK OF THE COURT  
BY: Mary Ann Moran Deputy Clerk

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
10 UNLIMITED JURISDICTION

11  
12 PILLSBURY WINTHROP SHAW )  
PITTMAN LLP, a Delaware Limited ) No. **CGC 14-542271**  
13 Liability Partnership, )  
14 Plaintiff, )  
15 vs. )  
16 CITY AND COUNTY OF SAN )  
FRANCISCO and JOSE CISNEROS, )  
17 TREASURER AND TAX COLLECTOR OF )  
THE CITY AND COUNTY OF SAN )  
18 FRANCISCO, )  
19 Defendants. )  
20

21 Plaintiff Pillsbury Winthrop Shaw Pittman LLP ("Plaintiff", "Pillsbury" or  
22 "Partnership"), in accordance with California Government Code § 945.6, hereby files this  
23 Verified Complaint for Refund of Taxes ("Complaint"). This Complaint constitutes an  
24 appeal of the denial of a claim for refund of payroll expense tax paid by Pillsbury to the  
25 City and County of San Francisco. Plaintiff complains of Defendants as follows:  
26  
27  
28



1 **PARTIES**

2 1. Plaintiff at all times mentioned herein was a limited liability partnership  
3 (“LLP”) organized and existing under the laws of Delaware and qualified to do business in  
4 the State of California. Plaintiff’s principal place of business is located at Four  
5 Embarcadero Center, 22nd Floor, San Francisco, California 94111.

6 2. Defendant City and County of San Francisco (hereinafter “Defendant” or the  
7 “City”) is a political subdivision of the State of California. The City is a “local  
8 government” as defined in the California Constitution art. XIII C, § 1(b).

9 3. Defendant Jose Cisneros (“Treasurer”), at all times relevant herein, was the  
10 Treasurer and Tax Collector of the City. He is sued in his official capacity only.

11 **JURISDICTION AND VENUE**

12 4. Jurisdiction is vested in this Court under sections 940 *et seq.* of the  
13 California Government Code.

14 5. Venue is proper in this Court pursuant to Code of Civil Procedure  
15 Section 394.

16 **BASIS OF THE ACTION**

17 6. Plaintiff brings this action in accordance with Section 945.6 of the California  
18 Government Code. This is an action for refund of payroll expense tax paid by Plaintiff to  
19 Defendants pursuant to San Francisco’s Payroll Expense Tax Ordinance, S.F. Business and  
20 Tax Regulations Code, Article 12-A (“Payroll Expense Tax”). Plaintiff seeks a refund on  
21 the basis that the expansion of the Payroll Expense Tax to apply to profit distributions made  
22 to owners of pass-through entities (such as law partnerships like Plaintiff) is invalid and  
23 unconstitutional. This expansion of the Payroll Expense Tax was purportedly effectuated  
24 by Proposition Q, an ordinance approved by voters in the City on November 4, 2008, and  
25 applicable to tax years beginning January 1, 2009. Plaintiff is entitled to a refund of the  
26 amount of 2012 Payroll Expense Tax it paid on profit distributions to its partners because  
27 the City is precluded from taxing such distributions for at least four reasons. First,  
28 Proposition Q’s alleged expansion of the Payroll Expense Tax was not properly submitted



1 to City voters for their approval as required by California Constitution art. XIII C. Second,  
2 in the alternative, even assuming Proposition Q was properly approved, the text of  
3 Proposition Q cannot be read to expand the Payroll Expense Tax to partnership profit  
4 distributions. By its terms, the Payroll Expense Tax limits its application to "compensation  
5 for services" paid to partners. Plaintiff does not compensate its partners for services, and  
6 profit distributions are not compensation for services. Third, in the alternative, if  
7 Proposition Q is interpreted to reach such profit distributions, Proposition Q violates Rev.  
8 & Tax. Code Section 17041.5, which prohibits municipalities from taxing income of  
9 individuals and partnerships. Fourth, Proposition Q is also invalid under the City's Charter  
10 which mandates that "[a]n ordinance shall deal with only one subject matter" and that  
11 ordinance titles must "clearly reflect the content of the ordinance." S.F. Charter § 2.105.

## 12 **FACTS**

### 13 **Proposition 218's Voter Approval Requirements**

14 7. In 1996, the California electorate approved Proposition 218 ("Prop. 218"),  
15 known as the "Right to Vote on Taxes Act." See Cal. Const. art. XIII C. Prop. 218  
16 established the constitutional right of California citizens to vote on attempts by local  
17 governments to increase general taxes. The codified "Findings and Declarations" of Prop.  
18 218 state:

19 The people of the State of California hereby find and declare that Proposition 13  
20 was intended to provide effective tax relief and to require approval of tax increases.  
21 However, local governments have subjected taxpayers to excessive tax, assessment,  
22 fee and charge increases that not only frustrate the purposes of voter approval for  
23 tax increases, but also threaten the economic security of all Californians and the  
California economy itself. This measure protects taxpayers by limiting the methods  
by which local governments exact revenues from taxpayers without their consent.

24 8. The California voters also codified their intent that "[t]he provisions of  
25 [Prop. 218] shall be liberally construed to effectuate its purposes of limiting local  
26 government revenue and enhancing taxpayer consent." Prop. 218, § 5.

27  
28

1           9.     The essence of Prop. 218 is that “[n]o local government may impose, extend,  
2 or increase any general tax unless and until that tax is submitted to the electorate and  
3 approved by a majority vote.” Cal. Const. art. XIII C, § 2(b).

4           10.    A “general tax” is a “tax imposed for general governmental purposes.” Cal.  
5 Const. art. XIII C, § 1(a).

6           11.    A “local government” is “any county, city, city and county, including a  
7 charter city or county, any special district, or any other local or regional governmental  
8 entity.” Cal. Const. art. XIII C, § 1(b).

9           12.    A tax increase for purposes of Prop. 218 “means a decision by a [local  
10 government] that does either of the following: (A) Increases any applicable rate used to  
11 calculate the tax, assessment, fee or charge; or (B) Revises the methodology by which the  
12 tax, assessment, fee or charge is calculated, if that revision results in an increased amount  
13 being levied on any person or parcel.” Gov. Code § 53750(h).

14          13.    Accordingly, any change in the method of computing tax that results in an  
15 increased amount being levied on any person or entity must be submitted to the voters and  
16 approved by a majority vote.

17                               **The City's Payroll Expense Tax: 1970-2004**

18          14.    Since 1970, the City has imposed the Payroll Expense Tax on every entity  
19 engaging in business in the City. S.F. Bus. & Tax Regulations Code Art. 12-A, sec. 903(a).  
20 The Payroll Expense Tax is for general governmental purposes. *Id.* At sec. 903(a-b).  
21 Generally, the Tax is computed by multiplying the applicable percentage tax rate (currently  
22 1.5%) by “Payroll Expense.” “Payroll Expense” means the compensation paid to, on behalf  
23 of, or for the benefit of an individual, including salaries, wages, bonuses, commissions,  
24 property issued or transferred in exchange for the performance of services and any other  
25 form of compensation for services. *Id.* At sec. 902.1(a).

26          15.    Section 903.1 of Art. 12-A of the S.F. Bus. & Tax Regulations Code  
27 provides for the computation of tax of an Association. The term “Association” is defined to  
28 include a partnership, limited partnership, limited liability company, limited liability

1 partnership and any other form of unincorporated business or enterprise (except a sole  
2 proprietorship). S.F. Bus. & Tax Regulations Code Art. 6, sec. 6.2-4. (For purposes of this  
3 Complaint, the term Partnership is intended to be synonymous with Association and pass-  
4 through entity, and Partner is intended to be synonymous with owner or member.) Section  
5 903.1 provides:

6 The amount of tax for Associations shall be 1½ percent of the payroll expense of  
7 such Association, plus 1½ percent of the total distributions made by such  
8 Association by way of salary to those having an ownership interest in such  
9 Associations. Amounts paid or credited to those having an ownership interest in  
10 such Association prior and in addition to the distribution of ownership profit or loss  
shall be presumed to be distributions "by way of salary" and for personal services  
rendered, unless the taxpayer proves otherwise by clear and convincing evidence.

11 By providing that distributions "by way of salary" to Partners includes only distributions  
12 "prior and in addition to the distribution of ownership profit or loss," Section 903.1  
13 establishes that "distributions of ownership profit or loss" may not be taxed as Payroll  
14 Expense.

15 16. The City's long-standing interpretation of the Payroll Expense Tax as  
16 applied to Partnerships was as described by Hadley Alger, Chief Auditor of the Business  
17 Taxes Division, in an official response dated January 21, 2003, to the question "Under what  
18 circumstances are amounts paid to partners of a partnership, or members of an LLC, subject  
19 to San Francisco Payroll Tax":

20 We have considered your question whether partner draws from a partnership, or  
21 member draws from an LLC, are subject to the San Francisco Payroll Expense Tax.  
22 Such draws are treated as taxable payroll to the extent such draws are expensed at  
23 the entity level rather than debited from the distributee's capital account. We  
24 consider the fact that the distribution does not affect the distributee's capital account  
as establishing that such distribution is "prior to" or "in addition to" the entity's  
profits and losses. (See Article 12-A, Section 903.1, San Francisco Business and  
Tax Regulation Code.)

25 (For purposes of this Complaint, we refer to the above-described methodology as the "Prior  
26 Methodology.") Therefore, Partnership profit distributions were not subject to the Payroll  
27 Expense Tax under the Prior Methodology.

28

1           17.     The City also memorialized its interpretation and application of the Payroll  
2     Expense Tax to Partnerships, as reflected in the Prior Methodology, on the City's Website.

3                     **The City's Unsuccessful Attempt to Modify its Payroll Expense Tax**

4                             **Methodology for Partnerships in 2004**

5           18.     On July 27, 2004, the City's Board of Supervisors passed Ordinance No.  
6     196-04 approving the submission of Proposition K to the City's electorate. Ordinance No.  
7     196-04 submitted to the voters amendments to the S.F. Bus. & Tax Regulations Code to  
8     impose a new temporary business gross receipts and to expend the Payroll Expense Tax to  
9     extend to Partnership profit distributions.

10          19.     Proposition K was included on the November 2, 2004 General Election  
11     ballot for voters in the City.

12          20.     The Voter Information Pamphlet for the November 2, 2004 General Election  
13     provided voters with the full legal text of the propositions submitted to them to be voted  
14     upon at the election, including Proposition K, as required by S.F. Municipal Elections Code  
15     sec. 500(c)(6). A true and correct copy of the Voter Information Pamphlet containing the  
16     Legal Text of Proposition K is attached hereto as Exhibit A and incorporated by reference  
17     as if fully set forth herein. In relevant part, as detailed in the Legal Text, Proposition K  
18     proposed to add Sections 902.1(d) and 902.2 to the Payroll Expense Tax Ordinance and to  
19     delete from Section 903.1 the provision excluding distributions of Partnership profits or  
20     losses from the Payroll Expense Tax (discussed above in paragraph 16). See Ex. A at 162.

21          21.     Proposition K did not receive a majority vote and was not enacted.

22                     **The City's Unsuccessful Attempt to Modify its Payroll Expense Tax**

23                             **Methodology for Partnerships in 2005**

24          22.     Undeterred by the voters' rejection of the City's attempt to expand the  
25     Payroll Expense Tax to Partnership profit distributions, in 2005, the City attempted to  
26     bypass the voters and the restrictions of Prop. 218 through administrative action.

27          23.     Effective for the year 2005, purely through administrative action rather than  
28     by amending the Payroll Expense Tax (as required by Prop. 218) or other formal channel,



1 Defendants changed their interpretation and application of the Payroll Expense Tax, as well  
2 as their methodology for computing the tax of Partnerships. Under the methodology  
3 developed in 2005, the City included in the computation of the Payroll Expense Tax 90% of  
4 Partnership distributions of profit without regard to whether such distributions constituted a  
5 payroll expense. In other words, the City included 90% of the amount of net earnings from  
6 self-employment derived from the Partnership for federal income tax purposes, or the  
7 amount reported for federal purposes on line 14a of the Schedule K of a partner's Form  
8 1065. (For purposes of this Complaint, we refer to the above-described methodology as the  
9 "2005 Methodology.")

10 24. A writ petition was filed in August 2007 challenging the City's 2005  
11 Methodology as an illegal extension and increase in the Payroll Expense Tax as applied to  
12 Partnerships. The basis for the writ petition was that the 2005 Methodology violated Prop.  
13 218 because the change in its taxing methodology was not approved by the majority of the  
14 City's electorate.

15 25. Recognizing the illegality of its actions, the City agreed to abandon the 2005  
16 Methodology in exchange for dismissal of the writ petition. The City returned to its Prior  
17 Methodology, agreeing to "tax distributions to partners only to the extent that the  
18 distributions were determined without regard to the income of the partnership and were  
19 deductible by the partnership for federal income tax purposes, unless and until taxation of a  
20 greater amount is approved by the voters pursuant to the requirements of Proposition 281."  
21 See October 3, 2007 Letter from Deputy City Attorney J. Emery confirming agreement.

22 **Proposition Q**

23 26. Thwarted in its earlier attempts to tax profit distributions to Partners, on  
24 July 29, 2008, the City's Board of Supervisors passed Ordinance No. 147-08 approving the  
25 submission of Proposition Q to the City's electorate. Ordinance No. 147-08 was titled as  
26 follows:

27 Ordinance submitting to the voters an ordinance amending the Business and Tax  
28 Regulations Code by (1) amending Section 902.1 and adding Section 902.2 to



clarify the tax liability of "pass through entities" under the Payroll Expense Tax Ordinance, including 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 and specifying safe harbor measure of taxable payroll expense for owners of pass through entity (200% of compensation for its most highly paid quartile of employees, provided entity has at least 4 employees); and (2) amending Section 905-A to increase the Small Business Tax Exemption to include all taxpayers whose taxable payroll expense is \$250,000 or less.

27. Proposition Q was included on the November 4, 2008 ballot for voters in the City.

28. The Voter Information Pamphlet for the November 2, 2008 General Election provided voters with the full legal text of the propositions submitted to them to be voted upon at the election, including Proposition Q, as required by S.F. Municipal Elections Code sec. 500(c)(6). A true and correct copy of the Voter Information Pamphlet is attached hereto as Exhibit B and incorporated by reference as if fully set forth herein.

29. As required by S.F. Municipal Elections Code sec. 501, at the outset of the full Legal Text of Proposition Q in the Voter Information Pamphlet, the City provided the following guide to allow voters "to distinguish additions to or deletions from existing legislation in the printed text of the measure."

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough italics Times New Roman~~.

The Note makes clear that additions to the existing ordinance are clearly indicated by single-underlined italicized text. Provisions in plain text, therefore, already existed in the ordinance and were not being submitted to the voters for their approval.

30. The Legal Text of Proposition Q submitted to voters in the Voter Information Pamphlet included the following version of Section 902.1(d):

All compensation, including all pass-through compensation for services paid to, on behalf of, or for the benefit of owners of a pass-through entity, shall be included in the calculation of such entity's payroll expense tax base for purposes of determining such entity's tax liability under this Article. For purposes of this section, the "pass-

1 through compensation for services” of a pass-through entity shall be the aggregate  
2 compensation paid by such entity for personal services rendered by all such owners,  
3 and shall not include any return on capital investment. The taxpayer may calculate  
4 the amount of compensation to owners of the entity subject to the Payroll Expense  
5 Tax, or the taxpayer may presume that in addition to amounts reported on a W-2  
6 form, the amount subject to the payroll expense tax is 90% of the amount of net  
7 earnings from self-employment derived from the entity for federal income tax  
8 purposes for each owner, an amount that is two hundred percent (200%) of the  
9 average annual compensation paid to, on behalf of, or for the benefit of the  
10 employees of the pass-through entity whose compensation is in the top quartile (i.e.,  
11 25%) of the entity's employees who are based in the City; provided, the total  
12 number of employees of the entity based in the City is not less than four.

13 Hereinafter, the methodology for computing the amount of compensation to owners  
14 described in the final sentence of Section 902.1(d), above, will be referred to as the “Safe  
15 Harbor Methodology.”

16 31. The Legal Text of Proposition Q indicates that the key provisions extending  
17 the reach of the Payroll Expense Tax to all pass-through compensation already existed in  
18 the law and was not being submitted for voter approval because these provisions are shown  
19 in plain text. The City submitted these key provisions to voters as though they already  
20 existed in the Payroll Expense Tax Ordinance (when they did not) and as though they  
21 already been voted on and approved by voters (when they had not).

22 32. The only aspect of Section 902.1(d) submitted for voter approval by  
23 Proposition Q is a change in the Safe Harbor Methodology, because this is the only  
24 provision in the entire Section that is indicated as a change from existing law.

25 33. A comparison of the Legal Text of Section 902.1(d) in Proposition K (the  
26 City’s 2004 attempt to expand the Payroll Expense Tax to Partnership profits) and  
27 Proposition Q confirms that the City did not properly submit Proposition Q’s expansion of  
28 the Payroll Expense Tax to Partnership profit distributions to the voters for their approval.  
In the Legal Text of Proposition K, the *entire* text of Section 902.1(d) is indicated as an  
addition to existing law, which was accurate. However, the Legal Text of Proposition Q  
indicates that *only* the change in the Safe Harbor Methodology is a change to existing law.  
*Compare* Ex. A at 162 and Ex. B at 264.

1           34.     The Legal Text of Proposition Q submitted to voters indicated that changes  
2     were being made to Section 902.1 of the Payroll Expense Tax Ordinance:

3           The term "Payroll Expense" means the compensation paid to, on behalf of, or for  
4     the benefit of an individual, including shareholders of a professional corporation,  
5     or a Limited Liability Company ("LLC"), including salaries, wages, bonuses,  
6     commissions, property issued or transferred in exchange for the performance of  
7     services (including but not limited to stock options), compensation for services to  
8     owners of pass-through entities, and any other form of compensation, who during  
9     any tax year, perform work or render services, in whole or in part in the City; and if  
10    more than one individual or shareholders of a professional corporation or members  
11   of an LLC, during any tax year performs work or renders services in whole or in part  
12    in the City, the term "Payroll Expense" means the total compensation paid including  
13    salaries, wages, bonuses, commissions, property issued or transferred in exchange  
14    for the performance of services (including but not limited to stock options), in  
15    addition to any compensation for services to owners of pass-through entities, and  
16    any other form of compensation for services, to all such individuals and  
17    shareholders of a professional corporation or members of an LLC.

13           35.     In addition, the Legal Text of Proposition Q submitted to voters indicated  
14     that Section 902.2 was being added to the Payroll Expense Tax Ordinance to define pass-  
15     through entities:

16           SEC. 902.2. PASS-THROUGH ENTITY. The term "pass-through entity" includes  
17     a trust, partnership, corporation described in Subchapter S of the Internal Revenue  
18     Code of 1986, as amended limited liability company, limited liability partnership,  
19     professional corporation, and any other person or entity (other than a disregarded  
20     entity for federal income tax purposes) which is not subject to the income tax  
21     imposed by Subtitle A, Chapter 1 of the Internal Revenue Code of 1986, as  
22     amended, or which is allowed a deduction in computing such tax for distributions to  
23     the owners or beneficiaries of such person or entity ...

22           36.     The changes described in Paragraphs 34 and 35 were consistent with the  
23     City's description of Proposition Q to "clarify" the tax liability of Partnerships. Ex. B at  
24     264. These changes clarified that Partnerships were subject to the Payroll Expense Tax (as  
25     described above in Paragraphs 16-18, 26); they did not alter or expand such liability.

26           37.     In addition, the Legal Text of Proposition Q submitted to voters indicated  
27     that Section 905-A was being added to the Payroll Expense Tax Ordinance to provide an  
28

1 increased small business exemption for businesses with taxable payroll expense of  
2 \$250,000 or less.

3 38. Proposition Q did not change Section 903.1 of the Payroll Expense Tax  
4 Ordinance which continues to provide:

5 The amount of tax for Association shall be 1½ percent of the payroll expense of  
6 such Association, plus 1½ percent of the total distributions made by such  
7 Association by way of salary to those having an ownership interest in such  
8 Associations. Amounts paid or credited to those having an ownership interest in  
9 such Association prior and in addition to the distribution of ownership profit or loss  
shall be presumed to be distributions "by way of salary" and for personal services  
rendered, unless the taxpayer proves otherwise by clear and convincing evidence.

10 39. In contrast, the Legal Text of Proposition K (the City's 2004 attempt to  
11 expand the Payroll Expense Tax to Partner profit distributions) deleted the last sentence  
12 from Section 903.1 excluding Partner profit distributions from Payroll Expense Tax to  
13 Associations in order to avoid conflicting provisions. *See* Ex. A at 162. Proposition Q did  
14 not make this change to existing law, leaving this provision excluding Partner profit  
15 distributions from the Payroll Expense Tax in the ordinance.

16 40. In the Voter Information Pamphlet and in the November 4, 2008 ballot,  
17 Proposition Q was titled "Modifying the Payroll Expense Tax."

18 41. The official wording of Proposition Q on the November 4, 2008 ballot was  
19 as follows: "Shall the City specify that certain partnerships and other businesses are subject  
20 to the City's payroll expense tax and expand the payroll expense tax exemption for small  
21 businesses so that businesses with annual payroll expenses of \$250,000 or less would not  
22 have to pay the tax?" This official wording also does not accurately describe Proposition Q  
23 to the voters for their approval. As explained above the City's long-standing Prior  
24 Methodology was to apply the Payroll Expense Tax to Associations, including Partnerships,  
25 as described in Section 903.1. The purported intent of Proposition Q was to expand the  
26 reach of the Payroll Expense Tax to all Partner compensation, including profit distributions  
27 (which were not taxable under the Prior Methodology).

28



1           42.     In addition to the Legal Text, the Voter Information Pamphlet included the  
2 following Digest for Proposition Q:

3           **The Way it is Now:** The City imposes a 1.5% tax on the payroll expenses of  
4 businesses that have employees working for them in San Francisco. Payroll  
5 expenses include salaries, wages, bonuses, and commissions. The payroll expense  
6 tax does not apply to compensation to owners of certain partnerships and  
7 businesses.

8           The City's payroll expense tax does not apply to small businesses. A company  
9 qualifies as a small business if its payroll expenses do not exceed \$166,667.

10           **The Proposal:** Proposition Q would specify that the City's 1.5% payroll expense  
11 tax applies to compensation paid to shareholders of professional corporations,  
12 members of limited liability companies, and owners of partnerships for their  
13 services.

14           Proposition Q would allow these types of businesses to choose one of two ways to  
15 calculate how much of the payments to their owners is a taxable payroll expense.  
16 The business could:

- 17           ▪ determine how much of the payment to its owners is taxable compensation  
18 for services, or
- 19           ▪ calculate payroll expenses for each owner using a formula specified in the  
20 tax Code.

21           Proposition Q would also expand the City's payroll expense tax exemption for small  
22 businesses.

23           43.     The Voter Information Pamphlet also included the following "Controller's  
24 Statement on 'Q'" from City Controller Ben Rosenfield:

25           Should this ordinance be approved, in my opinion, it would result in a net annual tax  
26 revenue increase to the City of approximately \$10.5 million. The ordinance would  
27 change the number and types of businesses in the City that pay the payroll tax.

28           Some types of corporations compensate their partners by paying them a share of the  
firm's annual profits in addition to any salary paid for services rendered. Currently,  
the City's payroll tax is not paid on these profits. The proposed ordinance would  
require the payroll tax to be paid on all partner compensation, excluding returns on  
investment, and would result in additional gross tax revenue of approximately \$17  
million. . . .



1           44.     The Digest and Controller's Statement provide conflicting descriptions of  
2 Proposition Q that do not, and cannot, ameliorate the serious flaws in the Legal Text  
3 submitted to voters. In one instance, Proposition Q is described as only taxing  
4 compensation paid to Partners for services and in the other, it is described as taxing all  
5 profit distributions. Therefore, these descriptions also fail to set forth the expansion of the  
6 Payroll Expense Tax.

7           45.     Proposition Q was passed by a majority of the City's electorate on  
8 November 4, 2008.

9                           **Plaintiff's 2012 Payroll Expense Tax and Refund Claim**

10          46.     Plaintiff engaged in business within and without the City during the year  
11 2012. In February 2013, Plaintiff filed a timely 2012 Payroll Expense Tax return.

12          47.     On February 13, 2014, in accordance with Gov't Code § 910 *et seq.* and S.F.  
13 Bus. & Tax Regulations Code § 6.15-1, Plaintiff filed a timely claim for refund for the 2012  
14 taxable year for a total of \$408,695.00 (a copy of this claim for refund is attached hereto as  
15 Exhibit C and incorporated by reference as if fully set forth herein).

16          48.     As detailed on the Attachment to the refund claim, \$408,695.00 is the  
17 amount of 2012 Payroll Expense Tax paid by Plaintiff on Partner profit distributions.

18          49.     Most of Plaintiff's Partners are not compensated for their services. Plaintiff  
19 distributes its net profits and losses among its Partners. Plaintiff makes guaranteed  
20 payments to compensate certain partners but Plaintiff seeks no refund of Payroll Expense  
21 Tax paid on these amounts.

22          50.     In submitting its Payroll Expense Tax return for 2012, Plaintiff used the Safe  
23 Harbor Methodology set forth in Section 902.1(d). Plaintiff did not and does not concede  
24 that any portion of its distributions, including the amounts reported using the Safe Harbor  
25 Methodology, constitute compensation for services, and such amounts do not constitute  
26 compensation for services. Rather, Plaintiff used the Safe Harbor Methodology in order to  
27 comply with its obligations to file a Payroll Expense Tax return and to avoid penalties.

28

1           51.     On April 22, 2014, the City denied Plaintiff's claim for refund (a copy of  
2 this denial is attached hereto as Exhibit D and incorporated by reference as if fully set forth  
3 herein).

4           52.     Plaintiff timely filed this Complaint for Refund before October 22, 2014.  
5 Cal. Gov't Code § 945.6; S.F. Bus. & Tax Regulations Code § 6.15-4.

6           53.     Plaintiff has exhausted all available administrative remedies.

7                               **FIRST CAUSE OF ACTION**

8                               **Refund of Payroll Expense Tax – Prop. 218**

9           54.     Plaintiff realleges and incorporates by reference the allegations set forth in  
10 paragraphs 1 through 53 above.

11          55.     Proposition Q's expansion of the Payroll Expense Tax to Partnership profit  
12 distributions is invalid and unconstitutional because it failed to comply with the  
13 requirements of Prop. 218, Cal. Const. art. XIII C.

14          56.     Prop. 218 imposed a constitutional requirement that the City cannot  
15 "impose, extend or increase any general tax unless and until that tax is submitted to the  
16 electorate and approved by a majority vote." It vests California voters with the right to  
17 approve any increase of a local tax.

18          57.     The Legal Text of Proposition Q submitted to voters was fatally flawed. It  
19 did not submit to voters the central provision of Proposition Q in Section 902.1(d)  
20 expanding the Payroll Expense Tax to Partnership profit distributions – the very aspect of  
21 the law that Prop. 218 mandates must be submitted to voters for majority approval. *See Ex.*  
22 *B 15 264.*

23          58.     It is only through proper identification of the changes to an existing  
24 ordinance that a voter is able to approve such changes. *See, e.g.,* S.F. Municipal Elections  
25 Code sec. 501; Elec. Code § 9086. There was no Section 902.1(d) in the Payroll Expense  
26 Tax Ordinance prior to the passage of Proposition Q, yet the Legal Text of Proposition Q  
27 indicated that Section 902.1(d), and most significantly, its provisions expanding the Payroll  
28 Expense Tax to Partnership profit distributions *already existed* in the law (when it did not)

1 and had already been approved by the voters (when it had not). The Legal Text of  
2 Proposition Q indicated that *only* the change in the Safe Harbor Methodology in Section  
3 902.1(d) was submitted for voter approval. *See* Ex. B at 264.

4 59. The fatal flaw in the Legal Text of Proposition Q is confirmed by  
5 comparison to the Legal Text of Proposition K, which clearly indicated that these key  
6 provisions in Section 902.1(d) were being added to the Payroll Expense Tax Ordinance and  
7 submitted for voter approval. In order to comply with Prop. 218, the Legal Text of  
8 Proposition Q must have shown the entirety of Section 902.1(d) in single-underlined,  
9 italicized text (as in the Legal Text of Proposition K). *Compare* Ex. A at 162 and Ex. B at  
10 264. By failing to underline and italicize Section 902.1(d), the City misrepresented to  
11 voters that the Payroll Expense Tax already applied to *all* pass-through compensation to  
12 Partnerships when, in fact, this was the key issue that required majority voter approval  
13 before Proposition Q could be validly enacted.

14 60. Because the key provision expanding the reach of the Payroll Expense Tax  
15 to Partnership profit distributions in Section 902.1(I)(d) was not submitted to voters for  
16 their approval, Proposition Q failed to comply with the constitutional requirements of Prop.  
17 218, and the tax expansion is invalid as a matter of law.

18 61. The Digest and Controller's Statement in the Voter Information Pamphlet  
19 provide conflicting descriptions of Proposition Q that do not, and cannot, ameliorate the  
20 serious flaws in the Legal Text submitted to voters. In one instance, Proposition Q is  
21 described as only taxing compensation paid to Partners for services and in the other, it is  
22 described as taxing all profit distributions. *See* Ex. B at 193.

23 62. The wording of the title for Proposition Q also failed to accurately describe  
24 Proposition Q to the voters. The bold summary language at the beginning of the Legal Text  
25 of Proposition Q describes it as an ordinance to "clarify" the tax liability of pass-through  
26 entities, not to alter or expand such liability. *See* Ex. B at 264.

27 63. The official wording of Proposition Q included in the Voter Information  
28 Guide and on the Ballot also does not accurately describe Proposition Q to the voters for

1 their approval, as required by Prop. 218. The official wording indicates that voters were  
2 asked to decide whether the City should specify that certain partnerships are subject to the  
3 Payroll Expense Tax; however, Partnerships were already subject to the Payroll Expense  
4 Tax, as set forth in Section 903.1. The purported intent of Proposition Q was to expand the  
5 reach of the Payroll Expense Tax to include types of Partner compensation (including profit  
6 distributions) which were not previously taxable. The City's failure to accurately describe  
7 the tax increase or expansion that it was submitting for voter approval violates Prop. 218.

8 WHEREFORE, Plaintiff prays for relief as set forth below.

9 **SECOND CAUSE OF ACTION**

10 **Refund of Payroll Expense Tax – Interpretation**

11 64. Plaintiff realleges and incorporates by reference the allegations set forth in  
12 paragraphs 1 through 63 above.

13 65. In the alternative, even assuming Proposition Q had been properly approved,  
14 Proposition Q's amendments were not effective in expanding the Payroll Expense Tax to  
15 profit distributions to Partners. The plain language of Proposition Q does not support  
16 inclusion of non-guaranteed distributions to Partners in the measure of a partnership's  
17 Payroll Expense Tax.

18 66. Although Proposition Q amended certain provisions of the Payroll Expense  
19 Tax, it did not amend a key provision governing the tax base for Associations. Section  
20 903.1 continues to provide explicitly that "distribution of ownership profit or loss" is not  
21 included within a Partnership's payroll expense tax base. Similarly, according to the Board  
22 of Supervisors, Proposition Q is meant "to clarify the tax liability of 'pass-through' entities"  
23 rather than to drastically depart from the taxation methodology for Partnerships under the  
24 Payroll Expense Tax Ordinance since its enactment in 1970.

25 67. It is noteworthy that when the City attempted to pass Proposition K  
26 expanding the Payroll Expense Tax to Partnerships, it was more careful in its drafting and  
27 deleted the provisions in Section 903.1 addressing "distributions of ownership profit or  
28



1 loss." The City's errors in drafting Proposition Q have resulted in an inconsistent ordinance  
2 which cannot be read fairly to impose taxation on Partner profit distribution.

3 68. In addition, the language that Proposition Q purported to change in the  
4 Payroll Expense Tax is to define the tax base of a Partnership as "compensation for  
5 services." However, distributions of profits by a Partnership are not compensation for  
6 services.

7 69. "Compensation for services" incorporates the concepts of effort expended  
8 and market value for that effort. Profit distributions are not "compensation for services."  
9 They are the allocation of the net income of the Partnership among its owners.

10 70. Indeed, California law makes clear that Partnership profit distributions are  
11 not compensation for services. Cal. Corp. Code § 16401(h) states that "a partner is not  
12 entitled to remuneration for services performed for the partnership." *See also*, Cal. Corp.  
13 Code § 16957 (distributions by limited liability partnership to its partners are "without  
14 consideration"); § 17001(j).

15 71. When a Partner is compensated for the provision of services, the payment to  
16 the Partner is deemed a "guaranteed payment." A guaranteed payment is contractually set  
17 by the parties, typically prior to the provision of services, and it is an obligation of the  
18 Partnership with priority before any profits are distributed.

19 72. Plaintiff does not compensate most of its Partners for their services, and,  
20 with limited exceptions, does not provide any guaranteed payments to its Partners. Rather,  
21 most of Plaintiff's Partners receive only distributive shares of the profits, and such shares  
22 are not guaranteed. A Partner's distributive share represents his or her share of Partnership  
23 profits. The amount of a Partner's total annual distribution reflects the ability of the  
24 Partnership as a whole to generate revenues and manage expenses. If the Partnership failed  
25 to make a profit, Partnership distributions to most of its partners would be zero regardless  
26 of the services performed.

27 73. Tax law also confirms the distinction between guaranteed payments and  
28 non-guaranteed distributions. Subchapter K of the Internal Revenue Code makes explicit



1 that guaranteed payments are deductible in the calculation of the Partnership's net income  
2 and treated as an expense of the Partnership, akin to salaries paid to employees. After  
3 deducting expenses, including guaranteed payments, the Partnership's net income is  
4 calculated and then distributed among the Partners. See Schedules K and K-1 to Form  
5 1065. Each Partner's non-guaranteed distributive share of the Partnership's net profits is  
6 Partnership income, not compensation for services (I.R.C. § 702). California incorporates  
7 federal law in all aspects relevant to this action. Rev. & Tax. Code § 17851.

8       74. For all of these reasons, the plain language of the Payroll Expense Tax  
9 Ordinance does not permit an interpretation of the term "compensation for services" to  
10 include non-guaranteed Partnership profit distributions—Partners are not compensated for  
11 their services, profit distributions are not compensation for services, Section 903.1 excludes  
12 profit distributions from the Payroll Expense Tax, and Section 902.1(d) excludes returns on  
13 capital investment from the Payroll Expense Tax.

14       75. Indeed, such an interpretation of Proposition Q is compelled to avoid  
15 rendering Proposition Q unconstitutional. To interpret Proposition Q to include non-  
16 guaranteed distributions of the Partnership's net income would violate the federal and  
17 California Constitutions, including but not limited to the Due Process, Commerce, and  
18 Equal Protection Clauses.

19       76. In the alternative, even if the Payroll Expense Tax Ordinance could be  
20 interpreted to tax some portion of profit distributions to the extent that they are  
21 compensation for services, Plaintiff is entitled to a refund based on the application of the  
22 Ordinance to its facts. As alleged, Plaintiff does not compensate its Partners for their  
23 services and is entitled to a refund of Payroll Expense Tax paid on all distributions that are  
24 not compensation for services. In addition, Section 903.1 excludes profit distributions from  
25 taxation. Finally, Plaintiff is entitled to a refund of Payroll Expense Tax paid on  
26 distributions that represent return on capital investment, pursuant to Section 902.1(d).

27       77. In submitting its Payroll Expense Tax return for 2012, Plaintiff used the Safe  
28 Harbor Methodology set forth in Section 902.1(d). Plaintiff did not and does not concede

1 that any portion of its distributions, including the amounts reported using the Safe Harbor  
2 Methodology, constitute compensation for services, and such amounts do not constitute  
3 compensation for services. Rather, Plaintiff used the Safe Harbor Methodology in order to  
4 comply with its obligations to file a Payroll Expense Tax return and to avoid penalties.

5 WHEREFORE, Plaintiff prays for relief as set forth below.

6 **THIRD CAUSE OF ACTION**

7 **Refund of Payroll Expense Tax – Taxation of Profit Distributions Violates**

8 **Rev. & Tax. Code § 17041.5**

9 78. Plaintiff realleges and incorporates by reference the allegations set forth in  
10 paragraphs 1 through 77 above.

11 79. In the alternative, even assuming Proposition Q had been properly approved,  
12 Proposition Q's attempt to tax profit distributions to Partners violates Revenue & Taxation  
13 Code Section 17041.5 which bans income taxes imposed by local jurisdictions (including  
14 chartered cities). Rev. & Tax. Code § 17041.5 provides:

15 Notwithstanding any statute, ordinance, regulation, rule or decision to the contrary,  
16 no city, county, city and county, governmental subdivision, district, public and  
17 quasi-public corporation, municipal corporation, whether incorporated or not or  
18 whether chartered or not, shall levy or collect or cause to be levied or collected any  
19 tax upon the income, or any part thereof, of any person, resident or nonresident.

20 80. Rev. & Tax. Code § 17007 defines person to include "individuals'  
21 fiduciaries, partnerships, limited liability companies, and corporations." Thus, the plain  
22 language of Section 17041.5 bars a tax on the income of either Partners or the Partnership.

23 81. If Proposition Q is interpreted to require inclusion of K-1 reported net  
24 earnings from self-employment in the Partnership's Payroll Expense Tax base, it would be  
25 an unlawful tax on income by a local jurisdiction.

26 82. Profit distributions to Partners are income. They are the allocation of the net  
27 income of the Partnership among its owners after expenses are paid. Subchapter K of the  
28 Internal Revenue Code makes explicit that each Partner's distributive share of the  
29 Partnership's net profits is income (I.R.C. § 702), and Rev. & Tax Code § 17851 mandates

1 that Subchapter K applies to the taxation of partners and partnerships in California. *See*  
2 *also* ¶ 74 *supra*. Therefore, the measure that the City is now seeking to tax is income.

3 83. This defect is not cured by allowing partnerships to compute their Tax  
4 liability pursuant to the Safe Harbor Methodology because taxing even a portion of K-1  
5 reported net earnings from self-employment (which includes profit distributions) constitutes  
6 an unlawful income tax. Using the Safe Harbor Methodology does not change the character  
7 of the Partner profit distributions as income.

8 WHEREFORE, Plaintiff prays for relief as set forth below.

9 **FOURTH CAUSE OF ACTION**

10 **Refund of Payroll Expense Tax – Violation of Single Subject Rule**

11 84. Plaintiff realleges and incorporates by reference the allegations set forth in  
12 paragraphs 1 through 83 above.

13 85. As noted above, Proposition Q contained both the purported tax increase  
14 challenged in this lawsuit and a tax decrease achieved by increasing the small business tax  
15 exemption. The latter tax decrease did not require a vote of the electorate.

16 86. The City's single subject rule provides in relevant part: "An ordinance shall  
17 deal with only one subject matter." SF Charter section 2.105.

18 87. One of the purposes of the single subject rule is to minimize the risk of voter  
19 confusion and deception or, stated differently, to prevent "logrolling" or exploiting the  
20 initiative process by combining in a single measure several provisions which might not  
21 have commanded majority support if considered separately. Yet, this is exactly what  
22 happened when the two different positions of Proposition Q were combined into a single  
23 initiative.

24 88. The fact that Proposition K – the expansion of the Payroll Expense Tax to  
25 Partnership profit distributions *without* an increased tax exemption – did not pass, while  
26 Proposition Q's packaging of the expansion with an increased tax exemption did pass,  
27 raises serious concerns at the heart of the single subject rule.

1 89. By combining both a tax increase and a tax exemption, Proposition Q was  
2 both misleading and lacking in any common purpose, as required by a single subject rule.

3 90. Section 2.105 contains the separate and related requirement that the "title of  
4 each ordinance shall clearly reflect the content of the ordinance." Here, the title of  
5 Proposition Q did not clearly reflect its content as it indicated that the ordinance would  
6 "clarify" the tax liability of Partnerships, not alter or expand such liability.

7 91. Thus, Proposition Q violates the requirements of S.F. Charter § 2.105.

8 WHEREFORE, Plaintiff prays for relief as set forth below.

9 **PRAYER FOR RELIEF**

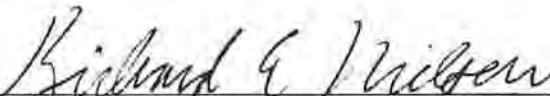
10 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 11 1. For a refund of Payroll Expense Tax paid by Plaintiff for the year 2012 in  
12 the amount of \$408,695.00, plus interest from the date of payment as  
13 provided by law;  
14 2. For Plaintiff's attorneys' fees and costs of suit as permitted by law; and  
15 3. For such other and further legal and equitable relief as the Court deems just  
16 and reasonable.

17 Dated: October 17<sup>th</sup>, 2014.

18 PILLSBURY WINTHROP SHAW PITTMAN LLP  
19 JEFFREY M. VESELY  
20 RICHARD E. NIELSEN  
21 50 Fremont Street  
22 Post Office Box 7880  
23 San Francisco, CA 94120-7880

24 By

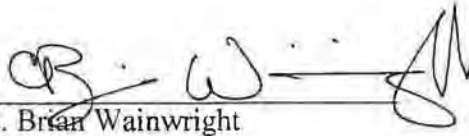
  
25 Richard E. Nielsen  
26 Attorneys for Plaintiff  
27 PILLSBURY WINTHROP SHAW  
28 PITTMAN LLP

1 VERIFICATION

2 I, C. BRIAN WAINWRIGHT, have read the foregoing Verified Complaint and the  
3 exhibits incorporated therein, and know the contents thereof. I am authorized to make this  
4 verification. I am informed and believe that the information contained in said document is  
5 true, and on that ground I allege that the information stated therein is true.

6 I declare under penalty of perjury under the laws of the State of California that the  
7 foregoing is true and correct.

8 Executed this 17<sup>th</sup> day of October, 2014, at Palo Alto, CA.

9  
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11   
12 C. Brian Wainwright  
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## **EXHIBIT A**

DEPARTMENT OF ELECTIONS  
*City and County of San Francisco*



JOHN ARNTZ  
*Director*

September 12, 2004

Dear San Francisco Voter:

The November 2, 2004 General Election will be a historic election for San Francisco because it will be the first time San Franciscans use "ranked-choice voting" to elect local officials. Voters amended the City Charter in March 2002 to require the use of ranked-choice voting, also called "instant run-off elections" to elect most local officials. This November, voters in seven of the City's eleven districts—districts 1, 2, 3, 5, 7, 9 and 11—will elect supervisors using this new voting method. Please turn to page 7 to view a district map if you are unsure if your district will have a contest for Supervisor.

The ballot card that lists candidates for Supervisor will look very different from the ballots San Francisco has used in the past and will have different voting instructions. Ballots for contests using ranked-choice voting will have three columns, side-by-side, and each column will have a complete list of the district candidates. The voter will be instructed to select a first-choice candidate in the first column, a second-choice candidate in the second column, and a third-choice candidate in the third column. For specific information about how to mark the ranked-choice ballot, please turn to page 10.

I recommend that voters familiarize themselves with the ranked-choice ballot in advance of the election, and share this information with other voters. I also encourage voters to attend one of the Department of Elections' weekly presentations on ranked-choice voting. These presentations are conducted in English, Spanish, Cantonese and Mandarin, and are held at City Hall and in neighborhoods throughout San Francisco.

Ranked-choice voting does not affect contests for federal or State office, or ballot measures. For this reason, voters can expect that the portion of the ballot that lists these candidates and measures will be familiar—this portion of the ballot will have the same design and voting instructions that San Francisco has used since November 2000.

In addition to information about ranked-choice voting, this Voter Information Pamphlet includes a sample of the official ballot for this election, as well as information about candidates and ballot measures. The back cover lists the address of your polling place. Since we sometimes need to relocate polling places between elections, I recommend that each voter check the location of his or her polling place before election day.

For more information about the November 2, 2004 election and ranked-choice voting, please visit our website at [www.sfgov.org/election](http://www.sfgov.org/election) or call the Department of Elections at 554-4375.

Respectfully,

John Arntz  
Director of Elections

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1 Dr. Carlton B. Goodlett Place – Room 48, San Francisco, CA 94102-4634  
Voice (415) 554-4375; Fax (415) 554-7344; Absentee Fax (415) 554-4372; TDD (415) 554-4386

38-CP2-NE04

## Purpose of the Voter Information Pamphlet

The purpose of this pamphlet is to provide voters with information about candidates and ballot measures in advance of each election. In addition to the sample ballot, this pamphlet contains: information about the qualifications of candidates for local office; information about the duties and salaries of the elective offices sought by those candidates; the legal text of each local ballot measure; an impartial summary of each local ballot measure prepared by the City's Ballot Simplification Committee; a financial analysis of each local ballot measure prepared by the City's Controller; an explanation of how each local ballot measure qualified for the ballot; and arguments supporting and opposing local ballot measures. This pamphlet is also available in Chinese and Spanish.

The Department of Elections delivers the voter information pamphlets to the Post Office for delivery to individual voters. If you do not receive your pamphlet in a timely manner, please contact your local Post Office and the Department of Elections.

Este folleto también está disponible en español. Para solicitar una copia en español, por favor llame al teléfono (415) 554-4366.

這本手冊有中文版。要索取中文版，請致電 (415) 554-4367。

## The Ballot Simplification Committee

The Ballot Simplification Committee prepares an impartial summary of each local ballot measure. In addition, the Committee writes or reviews other information in this pamphlet, including the glossary of "Words You Need to Know" and the Frequently Asked Questions. The Committee members have backgrounds in journalism and written communication, and they volunteer their time to prepare these informational materials for voters. The Committee members are:

Betty Packard, Chair  
*Nominated by the Northern California  
Broadcasters Association*

Alma Carroll  
*Nominated by the National Association of  
Television Arts and Sciences*

Suzanne Stassevlitch  
*Nominated by the League of Women Voters*

Julia Mott, *Ex officio*  
*Deputy City Attorney*

John Arntz, *Ex officio*  
*Director of Elections*



## Access for the Disabled Voter

by the Ballot Simplification Committee

### Before Election Day

**Absentee voting**— All voters may request that an absentee ballot be mailed to them, or they may vote in person at the Department of Elections, City Hall, One Dr. Carlton B. Goodlett Place, Room 48, from October 4 through November 2.

The office hours are:

- 8 a.m. to 5 p.m., Monday through Friday;
- 10 a.m. to 4 p.m., on Saturday and Sunday, October 23-24 and October 30-31;
- 7 a.m. to 8 p.m. on Election Day, November 2.

In addition, all voters may apply to become Permanent Absentee Voters (see page 8). Ballots for all future elections will automatically be mailed to Permanent Absentee Voters.

**Tape recordings**— The San Francisco Public Library for the Blind and Print Handicapped, 100 Larkin Street, produces and distributes tape-recorded copies of the Voter Information Pamphlet for use by visually impaired voters. Voters may request a tape-recorded copy by calling Martin Magid at the San Francisco Public Library for the Blind and Print Disabled, at (415) 557-4253, or may obtain a copy at any branch of the San Francisco Public Library.

**TDD (Telecommunications Device for the Deaf)**— Hearing-impaired or speech-impaired voters who have a TDD may communicate with the San Francisco Department of Elections office by calling 554-4386.

### On Election Day

**Assistance**— Persons unable to complete their ballot may bring one or two persons with them into the voting booth to assist them, or they may ask poll workers to provide assistance.

**Curbside voting**— If architectural barriers prevent an elderly or disabled voter from entering the polling place, poll workers will bring the necessary voting materials to the voter in front of the polling place.

**Parking**— If a polling place is situated in a residential garage, elderly and disabled voters may park in the driveway while voting, provided they do not block traffic.

**Reading tools**— Every polling place has large-print instructions on how to vote and special sheets to magnify the type on the ballot.

**Seated voting**— Every polling place has at least one voting booth which allows voters to vote while sitting in a chair or a wheelchair.

**Voting tools**— Every precinct has an easy-grip pen for signing the roster and an easy-grip special pen for marking the ballot.

# Voter Bill of Rights

1. **You have the right to cast a ballot if you are a valid registered voter.**  
A valid registered voter means a United States citizen who is a resident in this state, who is at least 18 years of age and not in prison or on parole for conviction of a felony, and who is registered to vote at his or her current residence address.
2. **You have the right to cast a provisional ballot if your name is not listed on the voting rolls.**
3. **You have the right to cast a ballot if you are present and in line at the polling place prior to the close of the polls.**
4. **You have the right to cast a secret ballot free from intimidation.**
5. **You have the right to receive a new ballot if, prior to casting your ballot, you believe you made a mistake.**  
If, at any time before you finally cast your ballot, you feel you have made a mistake, you have the right to exchange the spoiled ballot for a new ballot. Absentee voters may also request and receive a new ballot if they return their spoiled ballot to an elections official prior to the closing of the polls on Election Day.
6. **You have the right to receive assistance in casting your ballot, if you are unable to vote without assistance.**
7. **You have the right to return a completed absentee ballot to any precinct in the county.**
8. **You have the right to election materials in another language, if there are sufficient residents in your precinct to warrant production.**
9. **You have the right to ask questions about election procedures and observe the elections process.**  
You have the right to ask questions of the precinct board and election officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the board or election officials may discontinue responding to questions.
10. **You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's Office.**

If you believe you have been denied any of these rights, or if you are aware of any elections fraud or misconduct, please call the Secretary of State's confidential toll-free

**Voter Protection Hotline at 1-800-345-VOTE [8683]**

**CALIFORNIA SECRETARY OF STATE KEVIN SHELLEY**

# Frequently Asked Questions

by the Ballot Simplification Committee

**Q — Who can vote?**

**A —** U.S. citizens, 18 years or older, who are registered to vote in San Francisco on or before October 18, 2004.

**Q — My 18th birthday is after October 18, 2004 but on or before November 2. May I vote in the November 2 election?**

**A —** Yes, if your 18th birthday is on or before November 2, but after October 18, you can register to vote on or before October 18 and vote November 2 — even though you were not 18 at the time you registered to vote.

**Q — If I was arrested or convicted of a crime, can I still vote?**

**A —** You can vote as long as you are not in prison or on parole for a felony conviction. You must be registered to vote.

**Q — I have just become a U.S. citizen. Can I vote in the November 2 election?**

**A —** If you became a U.S. citizen on or before October 18, you may vote in the election, but you must register to vote by October 18.

**OR**

If you became a U.S. citizen after October 18, but on or before October 26, you may register and vote at the Department of Elections office with proof of citizenship and proof of San Francisco residency.

**Q — I have moved within the county but have not re-registered. Can I vote in this election?**

**A —** Yes, but you must go to your new polling place and complete a voter registration card to update your registration information.

**Q — When do I vote?**

**A —** Election Day is Tuesday, November 2, 2004. Your polling place will be open from 7 a.m. to 8 p.m.

**Q — Where do I go to vote?**

**A —** Go to your polling place. The address is on the back cover of this book.

**Q — What do I do if my polling place is not open?**

**A —** Check the label on the back of this book to make sure you have gone to the right place. Polling places often change. If you are at the right place, call the Department of Elections at 554-4375 to let them know the polling place is not open.

**Q — If I don't know what to do when I get to my polling place, is there someone there to help me?**

**A —** Yes, the poll workers at the polling place will help you.

**Q — Can I take my sample ballot or my own written list into the voting booth?**

**A —** Yes. Deciding your votes before you get to the polls will help. You can locate your sample ballot inside this voter pamphlet.

**Q — Is there any way to vote instead of going to the polling place on Election Day?**

**A —** Yes, you can vote before November 2 if you:

Fill out and mail the Absentee Ballot application printed on the back cover of this book. Within three days after we receive your request, a vote-by-mail ballot will be sent to you. Your request must be received by the Department of Elections no later than 5 p.m. on October 26, 2004;

**OR**

Go to the Office of the Department of Elections at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 48, from October 4 through November 2. The office hours are: from 8 a.m. to 5 p.m., Monday through Friday; from 10 a.m. to 4 p.m. Saturday and Sunday starting October 23-24 and October 30-31; and from 7 a.m. to 8 p.m. on Election Day, November 2.

**Q — If I don't use an application form, can I get an Absentee Ballot some other way?**

**A —** You can send a note, preferably on a postcard, to the Department of Elections asking for a ballot. This note must include: your printed home address, the address where you want the ballot mailed, your birthdate, your printed name and your signature. Mail your request or fax it to (415) 554-4372. Your request must be received by the Department of Elections no later than 5 p.m. on October 26, 2004.

Any voter has the right under California Elections Code Sections 9295 and 13314 to seek a writ of mandate or an injunction, prior to the publication of the Voter Information Pamphlet, requiring any or all of the materials submitted for publication in the Pamphlet to be amended or deleted.



# NEW THIS NOVEMBER:

## RANKED-CHOICE VOTING

Ranked-choice voting (also known as "instant run-off voting") was passed by San Francisco voters as an amendment to the City Charter (Proposition A) in March 2002. Ranked-choice voting allows for elections in which candidates win by majority vote totals without the need for separate run-off elections.

Ranked-choice voting authorizes San Francisco voters to elect local officials by ranking a first, second and third choice candidate for each office.

### **Ranked-choice ballots are counted in the following way:**

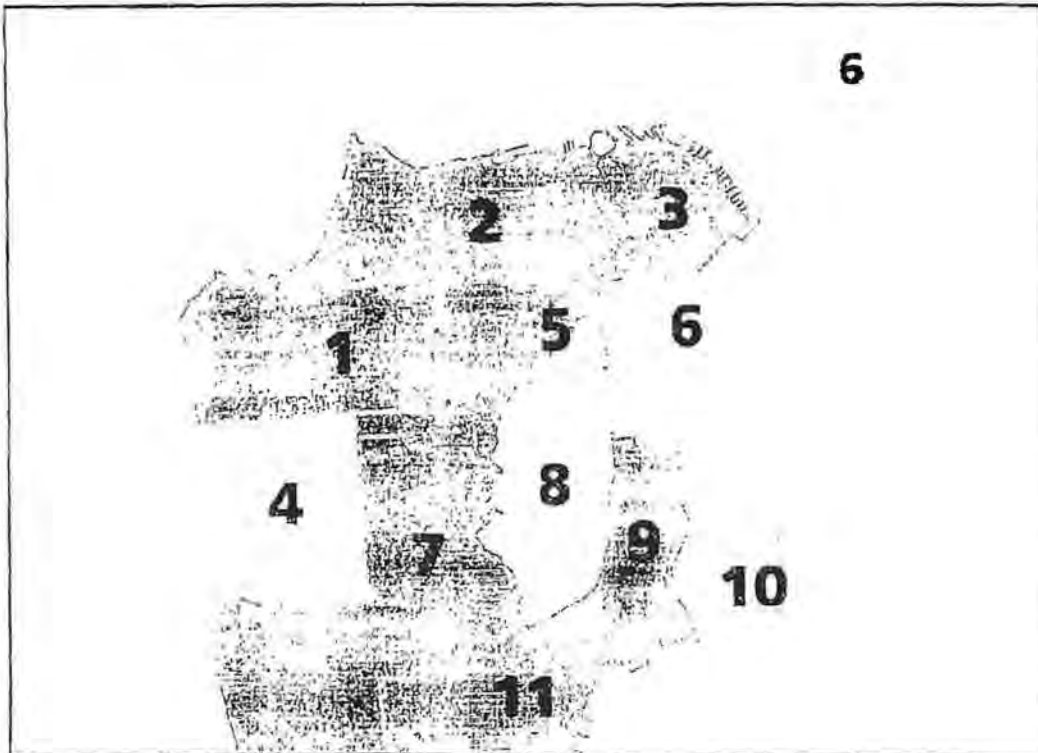
- Every first-choice selection is counted. A candidate who receives a majority (more than 50%) of the first-choice rankings is declared the winner.
- If no candidate receives more than 50% of the first-choice selections, the candidate who received the fewest number of first-choice selections is eliminated from the race.
- Voters who selected the eliminated candidate as their first choice will have their vote transferred to their second choice.
- All votes are recounted.
- Once the recount is finished, the candidate who has received more than 50% of the votes is declared the winner.
- If no candidate receives more than 50% of the votes in the recount, the process of eliminating candidates and transferring of votes to the next-ranked candidate is repeated until a candidate has a winning majority.

San Francisco voters will use ranked-choice voting when electing members of the Board of Supervisors, Mayor, Sheriff, District Attorney, City Attorney, Treasurer, Assessor-Recorder, and Public Defender.

For the November 2, 2004 election, San Francisco voters will elect members of the Board of Supervisors for Districts 1, 2, 3, 5, 7, 9 and 11. (San Francisco voters who live in Supervisorial districts 4, 6, 8 and 10 will not use ranked-choice voting this election). To locate your district, turn to the map on page 7. For instructions on how to mark the ranked-choice ballot, turn to page 10.

## San Francisco's Supervisorial Districts

San Francisco is divided into eleven Supervisorial districts. Each district is represented by one member of the Board of Supervisors. For the November 2, 2004 election, San Francisco voters who live in districts 1, 2, 3, 5, 7, 9 and 11 will elect their member of the Board of Supervisors. To find out which district you live in, please refer to the map.



**District 1** covers most of the Richmond neighborhood.

**District 2** includes the Presidio, Cow Hollow, Marina, and Pacific Heights neighborhoods, as well as part of the Richmond neighborhood.

**District 3** includes Chinatown, Nob Hill, Russian Hill, Telegraph Hill, and the waterfront.

**District 4** covers most of the Sunset neighborhood.

**District 5** includes the Haight-Ashbury, Panhandle, and Western Addition neighborhoods.

**District 6** includes the Civic Center and South of Market neighborhoods and Treasure Island.

**District 7** includes Park Merced and Twin Peaks.

**District 8** includes the Castro, Noe Valley, Glen Park, and Upper Market neighborhoods.

**District 9** includes the Mission and Bernal Heights neighborhoods.

**District 10** includes the Bayview, Hunter's Point, and Potrero Hill neighborhoods.

**District 11** includes the Ingleside, Excelsior, Ocean View and Merced Heights neighborhoods.



## Early Voting

(In person or by mail)

You no longer need a reason such as illness or travel to qualify to cast your ballot prior to election day. Any voter may request an absentee ballot. You can request that a ballot be mailed to you, or you can come to the Department of Elections and vote an absentee ballot starting on October 4, 2004.

### EARLY VOTING IN PERSON

Office hours for early voting are as follows:

- 8 a.m. to 5 p.m., Monday through Friday, beginning October 4 at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 48;
- 10 a.m. to 4 p.m., Saturday and Sunday starting October 23-24 and October 30-31;
- 7 a.m. to 8 p.m. on Election Day, November 2 at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 48.

### EARLY VOTING BY MAIL

To request an absentee ballot by mail, complete the application card on the back cover of this pamphlet, and mail it to the Department of Elections. You may also request a ballot by sending a short note or postcard to the Department of Elections. When making such a request, remember to include your home address, the address to which you want the ballot mailed, your birthdate, name and signature. Your signature must be included! Mail your request or fax it to (415) 554-4372. Your request must be received by the Department of Elections before 5 p.m. on October 26, 2004. (By law, the Department of Elections cannot accept requests for absentee ballots received after 5 p.m. on October 26, 2004, regardless of when these requests are postmarked!). Within three days after we receive your request, an absentee ballot will be sent to you.

When you receive your absentee ballot, please read the instructions carefully. You can mark your absentee ballot using a pencil or black pen. (Because permanent markers can bleed through to the reverse side of the ballot card, the Department of Elections does not recommend the use of felt tip pens.)

You can mail your absentee ballot back to the Department of Elections by inserting your absentee ballot into the envelope provided, signing and sealing the envelope, and dropping it in any mailbox—no stamp is required! You can also drop off your voted absentee ballot at any polling place on Election Day, Tuesday, November 2, 2004. The Department of Elections MUST receive your absentee ballot by 8 p.m. on Tuesday, November 2, 2004.

## Permanent Absentee Voter

(Permanent Vote-by-Mail)



Any registered voter may request to be a Permanent Absentee Voter. Permanent Absentee Voter status is no longer limited to those voters with physical disabilities.

Once you are on our permanent absentee voter mailing list, we will mail you an absentee ballot automatically for every election until you move, re-register, or do not vote in a statewide general election. If you do not vote in a statewide general election, you will no longer be a permanent absentee voter; however, you will remain on the voter roll unless this office has been informed that you no longer live at the address at which you are registered.

To become a permanent absentee voter, complete the absentee ballot application on the back cover and return it to the Department of Elections or call for an application at (415) 554-4375. Be sure to check the box that says, "Permanent Absentee Voter" and sign your name where it says, "Sign Here."

If you move, re-register, or do not vote in a statewide general election, you will need to re-apply to be a permanent absentee voter. In all other cases, you do not need to re-apply.



### IMPORTANT NOTICE TO PERMANENT ABSENTEE VOTERS

If you have already registered as a permanent absentee voter, your ballot will be mailed on or about October 4. To find out if you are registered as a permanent absentee voter, please call the Department of Elections at 554-4411. If you have not received your absentee ballot by October 20, please call 554-4375.

Para más información, llame al (415) 554-4366.

欲知詳情，請致電 415-554-4367。

# How to Locate Your Polling Place

## Your Polling Place May Have Changed

Back cover of this pamphlet (upper right-hand side):

**NOTE:**

Your polling place address is located on the upper right-hand side of the back cover of this pamphlet. Please make a note of it. Even if you request an absentee ballot, you may still wish to turn in your ballot at your polling place on election day.

Check here for whether your polling place is handicapped accessible.


**Your Polling Place Address is:**

Eureka Valley Playground  
100 Collingwood Street  
Between Stevens and Broadway  
PRECINCT 3623

5.1% Slope

**Polling Place Handicapped Accessible:**

☐



**Your precinct number**

**The slope of the entrance to your polling place**



## IMPORTANT NOTICE

### RESIDENTIAL CONFIRMATION POSTCARD

#### Will you vote in the upcoming election?

When people don't vote, we begin to think they no longer live in San Francisco.

When our records contain people who no longer live in San Francisco, valuable tax money is spent in maintaining records, mailing election materials, and preparing to count votes that are never cast.

In January 2005, we will be cleaning our records, but we do not want to lose track of anybody still living in San Francisco just because they haven't voted in awhile.

We will be mailing several thousand postcards that voters should mail back to us to confirm their residential and mailing addresses. If you receive one of these postcards, please take the time and mail it back to us within 15 days of receipt. *If we don't hear from you we will inactivate your voter registration.*

#### The people who will receive these postcards are those who

- ♦ have not voted in the past 4 years in any election, or
- ♦ have not responded to previous postcards or letters from the Department of Elections

#### Voters whose files are inactivated

- ♦ will not receive a Voter Information Pamphlet for future elections, and
- ♦ may be required to show proof of residence before a ballot is issued to them at the poll, and

#### FURTHERMORE, IF YOU DO NOT VOTE, WE MAY CANCEL YOUR VOTER REGISTRATION.

Under state election laws, all people who receive this card and who do not vote between the date of this notice and the second federal general election that follows the date of this notice, their registration may be cancelled.

#### ALL CANCELLED VOTERS WILL HAVE TO RE-REGISTER TO VOTE IN FUTURE ELECTIONS

So, let us know if you still live in San Francisco and want to remain on the active voter roll. **PLEASE** take the time to vote, respond to one of our mailings, or, to write and let us know that you want to stay on the active voter roll. If you decide to write to us, please sign your letter and include the date, your current San Francisco residential address, your mailing address - If different from your San Francisco residential address, your birthplace, and your date of birth.

We thank you in advance for your cooperation!

DEPARTMENT OF ELECTIONS

VOTER SERVICES DIVISION

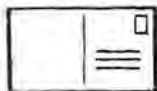


## Polling Places Change Every Election

**EACH ELECTION** an average of thirteen percent of San Francisco's polling places change due to cancellations. To confirm the location of your polling place, **always check the back of your Voter Information Pamphlet**. There you will find the accessibility status and location of your polling place, including cross-streets.



**Always check the back of your Voter Information Pamphlet**



### Change Card

**IF A POLLING PLACE** cancels after the Voter Information Pamphlet has been mailed, change notification postcards are sent to all registered voters within the precinct to inform them of the new location.



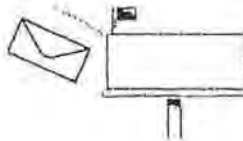
### Change of Poll Signs

**FOR THOSE VOTERS** who are unaware that their poll site has changed, Change of Poll Signs are posted at the address of the old polling place on Election Day. Voters can tear off a sheet of paper with the location name, address and cross-streets of their new polling place from a pad attached to the Change of Poll Sign.

## Some Voters Must Vote by Mail

**VOTING PRECINCTS** with less than 250 registered voters may be declared "Mailed Ballot Precincts". All voters in those precincts are automatically mailed an official ballot and a postage-paid return envelope four weeks before every election.

For those voters who would prefer to drop-off their official mail ballot at a polling place, the location names and addresses of the two poll sites nearest the precinct are provided.



## HELP AMERICA VOTE ACT

The Help America Vote Act (HAVA) is a federal law that requires individuals registering to vote for the first time, or voters who registered to vote by mail any time after January 1, 2003 and are voting at the polls for the first time since registering, to present identification information.

Specifically, HAVA requires that:

Individuals who register to vote in a federal election must include with their voter registration application EITHER:

- (1) a current and valid California driver's license number or California ID card number; OR
- (2) the last four digits of their social security number

Voters who registered to vote by mail after January 1, 2003, and did not include a California Driver's license number, California ID card number or the last four digits of their social security number, and have not voted in an election since registering, must produce at the polls EITHER:

- (1) a current, valid photo ID; OR
- (2) a copy of a current utility bill, bank statement, government check, paycheck, or other government document displaying the name and address of the voter.

# Information on Local Ballot Measures

## DIGEST AND ARGUMENT PAGES

On the following pages, you will find information about local ballot measures. For each measure, a digest has been prepared by the Ballot Simplification Committee. This digest includes a brief explanation of "The Way It Is Now," what each proposal would do, what a "Yes" vote means, and what a "No" vote means. Also included is a statement by the City Controller about the fiscal impact or cost of each measure. There is also a statement of how the measure qualified to be on the ballot.

Following the ballot digest page, you will find arguments for and against each measure.

**NOTE:** All arguments are strictly the opinions of their authors. They have not been checked for accuracy by this office or any other City official or agency. Arguments and rebuttals are reproduced as they are submitted, including typographical, spelling and grammatical errors.

## "PROPONENT'S" AND "OPPONENT'S" ARGUMENTS

For each measure, one argument in favor of the measure ("Proponent's Argument") and one argument against the measure ("Opponent's Argument") is printed in the Voter Information Pamphlet free of charge.

The designation, "Proponent's Argument" and "Opponent's Argument" indicates only that the arguments were selected in accordance with criteria in Section 540 of the San Francisco Municipal Elections Code and were printed free of charge. The Director of Elections does not edit the arguments, and the Director of Elections makes no claims as to the accuracy of statements in the arguments.

The "Proponent's Argument" and the "Opponent's Argument" are selected according to the following priorities:

### "PROPONENT'S ARGUMENT"

1. The official proponent of an initiative petition; or the Mayor, the Board of Supervisors, or four members of the Board, if the measure was submitted by same.
2. The Board of Supervisors, or any member or members designated by the Board.
3. The Mayor.
4. Any bona fide association of citizens, or combination of voters and association of citizens, any individual voter.



### "OPPONENT'S ARGUMENT"

1. For a referendum, the person who files the referendum petition with the Board of Supervisors.
2. The Board of Supervisors, or any member or members designated by the Board.
3. The Mayor.
4. Any bona fide association of citizens, or combination of voters and association of citizens, any individual voter.

## REBUTTAL ARGUMENTS

The author of a "Proponent's Argument" or an "Opponent's Argument" may also prepare and submit a rebuttal argument. Rebuttals are also the opinions of the author and are not checked for accuracy by the Director of Elections or any other City official or agency. Rebuttal arguments are printed below the corresponding "Proponent's Argument" and "Opponent's Argument."

## PAID ARGUMENTS

In addition to the "Proponent's Arguments" and "Opponent's Arguments" which are printed without charge, any eligible voter, group of voters, or association may submit paid arguments.

Paid arguments are printed in the pages following the proponent's and opponent's arguments and rebuttals. All of the arguments in favor of a measure are printed together, followed by the arguments opposed to that measure. Paid arguments for each measure are printed in order of submission.

Arguments and rebuttals are solely the opinions of their authors. Arguments and rebuttals are not checked for accuracy by the Director of Elections, or by any other City official or agency.

# AN OVERVIEW OF SAN FRANCISCO'S DEBT

## WHAT IS BOND FINANCING?

Bond financing is a type of long-term borrowing used to raise money for projects. The City receives money by selling bonds to investors. The City must pay back the amount borrowed plus interest to those investors. The money raised from bond sales is used to pay for large capital projects such as fire and police stations, affordable housing programs, schools, libraries, parks, and other city facilities. The City uses bond financing because these buildings will last many years and their large dollar costs are difficult to pay for all at once.

**Types of Bonds.** There are two major types of bonds--General Obligation and Revenue.

**General obligation bonds** are used to pay for projects that benefit citizens but do not raise revenue (for example, police stations or parks are not set up to pay for themselves). The City's general obligation bonds must be approved by a two-thirds vote. When general obligation bonds are approved and sold, they are repaid by property taxes. The Affordable Housing Bond and the Historical Resources Preservation Bond on this ballot are both general obligation bonds.

**Revenue bonds** are used to pay for projects such as major improvements to an airport, water system, or other large facilities which generate revenue. The City's revenue bonds must be approved by a majority vote. When they are sold, they are generally paid back from revenues generated by bond-financed projects, for example usage fees or parking fees. There is no revenue bond on this ballot.

## WHAT DOES IT COST TO BORROW?

The City's cost to borrow money depends on the interest rate on the debt and the number of years over which it will be repaid. Large debt is usually paid off over a period of 10 to 35 years. Assuming an average interest rate of 6%, the cost of paying off debt over 20 years is about \$1.73 for each dollar borrowed--\$1 for the dollar borrowed and 73 cents for the interest. These payments, however, are spread over the 20-year period. Therefore the cost after adjusting for inflation reduces the effective cost because the future payments are made with cheaper dollars. Assuming a 4% annual inflation rate, the cost of paying off debt in today's dollars would be about \$1.18 for every \$1 borrowed.

## THE CITY'S CURRENT DEBT SITUATION

**Legal Debt Limit.** The City Charter imposes a limit on the amount of general obligation bonds the City can have outstanding at any given time. That limit is 3% of the assessed value of property in the City--or currently about \$3.15 billion. Voters give the City authorization to issue bonds. Those bonds that have been issued and not yet repaid are considered to be *outstanding*. As of June 30, 2004, there were \$845 million in general obligation bonds issued by the City outstanding, which is equal to 0.8% of the assessed value of property. There were an additional \$872 million in bonds that are *authorized but unissued*. If all of these bonds were issued and outstanding, the total debt burden would be 1.63% of the assessed value of property. Bonds authorized to be issued by the School District and by the Community College District do not increase the City's debt burden for the purposes of the Charter limit, however they are repaid by property taxes (see Prudent Debt Limit below).

**Debt Payments.** During fiscal year 2004-05 the City will pay approximately \$135.1 million of principal and interest on outstanding general obligation bonds. The property tax rate for the year will be 14.4 cents per \$100 of assessed valuation or \$422 on a home assessed at \$300,000.

**Prudent Debt Limit.** Even though the City is well within its legal debt limit in issuing general obligation bonds, there are other "prudent" debt calculations used by bond rating agencies when they view the City's financial health. These agencies look at all debt using the City's tax base--our general obligation bonds, lease revenue bonds, and redevelopment agency, school and community college district debt. They then take that debt as a percentage of assessed value and the result is called the overlapping debt ratio. Large cities in the United States have a median overlapping debt ratio of 3.9% -- meaning half of the cities have less debt, half have more. The City currently has a ratio for all overlapping debt of 2.35%. While this is under the median debt ratio of large cities, the City needs to set priorities for future debt to continue to maintain good credit ratings that, in turn, are a sign of good financial health.

Prepared by Ed Harrington, Controller



# WORDS YOU NEED TO KNOW

by the Ballot Simplification Committee

## LISTED BELOW ARE DEFINITIONS OF TERMS:

### **ABSENTEE BALLOTS** (FREQUENTLY ASKED QUESTIONS)

— Ballots mailed to voters or given to voters in person at the Department of Elections. Absentee ballots can be mailed back to the Department of Elections, turned in at the Department of Elections office in City Hall, or turned in at any San Francisco polling place on election day.

**ANNUAL BUDGET** (PROPOSITION G) — The estimated cost of operating the City each year.

**AREA MEDIAN INCOME** (PROPOSITION A) — A level of income based on all incomes earned within a certain geographic area. Half of Area households have incomes higher than this amount, and half have incomes lower than this amount. Currently, the Area median income for a two-person household is \$76,000.

**CHARTER AMENDMENT** (PROPOSITIONS C, D, E, F AND G) — A change to the City's Charter. The Charter is the City's Constitution. The Charter can only be changed by a majority vote of the people.

**DECLARATION OF POLICY** (PROPOSITIONS N AND O) — A statement or expression of the will of the voters.

**GENERAL FUND** (PROPOSITIONS A AND L) — That part of the City's annual budget that can be used for any City purpose. Each year, the Mayor and the Board of Supervisors decide how the General Fund will be used. Money for the General Fund comes from property, business, sales, and other taxes and fees. Currently, the General Fund is 47% of the City's budget.

**GENERAL OBLIGATION BOND** (PROPOSITIONS A AND B) — A promise issued by the City to pay back money borrowed, plus interest, by a certain date. When the City wants to raise money to pay for a large public project, it can borrow money by issuing General Obligation Bonds. The City then repays the money plus interest over a period of years with property taxes. A two-thirds majority vote is required to authorize issuance of General Obligation Bonds.

**GROSS RECEIPTS** (PROPOSITION K) — The total amount of money a business takes in for certain goods and services.

**HOLD-OVER** (PROPOSITION D) — A member of a City board or commission who continues to serve after his or her term has expired.

**HOTEL TAX** (PROPOSITION L) — A tax added to the rental of hotel rooms.

**IMPLEMENT** (PROPOSITION F) — To put into effect.

**INITIATIVE** (PROPOSITIONS L AND M) — A proposition placed on the ballot by voters. Any voter may place an initiative on the ballot by gathering the required number of signatures on a petition.

**NONPROFIT** (PROPOSITION L) — A business that does not operate for profit.

**ORDINANCE** (PROPOSITIONS H, I, J, K, L AND M) — A local law passed by the Board of Supervisors or by the voters.

**PROPOSITION** (PROPOSITIONS A THROUGH O) — Any measure that is submitted to the voters for approval or disapproval.

**QUALIFIED WRITE-IN CANDIDATES** — A person who has turned in the required papers and signatures to the Department of Elections. Although the name of this person will not appear on the ballot, voters can vote for this person by writing the name of the person in the space on the ballot provided for write-in votes. The Department of Elections counts write-in votes only for qualified write-in candidates.

**REVITALIZE** (PROPOSITION I) — To bring back to use after a decline.

**SALES TAX** (PROPOSITIONS J AND O) — A tax added to the sale of certain retail goods.

**SURCHARGE** (PROPOSITION L) — An additional amount added to the base charge of goods and services.



# VOTING REFERENCE CHART

Fill in your choices — Clip out and take with you to the polls

OFFICES	
<b>President</b>	Vote for one
<b>United States Senator</b>	Vote for one
<b>United States Representative</b>	Vote for one
<b>State Senator</b>	Vote for one
<b>Member, State Assembly</b>	Vote for one
<b>Member, Community College Board</b>	Vote for four
<b>Member, Board of Education</b>	Vote for four
<b>Member, Board of Supervisors</b>	First choice
For more information on ranking your first, second and third choices for your district's Member of the Board of Supervisors, turn to page 6.	Second choice
	Third choice

Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



## PROPOSITIONS

TITLE	YES	NO
<b>A</b> : Affordable Housing Bonds		
<b>B</b> : Historical Preservation Bonds		
<b>C</b> : Health Service System		
<b>D</b> : Changes to City Charter		
<b>E</b> : Police & Fire Survivor Benefits		
<b>F</b> : Noncitizen Voting in School Board Elections		
<b>G</b> : Health Plans for City Residents		
<b>H</b> : Naming the Stadium at Candlestick Point		
<b>I</b> : Economic Analysis of Legislation		
<b>J</b> : Sales Tax Increase		
<b>K</b> : Business Tax		
<b>L</b> : Use of Hotel Tax to Preserve Movie Theaters		
<b>M</b> : THIS MEASURE HAS BEEN WITHDRAWN		
<b>N</b> : Withdrawing U.S. Military Personnel from Iraq		
<b>O</b> : Use of Sales Tax Funds		
<b>AA</b> : BART Earthquake Safety Bond		



# ON ELECTION DAY

## VOTING AT YOUR POLLING PLACE



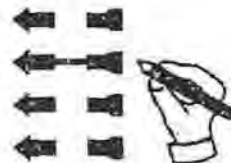
Approach the table where poll workers are issuing ballots and announce your name and address in an audible tone of voice. When one of the poll workers finds your name in the roster of voters, the poll worker will repeat your name and address. Sign your name on the signature line next to your name in the roster of voters.

The poll worker will give you your ballot and your ballot's stub receipt in a blue secrecy folder. The ballot will consist of multiple cards. Take your ballot to one of the voting booths in the polling places, where you may mark your ballot in privacy. There will be a special ballot-marking pen in each voting booth.

## MARKING THE BALLOT

Using the ballot-marking pen provided at your polling place, mark your ballot by connecting the head and tail of the arrow pointing to your choice for each contest.

To vote for a write-in candidate, write the name of the write-in candidate in the space marked "Write-in." You must connect the head and tail of the arrow pointing to the "Write-in space" for your write-in vote to be counted. Only write-in votes for qualified write-in candidates will be counted. For a list of qualified write-in candidates, please ask a poll worker.



Please note: the number of candidates you should select for each contest will be printed above the list of candidate names for each contest. If you vote for more than the allowed number of candidates for any contest, your votes for that contest will not count!

If you make a mistake while voting, ask a poll worker for another ballot.

## HOW TO MARK THE RANKED-CHOICE BALLOT

If you live in Supervisorial district 1, 2, 3, 5, 7, 9 or 11, you will be using ranked-choice voting to elect your district's Member of the Board of Supervisors this November. The Supervisor contest will appear on a separate ballot card.

To mark the ranked-choice ballot card, select your first-choice candidate in the first column by completing the arrow pointing to your choice. For your second choice, select a different candidate in the second column by completing the arrow pointing to your choice. For your third choice, select a different candidate in the third column by completing the arrow pointing to your choice. To vote for a qualified write-in candidate for any of your three choices, write the person's name on the blank line provided and connect the arrow pointing to your choice.

For more information on ranked-choice voting, please contact the Department of Elections:

Department of Elections  
City Hall, Room 48  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
(415) 554-4375  
[www.sfgov.org/election](http://www.sfgov.org/election)

# ONCE YOU HAVE MARKED YOUR BALLOT



Insert your ballot, one card at a time, into the slot in the front of the "Eagle" voting machine. The ballot can be fed into the Eagle in any direction: upside down, right side up, backwards or forwards. The Eagle counts the votes electronically when the ballots are inserted by the voter. The ballots are stored in a locked compartment inside the Eagle.

## GUIDELINES FOR PROVISIONAL VOTING

If you are a registered voter, you have the right to cast a provisional vote at your polling place if:

- You were issued an absentee ballot that you are unable to surrender, and you want to vote at the polls;
- Your name does not appear in the roster of voters for the precinct;
- You are required to show identification because you registered to vote by mail after January 1, 2003 and have not previously voted, but you did not bring identification to the polling place.

How to cast a provisional vote:

You will receive a ballot and the pink provisional ballot envelope from a poll worker. The poll worker will fill out the poll worker section of the envelope. You should complete the voter's section of the provisional envelope, including providing your name, date of birth, current address and previous address. You must also sign the declaration confirming that you are a resident of San Francisco, and are registered and eligible to vote in this election. **It is very important that you sign your name at the bottom of the envelope.**

Once you have filled out the voter's section of the provisional envelope and marked your ballot, insert your ballot into the provisional envelope, **seal the envelope**, and return it to a poll worker.

## YOUR SAMPLE BALLOT

The following pages contain your sample ballot. It is a 20% reduction in size of the ballot you will receive at your polling place on Election Day. Feel free to mark your sample ballot and bring it to the polling place to use as a guide on Election Day. (You can also use the Voting Reference Chart, located on page 205 of this pamphlet, for the same purpose.)

MEASURES SUBMITTED TO THE VOTER - CITY AND COUNTY PROPOSITIONS MEDIDAS SOMETIDAS A LOS VOTANTES - PROPOSICIONES DE LA CIUDAD Y CONDADO	
<p><b>A</b> Shall the City borrow \$25,000,000 to buy, build or renovate, improve, and maintain existing and new social care and health-related facilities and programs to help a house?</p> <p>(Shall the City borrow \$25,000,000 to buy, build or renovate, improve, and maintain existing and new social care and health-related facilities and programs to help a house?)</p>	<p>YES/NO SÍ/NO</p>
<p><b>B</b> Shall the City borrow \$25,000,000 to buy, build or renovate, improve, and maintain existing and new social care and health-related facilities and programs to help a house?</p> <p>(Shall the City borrow \$25,000,000 to buy, build or renovate, improve, and maintain existing and new social care and health-related facilities and programs to help a house?)</p>	<p>YES/NO SÍ/NO</p>
<p><b>C</b> Shall the Health Services Board be authorized to acquire, build, and operate a health services center to provide a range of health services to the community?</p> <p>(Shall the Health Services Board be authorized to acquire, build, and operate a health services center to provide a range of health services to the community?)</p>	<p>YES/NO SÍ/NO</p>
<p><b>D</b> Shall the Board of Supervisors be authorized to acquire, build, and operate a health services center to provide a range of health services to the community?</p> <p>(Shall the Board of Supervisors be authorized to acquire, build, and operate a health services center to provide a range of health services to the community?)</p>	<p>YES/NO SÍ/NO</p>

## Business Tax

# K

### PROPOSITION K

Shall the City create a temporary 0.1% (one-tenth-of-one-percent) gross receipts tax, and clarify how the City's existing payroll expense tax applies to certain business entities?

YES

NO



### Digest

by the Ballot Simplification Committee

**THE WAY IT IS NOW:** San Francisco collects a 1.5% (one-and-one-half percent) "payroll expense" tax from companies and individuals doing business in the City. "Payroll expense" means salaries and other payments made to employees, owners and partners who work in the City. Currently the City does not have a "gross receipts" tax.

**THE PROPOSAL:** Proposition K is an ordinance that would create a temporary four-year "gross receipts" tax on certain companies and individuals doing business in the City. "Gross receipts" means the total amount of money a business takes in for certain goods and services. The gross receipts tax would only apply to money received for goods and services sold in the City. Certain small businesses would be exempt from this tax.

- In 2005, the City would collect 0.1% (one-tenth-of-one percent) of gross receipts from companies and individuals doing business in the City.
- The City would reduce this rate for 2006, 2007 and 2008 if gross receipts tax funds collected in 2005 exceed \$30 million.
- The gross receipts tax will expire on December 31, 2008.

The gross receipts tax funds could be used by the City for any public purpose.

The gross receipts tax would apply in addition to the payroll expense tax.

Proposition K would also clarify how the payroll expense tax applies to certain businesses, including partnerships, limited liability partnerships, and limited liability companies.

**A "YES" VOTE MEANS:** If you vote "yes," you want to clarify how the City's existing payroll expense tax applies to certain businesses, and you want to create a temporary four-year 0.1% (one tenth of one percent) gross receipts tax on companies and individuals doing business in the City.

**A "NO" VOTE MEANS:** If you vote "no," you do not want to make these changes.

### Controller's Statement on "K"

City Controller Edward Harrington has issued the following statement on the fiscal impact of Proposition K:

Should the proposed ordinance be approved by the voters, in my opinion, it would generate business tax revenues for the City of approximately \$17 million in the fiscal year which began on July 1, 2004, and total revenues of approximately \$43 million annually beginning in FY 2005-2006, the first full fiscal year that the new tax rates would be effective.

The ordinance places a tax of up to 1/10<sup>th</sup> of one percent for a four-year period on businesses earning \$500,000 or more in gross receipts annually and extends the current 1.5% payroll tax to cover partnership compensation. The gross receipts tax rate may be adjusted downward subject to a finding by the Controller that the rate would have generated more than \$30 million had it been in effect for all of fiscal year 2004.

Revenue generated by the proposed tax could be spent by the City for any public purpose.

### How "K" Got on the Ballot

On July 27, 2004 the Board of Supervisors voted 8 to 3 to place Proposition K on the ballot.

The Supervisors voted as follows:

**Yes:** Supervisors Alloto-Pier, Ammiano, Duffy, Ma, Maxwell, McGoldrick, Peskin, and Sandoval.

**No:** Supervisors Daly, Gonzalez, and Hall.

### THIS MEASURE REQUIRES 50%+1 AFFIRMATIVE VOTES TO PASS.

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE. THE FULL TEXT BEGINS ON PAGE 158. SOME OF THE WORDS USED IN THE BALLOT DIGEST ARE EXPLAINED ON PAGE 53.

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**K**

## Business Tax

### PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION K

*The Board of Supervisors authorized the submission of the following argument. As of the date of the publication of this Voter Information Pamphlet, the following Supervisors endorse the measure: Supervisors Alioto-Pier, Aramiano, Daly, Dufty, Ma, Maxwell, McGoldrick, Peskin, and Sandoval; oppose the measure: Supervisor Gonzalez; take no position on the measure: Supervisor Elsbernd.*

Three years ago San Francisco lost millions in business tax revenues because of a lawsuit brought by an out-of-town attorney.

As we work to overcome the economic crisis in San Francisco, including the largest deficit in San Francisco history, we should all come together – businesses and individuals alike – to pay our fair share.

Proposition K closes business tax loopholes and restores balance to our revenue system. Most importantly, Proposition K will help us live up to our promise of being a compassionate city, by preserving vital services for the poor, seniors, the disabled and children.

Today we're doing more with less at City Hall:

- We've cut the pay of top city officials, eliminated free parking for city employees, reduced their use of cell phones, and asked that all full time employees of the City and County of

San Francisco make contributions to their own retirement funds.

- We've reduced the size of government by eliminating over 1,000 positions in the past six months. We're streamlining government, consolidating departments, eliminating unnecessary bureaucracy, and improving the way that the City delivers services.
- We're aggressively tackling waste, fraud and abuse at every level to make sure we have the money we need to fund vital services.

These measures close the vast majority – about 85% – of the \$1 billion budget shortfall the City faces during the coming three years. But a gap remains. That is why, as part of a package of reforms, cuts, increased efficiencies and shared sacrifices – and as a last resort – we must find new revenues for our city and close existing tax loopholes.

Please join me and our fellow San Franciscans as we come together and Vote YES on Propositions J and K.

Mayor Gavin Newsom

### REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION K

**NO REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION K WAS SUBMITTED**

## Business Tax



### OPPONENT'S ARGUMENT AGAINST PROPOSITION K

We need real reform, not another bandage on our City's failed financial situation.

This tax puts the burden of balancing our City Budget on the backs of small neighborhood serving businesses. It creates a Business Tax, similar to one eliminated through a lawsuit by major corporations, and gives these major corporations a significant tax break, while increasing the burden on small businesses.

This tax is in addition to all of the other taxes and fees small businesses pay.

Small Businesses are willing to pay their share. We've proposed a tax package that generates nearly \$30 million a year. We attempted to present this tax package to the Mayor, but were not included in the meetings between the Mayor and the major corporations when the deal for this tax was cut.

The Mayor threatens a major catastrophe if this tax fails. Let's be real, San Francisco's budget is \$4.6 billion a year, \$30 million is a drop in the bucket and can easily be made up with efficiencies.

Let's not force small businesses to carry Downtown's burden again. Send the big corporations who created this back room deal a message.

For more information please visit our website at [www.sfsmallbusinessadvocates.com](http://www.sfsmallbusinessadvocates.com)

*San Francisco Small Business Advocates*

### REBUTTAL TO OPPONENT'S ARGUMENT AGAINST PROPOSITION K

In this time of economic crisis, we have a city budget that unites all San Franciscans. Instead of dividing us along special interest lines, our community, business and political leaders have joined together to preserve vital city services for the most vulnerable – the poor, seniors, the disabled and children – and to close the largest budget deficit in San Francisco's history.

Proposition K closes business tax loopholes and restores tax fairness by asking businesses to pay their fair share: a gross receipts tax that they have not had to pay for three years because of a lawsuit filed by an out of town attorney. It is part of a fair, reasonable, and comprehensive budget package of reforms, cuts, increased efficiencies and shared sacrifices.

This is a time when San Franciscans are coming together to do their part, and our dedicated city workers are leading by example: taking pay cuts, giving up free parking, reducing the use of cell phones, and making contributions to their own retirement funds.

To suggest that some should not have to pay their fair share is not in the best interests of all San Franciscans. No one likes taxes; but this is a time of fiscal crisis and Proposition K will close business tax loopholes to preserve vital city services.

Please join me and our fellow San Franciscans as we all come together and Vote Yes on Proposition K.

*Mayor Gavin Newsom*

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**K**

## Business Tax

### PAID ARGUMENTS IN FAVOR OF PROPOSITION K

**YES on K: Close a tax loophole. Protect vital services for children and youth!**

*Coleman Advocates for Children and Youth*

The true source of funds used for the printing fee of this argument is the Coleman Advocates for Children and Youth.

**Vote Yes on K - Close a Business Tax Loophole to Save Vital City Services**

Our record economic crisis threatens the hopes and aspirations of the working people of San Francisco. As part of a great and compassionate city, we urge you to vote Yes on Proposition K to prevent deep cuts in vital city services - services that are a lifeline for poor, disabled, elderly or young San Franciscans.

Proposition K closes a business tax loophole - and asks businesses to do their part by paying a gross receipts tax they haven't had to pay for three years as a result of a lawsuit filed by an out of town attorney.

Everyone in San Francisco - businesses and individuals alike - should come together to meet the challenges of this fiscal crisis. City workers are doing their part by taking on more work for less pay. You can help businesses do their part by supporting Proposition K.

Please join with us and vote Yes on Proposition K. Help San Francisco live up to its promise as a compassionate city.

*San Francisco Labor Council, AFL-CIO*

The true source of funds used for the printing fee of this argument is the San Francisco Labor Council, AFL-CIO.

**Vote Yes on Prop K - Close the Loophole and Protect Health Services**

We're doing our part to meet the challenges of San Francisco's fiscal crisis. Proposition K asks the business community to begin doing its part, too. By closing a business tax loophole, we can help prevent deep cuts in city health care services for the most vulnerable San Franciscans.

Please vote Yes on Proposition K.

*SEIU Local 250 Health Care Workers*

The true source of funds used for the printing fee of this argument is the SEIU Local 250, Health Care Workers Union.

**Vote Yes on Prop K - Close a Loophole to Save Vital Services**

San Francisco is facing the worst fiscal crisis in its history. We're all pitching in to save vital city services. It's only fair that the business community do its part.

Three years ago San Francisco lost millions in business tax revenue because of a lawsuit filed by an out of town attorney. Proposition K restores these funds and closes a loophole in another business tax, money that will help prevent deep service cuts for the most vulnerable San Franciscans - the poor, the disabled, seniors, and children.

Let's all do our part to save vital city services. Vote Yes on Proposition K.

*SEIU Local 790 Members, Committed to Public Service and Social Justice*

The true source of funds used for the printing fee of this argument is the SEIU, Local 790.

**Vote Yes on K to Keep San Francisco Healthy.**

As Commissioners of the Department of Public Health, we know too well how thinly stretched our funds for trauma centers, nursing care, and other vital public health services are.

This City has reduced the size of its workforce, cut the pay of city workers, and rooted out waste and inefficiencies. But there is still a gap. New revenues must be part of the solution to avoid drastic reductions in critical city services.

Proposition K closes a business tax loophole to prevent deep cuts in critical city services.

Please join with us and vote Yes on Proposition K.

**San Francisco Health Commissioners:**

*Edward A. Chow, M.D.\**

*Roma Guy, M.S.W.\**

*James M. Illig*

*Lee Ann Monfredini*

\* For identification purposes only

The true source of funds used for the printing fee of this argument is the SEIU Local 790.

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## Business Tax

# K

### PAID ARGUMENTS IN FAVOR OF PROPOSITION K

**Vote Yes on Prop. K - Close Tax Loopholes to Save Critical Services**

We must act now to prevent deep cuts in vital city service for seniors, the disabled and other vulnerable San Franciscans.

We believe in the fundamental right of dignity for all persons. We know that San Franciscans can overcome the most difficult challenges if we all work together. That is why we urge every San Franciscan to support Proposition K.

Proposition K closes a business tax loophole and restores tax fairness by asking businesses to pay their fair share: a gross receipts tax they haven't had to pay for three years because of a lawsuit by an out of town attorney. Voting Yes on Proposition K will help save critical services for seniors.

We are all doing our part to pull our City through this economic crisis. It's only fair that the business community join with us and do its part as well.

Please support the dignity of all San Franciscans and Vote YES on Proposition K.

*Senior Action Network*

The true source of funds used for the printing fee of this argument is the Senior Action Network.

**Help Protect Vital Fire Services. Yes on K.**

Prop. K will help protect fire and other public safety services by closing a loophole.

Over the last year the City has worked to cut waste and asked employees to give back. But it is only fair to ask all San Franciscans to do their part.

Please help protect fire services by voting Yes on K.

*San Francisco Fire Fighters Local 798*

The true source of funds used for the printing fee of this argument is the San Francisco Fire Fighters Political Action Committee.

**Yes on K. It's Only Fair.**

Closing a loophole is a small price to pay to keep San Franciscans safe. We risk our lives to protect this community. Please join the San Francisco Police Officers' Association in support of Prop. K.

*San Francisco Police Officers' Association*

The true source of funds used for the printing fee of this argument is the San Francisco Police Officers Association.

**Vote Yes on Proposition K - Close a Loophole to Protect Mental Health Services**

San Francisco's economic crisis threatens deep cuts to vital city services that are a lifeline for San Franciscans with serious mental disabilities. Many of these San Franciscans at-risk receive no regular medical health care, either because it is unavailable to them or they find it too difficult to obtain in emergency rooms.

Proposition K closes a business tax loophole and restores tax fairness by asking businesses to pay their fair share: a gross receipts tax they haven't had to pay for three years because of a lawsuit by an out of town attorney. Voting Yes on Proposition K will help prevent deep cuts in mental health services.

If San Francisco is to live up to its promise of being a compassionate city, we simply cannot cut these San Franciscans loose.

Please join with us and vote Yes on Proposition K.

*Progress Foundation*

The true source of funds used for the printing fee of this argument is the Progress Foundation.

**Proposition K is a necessary part of the solution to our budget problems.**

San Francisco is dealing with record budget deficits. During tough budget times, making government more efficient - not raising taxes - is always the first choice. In the past year, the City has taken huge steps to cut costs. But it is not enough.

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**K**

## Business Tax

### PAID ARGUMENTS IN FAVOR OF PROPOSITION K

This measure provides money needed to keep our police, parks, hospitals and other crucial City services running, while continuing to exempt small businesses from increased taxes. These services are too important to lose.

**VOTE YES ON K.**

*San Francisco Planning and Urban Research Association (SPUR)*

For more information, visit [www.spur.org](http://www.spur.org)

The true source of funds used for the printing fee of this argument is the SPUR Urban Issues Committee.

The three largest contributors to the true source recipient committee are: 1. Oz Erickson 2. James Chappell 3. Evette Davis.

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## Business Tax

# K

### PAID ARGUMENTS AGAINST PROPOSITION K

Most women-owned businesses are small businesses. We are proud to be part of the biggest economic and job engine in San Francisco.

We oppose this proposition, which adds a gross receipts tax to our payroll taxes. The City is proposing this tax in an attempt to replace revenue lost by a successful lawsuit brought by big businesses against the City. It penalizes small business owners by doubling our taxes.

This tax is a job-killer. Recently, the same supervisors who support this proposal to double our taxes, voted to exempt the Biotechnology industry from payroll taxes. Their reasoning was that payroll taxes would prevent the creation of new biotechnology jobs. What about the jobs already created by small business? It makes no sense to kill small business jobs, forcing us to subsidize outsiders who may or may not hire locally.

Small businesses employ more people in the City than any other business sector. Most of the City's small businesses are women- or minority-owned. We pay the community with our taxes, rents, purchases, donations and volunteer work. Our own homes and savings are often the only source of funds for paying taxes and business overhead when we have a bad business year.

This proposal would result in San Francisco's having the highest business taxes in the region. Doubling our taxes could force many small business owners with low or negative profitability to let go employees, and go out of business.

We urge you to vote **NO** on Proposition K.

*Sharon Gadberry, President  
National Association of Women Business Owners,  
San Francisco (NAWBO-SF)*

The true source of funds used for the printing fee of this argument is the NAWBO - SF.

Proposition K unfairly burdens small businesses, which are the backbone of San Francisco's economy. Vote **NO** on K.  
*Christine Linnenbach, candidate for Supervisor, District 7\**

\* For identification purposes only

The true source of funds used for the printing fee of this argument is Christine Linnenbach.

We need to restructure our tax system in San Francisco. Proposition K does not accomplish this, it is another tax on top of current taxes. Since this tax sunsets in four years, we will be stuck without any fundamental reform of our tax structure.

We are more than willing to work with the Mayor to find new revenues so we can provide San Franciscans with the best possible services, but Proposition K is a half-way measure that will hurt small businesses and San Francisco's economy.

Join me in opposing Proposition K.

*Matt Gonzalez  
President, San Francisco Board of Supervisors\**

\*For identification purposes only

The true source of funds used for the printing fee of this argument is the Cal Insurance.

#### District Merchants Oppose Proposition K

Small business is willing to pay its fair share and even had an alternative tax proposal. Big business cut a deal with the Mayor and the Board of Supervisors for this tax measure.

Big Businesses sued to get rid of the previous business tax that charged them three times the rate of this tax. Now they want to cut the tax and have it end in five years. It is time for Big Business to pay its fair share and not put the tax burden on small neighborhood businesses like ours.

*The San Francisco Council of District Merchants  
Marina Merchants Association  
Noe Valley Merchants & Professionals  
Inner Sunset Merchants Association  
Union Street Association*

The true source of funds used for the printing fee of this argument is the Cal Insurance + Assoc.

Vote No On Proposition K  
Don't Run Business Out Of San Francisco

If this tax passes San Francisco will have the highest business tax rate in Northern California. According to the Legislative Analyst a business in San Francisco will have to pay \$5500 more in taxes than in San Mateo County. Businesses will not locate in

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**K**

## Business Tax

### PAID ARGUMENTS AGAINST PROPOSITION K

San Francisco and those that can operate elsewhere will relocate.

San Francisco lost 66,000 jobs over the past three years. We need a plan to create more jobs and jump start our economy. We do not need another tax on Small Businesses that are the main source of new jobs in an economic recovery.

*The S.F. Small Business Network*

The true source of funds used for the printing fee of this argument is the SF Small Business Network.

Don't balance the budget on the backs of our neighborhood merchants.

The City is attempting to replace revenue lost by a successful lawsuit brought by big businesses against the City's prior dual tax format. Small businesses and neighborhood merchants are now being asked to cover the loss.

Small business is key to the economic revitalization of the City, and local merchants stabilize our neighborhoods. Prop K would drive them out of the City. Prop K would raise San Francisco's business taxes to the highest in the Bay Area!

Support local small business. **Vote NO on Prop K.**

*Coalition for San Francisco Neighborhoods*

The true source of funds used for the printing fee of this argument is the CSFN Coalition for SF Neighborhoods.

**NO on K**

San Francisco has lost 50,000 jobs in the last four years. These taxes will drive out more business and cost more jobs. They will also send a loud message to businesses and investors all over America: Stay away from San Francisco, it is not a friendly place to do business.

*The San Francisco Republican Party*

**Chairman**

*Michael A. DeNunzio*

**Ballot Advisory Committee**

*Joshua Kriesel, Ph.D., Vice Chairman*

*Howard Epstein, Assembly Candidate*

*Christopher L. Bowman, Secretary*

*Michael J. Antonini, DDS, Member*

**Member - Candidates**

*Jennifer DePalma, Candidate, 8<sup>th</sup> Congressional District*

*Mike Garza, Candidate, 12<sup>th</sup> Congressional District*

**Members**

*Albert Chang*

*Elsa Cheung*

*Thomas D'Amato, General Counsel*

*Harold M. Hoogasian*

*Barbara Kiley*

*Leo Lacayo, Vice Chairman*

*Sue Woods*

The true source of funds used for the printing fee of this argument is the San Francisco Republican Party.

The three largest contributors to the true source recipient committees are: 1. Michael A. DeNunzio 2. Michael J. Antonini 3. Sue C. Woods.

### VOTE NO ON K!

To adopt this payroll tax on top of a gross receipts tax is unwise.

It would penalize and stunt desperately needed job creation and send jobs cascading to surrounding communities.

To impose an increase payroll tax further weakens the competitive position of the City and undermines our quality of life.

### VOTE NO ON K!

**MARA KOPP**

**FRED MARTIN**

**GOOD GOVERNMENT ALLIANCE**

The true source of funds used for the printing fee of this argument is the Kopp's Good Government Committee.

Proposition K will impose a gross receipts tax on our small neighborhood businesses, causing more of them to shut their doors and move away. In turn, tax revenues will decline, and unemployment will increase. Alternative tax options do exist.

These small businesses are essential to the vitality and preservation of each San Francisco neighborhood, providing a lifeline of goods and services to local residents. The serious decline of our

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## Business Tax

# K

### PAID ARGUMENTS AGAINST PROPOSITION K

some of neighborhood commercial streets has already had a devastating effect on the local quality of life.

Our D3 Supervisor, and others who share his lack of understanding of basic economics, believe small businesses should unfairly pay the price, rather than addressing long term structural problems with the cost of government.

Please join me in supporting small neighborhood businesses and VOTE NO.

*Brian O'Flynn*  
Candidate for D3 supervisor

The true source of funds used for the printing fee of this argument is Brian O'Flynn.

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#### Vote NO on K—The Double Tax

Proposition K will impose a new tax on local businesses that will be in addition to the payroll tax they already pay. This double taxation scheme was proposed by the same interests that sued the city for millions of dollars over an earlier tax the city was forced to repeal. The new tax is unfair and will disproportionately affect small businesses. Let's restore fairness to the business tax structure!

Vote NO on K.

*San Francisco Association of REALTORS®*

The true source of funds used for the printing fee of this argument is the San Francisco Association of REALTORS.

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#### Vote No on Proposition K

San Francisco lost 66,000 jobs over the past two years. We need a plan to create more jobs and jump start our economy. We do not need another tax on Small Businesses that are the main source of new jobs in an economic recovery. I have a plan to create jobs and stimulate our economy. Please visit my website at [www.district11supervisor.org](http://www.district11supervisor.org)

*Myrna Lim*  
Candidate for Supervisor  
District 11

The true source of funds used for the printing fee of this argument is Myrna Lim.

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## LEGAL TEXT OF PROPOSITION K

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, and (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 (iii) promote development of the biotechnology industry by excluding from the payroll expense of persons subject to the Payroll Expense Tax compensation paid to employees and owners or beneficiaries of a pass-through entity for work performed and services rendered in connection with the pass-through biotechnology business; 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.

Note: Additions are single-underline  
Italics Times New Roman;  
deletions are ~~strike-through-italics~~  
Times New Roman.  
Board amendment additions are  
double underlined.  
Board amendment deletions are  
~~strike-through-normal~~.

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

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

Section 2. Section 510 of the San Francisco Elections Code and the 30 word limit on ballot questions set forth therein shall not apply to the ballot question for the Business

Tax Ordinance set forth in Section 3 of this ordinance and submitted for voter approval at the November 2, 2004 general municipal election because the subject measure is unusually complex. The ballot question for the Business Tax Ordinance at such election shall read as follows:

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

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

### ARTICLE 12-A-1 BUSINESS TAX

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

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

SEC. 952.1. ADVANCE PAYMENTS. "Advance payments" means non-refundable payments for the purchase of tangible personal property or services to be delivered or performed in the future.

SEC. 952.2. CASH DISCOUNT. "Cash discount" means a deduction from the invoice price of goods or charges for services which is allowed if the bill is paid on or before a specified date.

SEC. 952.3. GROSS RECEIPTS. (a) "Gross receipts" means the total amount of the sale price of all sales, the total amount charged or received for the performance of any ~~any~~ service or employment of whatever nature it may be, whether such service or employment is done at part or in connection with the sale of goods, wares, merchandise or not, for which a charge is made or credit allowed, including all receipts, cash, credits and property of any kind or nature, any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever, provided that cash discounts allowed or taken on sales shall not be included. Gross receipts, including advance payments, shall be included in a taxpayer's gross receipts at the

time such receipts are recognized as revenue for federal income tax reporting purposes.

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

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

(d) "Gross receipts" shall not include any amount received from or charged to any person that is a related entity to the taxpayer. A person is a related entity to a taxpayer if 50% or more of the ownership interests in both value and voting power of such person and the taxpayer are held, directly or indirectly, by the same person or persons. Notwithstanding the foregoing, any amount received from or charged to any person which is a related entity to a taxpayer shall be included in "gross receipts" when said amount is compensation for activities, including, but not limited to, selling, renting and service, performed by the taxpayer for any person which is not a related entity to the taxpayer, unless such amount has been included in the "gross receipts" by the related entity and the tax thereon has been paid to the City.

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

(f) "Gross receipts" shall not include any amount received by persons acting as agents or brokers, other than amounts received as commissions or fees earned or charges of any character made or compensation of any

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## LEGAL TEXT OF PROPOSITION K (CONTINUED)

character received for the performance of any service as agent or broker; provided, that any agent or broker dealing in stocks or other similar written instruments evidencing a right to participate in the assets of any business, or dealing in bonds or other evidence of indebtedness, who also deals in such financial instruments as a principal, shall not include in the gross receipts resulting from such dealings as a principal the cost to acquire the financial instrument(s) sold or otherwise exchanged or converted.

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

**SEC. 952.74. LANDLORD AND LESSOR.** (a) "Landlord" and "Lessor" mean a lessor of real estate located within the City, except as provided in Subsection (b), regardless of whether the leased premises is designed, intended, used or occupied for business purposes or residential purposes. The failure of a landlord or tenant, or both, to obtain a business registration certificate under Article 12, or any other license or permit required for engaging in either person's business or occupation in the City, shall not relieve such landlord or tenant from the tax or other obligations imposed under this Article or Article 6.

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

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

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

**SEC. 952.67. SALE AND SELL.** "Sale" and "sell" mean the making of any transfer of title, in any manner or by any means

whatsoever, to tangible personal property for a price, and to the serving, supplying or furnishing for a price, of any tangible personal property fabricated or made at the special order of consumers who do or who do not furnish directly or indirectly the specifications therefor. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price shall likewise be deemed a sale.

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

**SEC. 952.8. 6A.B5 FOR CONVENIENCE.** (a) "Sales for convenience" means a sale of new goods, wares, or merchandise by a person engaged in selling such articles to another person engaged in selling like or similar kinds of articles.

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

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

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

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

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

(2) Transactions in which, by reason of the seller's more convenient location relative to a designated point of delivery, the purchaser agrees to reimburse the seller for delivering goods, wares or merchandise at that point to the purchaser's customer in accordance with a contract of sale between the purchaser and the purchaser's customer;

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

other point;

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

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

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

**SEC. 953. IMPOSITION OF BUSINESS TAX. STATEMENT OF VOTER INTEREST TAX COLLECTOR REGULATIONS.** (a) Except as provided under Sections 954 and 954.1, every person engaging in business within the City shall pay an annual business tax measured by the person's gross receipts from all taxable business activities attributable to the City. A person's liability for the Business Tax shall be calculated using the rule set forth in Section 953.1.

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

(c) The voters intend by approving this measure to impose the Business Tax upon all persons engaging in business within the City and upon all commerce and business activities

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## LEGAL TEXT OF PROPOSITION K (CONTINUED)

—occurring within, attributable to or having sufficient nexus with the City to lawfully impose the tax hereunder in the broadest possible manner consistent with the provisions and requirements of California Constitution Article XIII, the United States Constitution and any other applicable provision of federal and state law.

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

(ed) The Business Tax imposed under this Article is in addition to the Payroll Expense Tax imposed under Article 12-A. Persons not otherwise exempt from the Business Tax or Payroll Expense Tax shall pay both taxes. Persons exempt from either the Business Tax or Payroll Expense Tax, but not both, shall pay the tax from which not exempt.

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

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

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

**SEC. 954. EXEMPTIONS.** (a) Except as provided in Subsection (b) of this Section, an organization that is exempt from income tax-

ation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended, as qualified by Sections 502, 503, 504 and 508 of the Internal Revenue Code of 1986, as amended, shall be exempt from taxation under this Article.

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

(c) "Gross receipts" as defined in Section 952.33 shall not include receipts from business activities if, and only so long as and to the extent that, the City is prohibited from taxing such receipts under the Constitution or laws of the United States or under the Constitution or laws of the State of California.

(d) Blind persons licensed under the provisions of Chapter 6A of Title 12 of the United States Code ("Hendling Stands for Blind in Federal Buildings") or Article 5 of Chapter 6 of Part 2 of Division 10 of the California Welfare and Institutions Code ("Business Enterprises for the Blind") need not include in the computation of gross receipts the first \$15,000 of gross receipts in any one year which is attributable to their licensed operations within the City.

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

(f) Receipts derived from contracts for services or sales initiated or consummated at closed conventions shall be excluded from taxable "gross receipts" as defined in Section 952.33. For purposes of this Section, a "closed convention" means an assemblage of delegates to or members of a formally established organization devoted to trade, industrial or commercial purposes, and to which only such delegates

or members are admitted, to the exclusion of the general public.

(g) Receipts derived from the sale of real property located in the City shall be excluded from taxable "gross receipts" as defined in Section 952.33.

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

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

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

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

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

(4) Persons engaging in inter-city transportation as a household goods carrier under Public Utilities Code Section 5327;

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

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

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

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

**SEC. 954.1. SMALL BUSINESS EXEMPTION.** (a) Notwithstanding any other provision of this Article, "small business enterprises" as hereinafter defined, shall be exempt from payment of the Business Tax; provided,

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## LEGAL TEXT OF PROPOSITION K (CONTINUED)

that small business enterprises shall pay the annual registration fee pursuant to Section 855 of Article 12 and shall provide all information and records and file all returns with the Tax Collector as required by this Article and Article 6.

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

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

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

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

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

(2) Taxpayers shall include 100% of apportioned gross receipts derived from or attributable to the performance of any service or employment of whatever nature, and sales other than of tangible personal property, if: (i) the activity producing the gross receipts is performed in the City; or (ii) the activity producing the gross receipts is performed both in and outside the City and a greater proportion of such activity is performed in the City than in any other city, county or analogous local jurisdiction (excluding states and countries) that may lawfully impose a tax on the gross receipts derived from

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

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

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

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

(d) If the Tax Collector reallocates gross receipts upon examination of any return, the Tax Collector shall notify the person in writing of the basis upon which the Tax Collector made the reallocation. The Tax Collector shall provide such notice as soon as practicable following such reallocation, and within 10 days of receipt of a written request therefor from the taxpayer. The time for the doing of any act required by this Article or Article 6, and the commencement of any liability for penalties and interest under such Articles, shall not begin to run until the Tax Collector provides such notice.

**SEC. 956. PAYMENTS, RETURNS, PREPAYMENTS, EXTENSIONS AND REFUNDS.** Payments, returns, prepayments, extensions and refunds for person's subject to this Article shall be as prescribed in the common administrative provisions set forth in Article 6.

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

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

Section 45. The San Francisco Business and Tax Regulations Code is hereby amended by amending Sections 902.1, 903 and 903.1, and by adding Sections 902.2 and 906.1, of Article 12-A (Payroll Expense Tax Ordinance), as set forth below. The amendments to Sections 902.1, 903 and 903.1 and the addition of Sections 902.2 and 906.1, as enacted by this ordinance, are temporary and shall be operative commencing January 1, 2005 and shall expire on January 1, 2010. Sections 902.1, 903 and 903.1 shall revert to and be as such sections read immediately prior to the amendments enacted by this ordinance on and after January 1, 2010. Provided, that Sections 902.1, 902.2, 903, 903.1 and 906.1, as amended and added by this ordinance, shall continue to apply and be operative on and after January 1, 2010 for the limited purpose of Payroll Expense Taxes imposed under Article 12-A for tax years commencing on or after January 1, 2005 and ending on or before December 31, 2010, and any interest and penalties attributable thereto. Sections 902.1, 902.2, 903, 903.1 and 906.1, as amended and added by this ordinance, shall read as follows:

**SEC. 902.1. PAYROLL EXPENSE.** (a) The term "Payroll Expense" means the compensation paid to, on behalf of, or for the benefit of an individual or pass-through entity, including salaries, wages, bonuses, commissions, property issued or transferred in exchange for the performance of services

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## LEGAL TEXT OF PROPOSITION K (CONTINUED)

(including but not limited to stock options), compensation for services to owners of pass-through entities and any other form of compensation, who or that, during any tax year, performs work or renders services, in whole or in part in the City; and if more than one individual or pass-through entity during any tax year performs work or renders services in whole or in part in the City, the term "Payroll Expense" means the total compensation paid including salaries, wages, bonuses, commissions, property issued or transferred in exchange for the performance of services (including but not limited to stock options), compensation for services to owners of pass-through entities and any other form of compensation for services, to all such individuals and pass-through entities.

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

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

(d) All compensation including all pass-through compensation for services paid to, on behalf of, or for the benefit of owners of a pass-through entity shall be included in the calculation of such entity's payroll expense for purposes of determining such entity's tax liability under this Article. For purposes of this section, the "pass-through compensation for services" of a pass-through entity shall be the

aggregate compensation for personal services rendered by all such owners, and shall not include any return on capital investment. Pass-through entities, at their option, may calculate the amount of "pass-through compensation for services" for any given tax year using one of the following methods:

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

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

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

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

**SEC. 902.2. PASS-THROUGH ENTITY.** The term "pass-through entity" includes a trust, partnership, corporation described in Subchapter S of the Internal Revenue Code of 1986, or amended, limited liability company, limited liability partnership, professional corporation, and any other person or entity which is not subject to the income tax imposed by Subtitle A, Chapter 1 of the Internal Revenue Code of 1986, as amended, or which is allowed a deduction in computing such tax for distributions to the owners or beneficiaries of such person or entity. Any person exempt from payment of the Payroll Expense Tax under Section 934 of this Article shall not be disqualified from or denied such exemption as a result of being a "pass-through entity" under this Section.

**SEC. 903. IMPOSITION OF PAYROLL EXPENSE TAX.** (a) A tax for general governmental purposes is hereby imposed upon every person engaging in business within the City as defined in Section 6.2-12 of Article 6; provided, that such tax shall be levied only

upon that portion of the person's payroll expense that is attributable to the City as set forth in Section 904.

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

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

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

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

**SEC. 903.1. RATE OF PAYROLL EXPENSE TAX.** The rate of the payroll expense tax shall be 1-1/2 percent. The amount of a person's liability for the payroll expense tax shall be the product of such person's taxable payroll expense multiplied by 0.015. The amount of such tax for Associations shall be 1-1/3 percent of the payroll expense of such Association, plus 1-1/3 percent of the total distributions made by such Association by way of salary to those having an ownership interest in such Association. Amounts paid or credited to those having an ownership interest in such Association prior and in addition to the distribution of ownership profit or loss shall be presumed to be distributions "by way of salary" and for personal services rendered unless the taxpayer proves otherwise by clear and convincing evidence.

**SEC. 906.1. BIOTECHNOLOGY EXCLUSION.** (c) Any person engaging in business within the City may exclude from the

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## LEGAL TEXT OF PROPOSITION K (CONTINUED)

person's payroll expense all compensation paid to, on behalf of, or for the benefit of all individuals and pass-through entities who or that perform substantially all work or render substantially all services in direct support of such person's biotechnology business, subject to the conditions and limitations set forth in this Section. For purposes of this Section, "biotechnology business" means conducting biotechnology research and experimental development and operating laboratories for biotechnology research and experimental development, using recombinant DNA, cell fusion, and bioprocessing techniques, as well as the application thereof to the development of diagnostic products and/or devices to improve human health, animal health, and agriculture.

(b) Unless exempted under Sections 905 of this Article, every person engaging in the biotechnology business in the City shall pay the tax imposed under this Article on the full amount of the person's payroll expense attributable to the City from and after the expiration of this Section.

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

Section 66. The San Francisco Business and Tax Regulations Code is hereby 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 6.21-1, of Article 6 (Common Administrative Provisions), and by adding Sections 6.2-9.4, 6.2-9.5, 6.2-10.5, and 6.5-1.5, as follows:

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

(b) Unless expressly provided otherwise, all statutory references in this Article and the Articles set forth in Subsection (a) shall refer to such statutes as amended from time to time and shall include successor provisions. For purposes of collecting the Emergency Response Fee under Article 10A, any reference to a "tax" in this Article shall include the Emergency Response Fee where appropriate; provided, however that nothing in the operation of this provision shall affect the underlying legal character of the Emergency Response Fee or suggest that the fee is a tax.

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

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

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

- (1) Is not required to follow instructions on how to perform services;
- (2) Possesses the skills necessary to perform the task and does not need additional training;
- (3) Performs services that are not essential to the principal's business or are not incorporated into the product or services sold by the principal;
- (4) Should be able to subcontract all or a portion of the project;
- (5) Can hire and supervise his or her own employees, but should not supervise, or be supervised by, the principal's employees;
- (6) Generally works on one project and moves on acquiring additional projects when and if he or she is available;
- (7) Establishes his or her hours of work, working as necessary to accomplish the end result;
- (8) Usually has the right to work simultaneously for the principal and others as long as the end result is achieved;
- (9) Should be able to choose where to perform some, if not all, of the services;
- (10) Can control the manner and method of performing the services;
- (11) Is responsible only for the end result, and is not required to submit interim reports;
- (12) Generally is paid a flat rate for the completion of the project;
- (13) Is expected to assume the burden of business expenses;
- (14) Should have the tools and equipment necessary to perform the services independently;
- (15) Makes an investment in tools, business equipment, publications and supplies appropriate for his or her business;
- (16) Accepts both the benefits and risks of a business transaction. In that he or she has the opportunity to profit from the project price and risks a loss if the end result is unacceptable or costs exceed the project price;

ceptable or costs exceed the project price;

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

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

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

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

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

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

- (1) The person maintains a fixed place of business within the City; or
- (2) An employee, representative or agent of the person maintains a fixed place of business within the City for the benefit or partial benefit of the person; or
- (3) The person or one or more of the person's employees, representatives or agents owns, rents, leases, or hires real or personal property within the City for business purposes for the benefit or partial benefit of the person; or
- (4) The person or one or more of the person's employees, representatives or agents regularly maintains a stock of tangible personal property within the City, for sale in the ordinary course of the person's business; or
- (5) The person or one or more of the person's employees, representatives or agents employs or loans capital on property within the City for the benefit or partial benefit of the person; or
- (6) The person or one or more of the person's employees, representatives or agents solicits business within the City for all or part of any seven days during a tax year; or
- (7) The person or one or more of the person's employees, representatives or agents performs work or renders services within the City for all or part of any seven days during a tax year; or

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## LEGAL TEXT OF PROPOSITION K (CONTINUED)

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

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

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

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

**SEC. 6.5-1.5. AUTHORITY OF CONTROLLER TO REQUIRE INFORMATION FROM TAXPAYERS: CONFIDENTIALITY THEREOF.** (a) In addition to any information or records the Tax Collector may require from any person on any return or statement, or pursuant to a request under Section 6.5-1 or otherwise, the Controller may require any person engaging in business in the City to furnish information and records regarding the particulars of the person's business or businesses. Such particulars may include but are not limited to the person's gross receipts, income, payroll expenses, payments to independent contractors, costs for materials and other business expenses, industry codes, business and industrial classification(s), ownership and management structure of the business, ownership interests in other legal entities, businesses and joint ventures, federal and state tax filing status, and other information the Controller deems necessary or appropriate for purposes of evaluating business activities in the City, tax and economic policies and practices, revenue projections and trends, and other matters.

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

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

### SEC. 6.6-1. CERTIFICATE OF AUTHORITY FOR THIRD-PARTY TAXES.

(a) These additional provisions shall apply to operators under the transient hotel occupancy tax (Article 7), the parking space occupancy tax (Article 9), the utility users tax (Article 10) and the emergency response fee (Article 10A).

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

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

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

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

(f) The Tax Collector may refuse to issue the certificate where, within the 30-day period referred to in Subsection (d) above, the Tax Collector determines that the operator, or any signatory to the application, or any person holding a 10 percent or greater legal or beneficial interest in said operator ("10% owner") is not in compliance with any provision of Articles 6, 7, 9, 10, 10A, 12, 12-A or 12-A-1. Solely for purposes of determining under this Section whether any such operator, signatory or 10% owner is not in compliance with such Articles, the Tax Collector may disregard any

corporation or association owned or controlled, directly or indirectly, by any such operator, signatory or 10% owner and consider such corporation or association's operations and liabilities as conducted by or as owned by any one or more of such corporation or association's officers, directors, partners, members or owners. For purposes of this Section, (i) the term "owned" means ownership of 50 percent or more of the outstanding ownership interests in such corporation or association, and (ii) the term "controlled" includes any kind of control, whether direct or indirect, whether legally enforceable, and however exercisable or exercised over such corporation or association. A presumption of control arises if the operator, signatory or 10% owner is (or was) an officer, director, partner or member of such corporation or association.

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

(h) Before any certificate of authority shall be issued to any applicant to engage in the business of renting parking space in a parking station in this City, such applicant shall file with the Tax Collector a bond naming the City as exclusive beneficiary, at all times the applicant engages in such business. For any parking station with annual gross receipts less than \$100,000, such bond shall be in the amount of \$5,000. For any parking station with annual gross receipts of \$100,000 or more, such bond shall be in the amount of \$25,000. Such bond shall be executed by the applicant as principal, and by a corporation or association which is licensed by the Insurance Commissioner of this

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## LEGAL TEXT OF PROPOSITION K (CONTINUED)

State to transact the business of fidelity and surety insurance, as surety. The applicant shall keep the bond in full force and effect for the duration of the certificate of authority and all renewals thereof issued to such applicant. If the bond provides that the term thereof shall be continuous until cancelled, the applicant shall provide the Tax Collector with certification from the surety of the renewal or continuation of the bond: (i) when applying for renewal of an existing certificate of authority, (ii) when requesting the withdrawal of a suspension of an existing certificate of authority, or (iii) upon written request of the Tax Collector.

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

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

- (1) The City;
- (2) The State of California, or any county, municipal corporation, district or other political sub-division of the State, except where any constitutional or statutory immunity from taxation is waived or is not applicable;
- (3) The United States of America, or any of its agencies or subdivisions, except where any constitutional or statutory immunity from taxation is waived or is not applicable; or
- (4) Any person exempted from the particular tax by the Constitution or statutes of the United States or the Constitution or statutes of the State of California.

**SEC. 6.9-1. DETERMINATIONS, RETURNS AND PAYMENTS; DUE DATE OF TAXES.** Except for jeopardy determinations under Section 6.12-2, and subject to prepayments required under Section 6.9-2, all amounts of taxes and fees imposed by Articles 6, 7, 9, 10, 10A, 11, 12-A and 12-A-1 are due and payable, and shall be delinquent if not paid

to the Tax Collector on or before the following dates:

- (a) For the transient hotel occupancy tax (Article 7) and the parking space occupancy tax (Article 9), for each calendar quarter, on or before the last day of the month following each respective quarterly period;
- (b) For the payroll expense tax (Article 12-A) and Business Tax (Article 12-A-1), on or before the last day of February of each year;
- (c) For the utility users taxes (Article 10) and the emergency response fee (Article 10A), for each monthly period, on or before the last day of the following month; and
- (d) For the stadium operator admission tax (Article 11), within five days after the event, subject to the provisions of Article 11, Section 804.

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

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

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

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

(A) Small Firm Prepayments. Every person liable for payment of a total Payroll Expense Tax in excess of \$2,500 or a total Business Tax in excess of \$500, but less than a combined total of \$50,000 for both such taxes, for any tax year shall pay such taxes for the following tax year in two installments. The first installment shall be due and payable, and shall

be delinquent if not paid on or before, August 1st. The first installment shall be a credit against the person's total liability under the Payroll Expense Tax and Business Tax for the tax year in which the first installment is due. The first installment shall be in an amount equal to one-half (1/2) of the person's estimated total liability under the Payroll Expense Tax and Business Tax for such tax year. The estimated liability for a tax year shall be computed by using 102% of the person's total taxable payroll expense (as defined in Section 902.1 of Article 12-A) and taxable gross receipts (as defined in Section 952.33 of Article 12-A-1) for the preceding tax year, and the corresponding rates of tax applicable to the tax year in which the first installment is due. The second installment shall be reported and paid on or before the last day of February of the following year. The second installment shall be in an amount equal to the person's combined total liability under the Payroll Expense Tax and Business Tax for the subject tax year, less the amount of the first installment and other tax prepayments for such tax year, if any, actually paid. The estimated liability for the 2005 tax year shall be computed by using 102% of the person's taxable payroll expense for the 2004 tax year, plus the person's estimated taxable gross receipts for the 2005 tax year.

(B) Large Firm Prepayments. Every person liable for payment of a combined total Payroll Expense Tax and Business Tax in excess of \$50,000 for any tax year shall pay such tax for the following tax year in four quarterly installments. The first, second and third quarterly installments shall be due and payable, and shall be delinquent if not paid on or before, May 1st, August 1st and November 1st, respectively. The first, second and third quarterly installments shall be a credit against the person's total liability under the Payroll Expense Tax and Business Tax for the tax year in which such first, second and third quarterly installments are due. Such quarterly installments each shall be in an amount equal to one-quarter (1/4) of the person's estimated total liability under the Payroll Expense Tax and Business Tax for such tax year. The estimated liability for such tax year shall be computed by using 104% 102% of the person's total taxable payroll expense (as defined in Section 902.1 of Article 12-A) and taxable gross receipts (as defined in Section 952.33 of Article 12-A-1) for the preceding tax year, and the rates of tax applicable to the tax year in which the first, second and third quarterly installments are due. The fourth installment shall be reported and paid on or before the last day of February of the following year. The fourth quarterly installment shall be in an amount equal to the person's total combined liability under the Payroll Expense Tax and Business Tax liability for the subject

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## LEGAL TEXT OF PROPOSITION K (CONTINUED)

tax year, less the amount of the first, second and third quarterly installments and other tax prepayments, if any, actually paid. The estimated liability for the 2005 tax year shall be computed by using 102% of the person's taxable payroll expense for the 2004 tax year, plus the person's estimated taxable gross receipts for the 2005 tax year.

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

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

In no instance shall an estimated prepayment of hotel or parking taxes be less than 30 percent of such tax collected in the immediately preceding quarterly period. If such estimated prepayment is less than 30 percent of the tax collected in such preceding quarterly period, the operator shall be subject to penalties and interest for the deficiency pursuant to Section 6.17-1. If a prepayment based on actual tax owed is less than 90 percent of the actual liability for the month, the operator shall be subject to penalties and interest for the deficiency pursuant to Section 6.17-1.

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

**SEC. 6.9-5. DETERMINATIONS, RETURNS AND PAYMENTS; CREDITS AND EXEMPTIONS.** The credits and exemptions set forth in Articles 7, 9, 10, 10A, 11, 12, 12-A and 12-A-1 are provided on the assumption

that the City has the power to offer such credits and exemptions. If a credit or exemption is invalidated by a court of competent jurisdiction, the taxpayer must pay any additional amount that the taxpayer would have owed but for such invalid credit or exemption. Amounts owed as a result of the invalidation of a credit or exemption that are paid within three years after the decision of the court becomes final shall not be subject to interest or penalties.

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

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

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

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

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

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

## **EXHIBIT B**

DEPARTMENT OF ELECTIONS  
City and County of San Francisco  
[www.sfgov.org/elections](http://www.sfgov.org/elections)



JOHN ARNTZ  
*Director*

**NOTE:** This version of the Voter Information Pamphlet includes information about all contests for local offices throughout the City and County of San Francisco. Not all voters are eligible to vote on all contests. Your sample ballot includes the contests for which you are eligible to vote. For more information, see your sample ballot, which can be accessed, along with the address of your polling place, at the following address:

*<http://gispubweb.sfgov.org/website/pollingplace/>*

Also, because this version of the pamphlet is a compilation of the various versions of the printed pamphlets distributed throughout San Francisco, some page numbers are duplicated; the pages are also arranged in a different order from the printed version. For these reasons, we are unable to provide a Table of Contents. To find specific information, please refer to the book-marks on the left side of this file.

Voice (415) 554-4375  
Fax (415) 554-7344

1 Dr. Carlton B. Goodlett Place, Room 48  
San Francisco CA 94102-4634

Vote-by-Mail Fax (415) 554-4372  
TTY (415) 554-4386

**DEPARTMENT OF ELECTIONS**  
City and County of San Francisco  
[www.sfgov.org/elections](http://www.sfgov.org/elections)



**JOHN ARNTZ**  
*Director*

September 5, 2008

Dear San Francisco Voter:

San Francisco held its first Presidential Election in 1852, and as the picture on the cover illustrates, much has changed in the City since that election. As the City has evolved, so have the materials in this Voter Information Pamphlet—one of the nation's largest voter guides—and the materials available on the Department of Elections website. With so much information available, I hope you use this guide and our website as you consider how your vote could affect the City in the coming years.

**BALLOT SIMPLIFICATION COMMITTEE**

To assist with your decision-making on the local ballot measures, this pamphlet provides a summary of each local measure, called a "Digest." The Digests are crafted by the five San Francisco residents who make up the Ballot Simplification Committee and who have experience in the fields of education and communication. Their challenge is to transform the legal text of each local measure into clear, voter-friendly language. The Committee holds meetings which allow for public comment before the Committee makes its final decisions.

In the past year, San Francisco has conducted five elections, four of which included local measures. For this election alone, the Committee drafted digests for 22 measures. The Committee members deserve special acknowledgement for their tremendous effort and good work.

**OUR WEBSITE**

As you prepare to decide the City's future, consider visiting the Department of Elections website, which I consider one of the most informative elections websites in California. Some of the resources the site offers are:

**VOTER REGISTRATION LOOKUP:** This new service allows people to check their voter registration status and provides information about how to register or re-register to vote.

**VOTE-BY-MAIL BALLOT STATUS LOOKUP:** This service began recently and allows voters to check both the date the Department mailed their ballot and whether their voted ballot has been received by the Department.

**POLLING PLACE LOOKUP:** Allows voters to locate their polling places, provides a map, and, if polling sites are inaccessible to people with disabilities, provides the nearest accessible polling places within one-quarter mile.

**ONLINE REGISTRATION FORM:** Allows people to complete an online registration form, then print and sign the form before mailing it to the Department.

**PROVISIONAL BALLOT STATUS LOOKUP:** Allows voters who voted provisionally to determine whether their ballots were counted.

**RANKED-CHOICE VOTING INFORMATION:** Voters in 7 of San Francisco's 11 Supervisorial districts will vote for their candidates for the Board of Supervisors using the ranked-choice voting method. Our website includes information on ranked-choice voting, including an interactive demonstration and an explanation of how to correctly mark ballot cards with ranked-choice contests.

**VOTING**

Please note that the busiest times at the polling places are when the polls open at 7 a.m., then at midday, and after 5 p.m. Before Election Day, however, you can vote by mail or vote at City Hall.

**EARLY VOTING AT CITY HALL:** Beginning October 6, weekdays (except holidays) from 8 a.m. until 5 p.m., early voting is available in City Hall to all registered voters. On Election Day, City Hall is open for voting from 7 a.m. until 8 p.m.

**WEEKEND VOTING AT CITY HALL:** Early voting is available in City Hall during the three weekends before the election from 10 a.m. until 4 p.m.: October 18–19, October 25–26, and November 1–2. For weekend voting, please enter City Hall at the Grove Street entrance.

**TO CONTACT US**

If you have questions or need more information on any issue related to the election, please contact the Department at 554-4375, 554-4367 (Chinese), or 554-4366 (Spanish), or visit our website, [www.sfgov.org/elections](http://www.sfgov.org/elections).

Respectfully,  
John Arntz, Director

Voice (415) 554-4375  
Fax (415) 554-7344

1 Dr. Carlton B. Goodlett Place, Room 48  
San Francisco CA 94102-4634

Vote-by-Mail Fax (415) 554-4372  
TTY (415) 554-4386



## Purpose of the Voter Information Pamphlet

The purpose of this pamphlet is to provide voters with information about candidates and ballot measures before each election. In addition to the sample ballot, this pamphlet includes: candidates' statements of their qualifications for local office; information about the duties and compensation of the elective offices sought by those candidates; an impartial summary of each local ballot measure prepared by the City's Ballot Simplification Committee; a financial analysis of each local ballot measure prepared by the City's Controller; an explanation of how each local ballot measure qualified for the ballot; arguments supporting and opposing local ballot measures, and the legal text of each local ballot measure. The California Secretary of State also produces an Official Voter Information Guide that covers statewide ballot measures.

You may bring this pamphlet with you to your polling place. In addition, every precinct is supplied with a copy of the Voter Information Pamphlet. Please ask a pollworker if you would like to use it.

The Department of Elections provides the Voter Information Pamphlets to the Post Office for delivery to individual voters. If you do not receive your pamphlet by October 20, 2008, please contact your local Post Office and the Department of Elections.

This pamphlet is also available in Chinese and Spanish.

這本手冊有中文版，如果要索取中文版，請致電：(415) 554-4367。

Este folleto también está disponible en **español**. Para solicitar una copia, por favor llame al 415-554-4366.

## The Ballot Simplification Committee

The Ballot Simplification Committee prepares an impartial summary of each local ballot measure. This summary, or "Digest", is written in simple language and includes a brief explanation of "The Way it is Now," what each proposal would do, what a "Yes" vote means, and what a "No" vote means. In addition, the Committee writes or reviews other information in this pamphlet, including the glossary of "Words You Need to Know" and the Frequently Asked Questions (FAQs). The Committee members have backgrounds in journalism, education and written communication, and they volunteer their time to prepare these informational materials for voters. The Committee members are:

Betty Packard, *Chair*  
*Nominated by the Northern California*  
*Broadcasters Association*

Dana Chisnell  
*Nominated by the Northern California*  
*Media Workers Guild*

June Fraps  
*Nominated by the National Academy of*  
*Television Arts and Sciences*

Ann Jorgensen  
*Nominated by the San Francisco*  
*Unified School District*

Adele Fasick  
*Nominated by the League of Women Voters*

Mollie Lee, *ex officio*  
*Deputy City Attorney*

Andrew Shen, *ex officio*  
*Deputy City Attorney*

## Accessible Voting and Services for Voters With Disabilities

**Voting by Mail before Election Day** – Vote-by-mail voters are mailed an official ballot prior to the upcoming election, which allows them to vote privately and at their convenience. Any registered voter may request to vote by mail in any election. A Vote-by-Mail Application can be found on the back cover of this pamphlet. For more information, see page 7.

**Early Voting in City Hall** – During the 29 days prior to an election, any voter may vote at the Department of Elections on the ground floor of City Hall. City Hall is fully accessible from any of its four entrances. The polling station at City Hall is equipped with all of the assistance tools provided at polling places on Election Day. For more information, see page 7.

**Access to the Voter Information Pamphlet** – In collaboration with the Department of Elections, San Francisco Library for the Blind and Print Disabled, at 100 Larkin Street, distributes audiocassette versions of the Voter Information Pamphlet and the state Official Voter Information Guide. To request a copy call Martin Magid at 415-557-4253.

The Department of Elections also offers the Voter Information Pamphlet in audiocassette, audio CD and large-print formats, and the state Official Voter Information Guide in audiocassette and large-print formats.

To request either guide in alternative format, please call 415-554-4375. You may also access a PDF or text-only version of the Voter Information Pamphlet online on the Department of Elections website: [www.sfgov.org/elections](http://www.sfgov.org/elections)

**Accessible Voting Machine** – Voters with, but not limited to, sight and mobility impairments have the option to use an accessible voting machine. This machine is designed to assist voters with specific needs to vote independently and privately; it is available at every polling place on Election Day. For instruction on its use, see page 18.

### Other Forms of Assistance at the Polling Place:

**Personal Assistance** – A voter may bring up to two people, including pollworkers, into the voting booth for assistance in marking his or her ballot.

**Curbside Voting** – If a voter is unable to enter a polling place, pollworkers can be asked to bring the necessary voting materials to the voter outside the polling place.

**Reading Tools** – Every polling place is provided with large-print instructions on how to mark a ballot and special optical sheets to magnify the print on the ballot.

**Seated Voting** – Every polling place has at least one voting booth that allows voters to vote while seated.

**Voting Tools** – Every polling place has two easy-grip pens for signing the roster and marking the ballot.

**TTY (Teletypewriter Device)** – The Department of Elections can be reached via TTY by calling 415-554-4386.

If your polling place is not functionally accessible, you may call 415-554-4551 prior to Election Day to find out the location of the nearest accessible polling place within your district. For accessible polling place information on Election Day, or further information on accessibility for the upcoming election, please contact the Department of Elections at 415-554-4375.

**Multilingual Voter Services:**  
**Voter Assistance in Chinese and Spanish**  
**多種語言選民服務:**  
**選民中文和西班牙文語言協助**  
**Servicios Multilingües para los Electores:**  
**Asistencia para los Electores en Chino y Español**

In compliance with federal law and local ordinance, the Department of Elections provides services to voters and official election materials in Chinese and Spanish, in addition to English. Multilingual voter services include:

- Translated election materials: ballots, voter registration forms, voter notices, vote-by-mail ballot applications and instructions, and Voter Information Pamphlets.
- Telephone assistance in Chinese and Spanish, available Monday through Friday, 8 a.m. to 5 p.m. and from 7 a.m. to 8 p.m. on Election Day.
- Telephone Assistance in Chinese: 415-554-4367
- Telephone Assistance in Spanish: 415-554-4366
- Instructional signs in English, Chinese and Spanish at all polling places on Election Day.
- Chinese and Spanish bilingual pollworker assistance at designated polling places on Election Day.
- Voter information in Chinese and Spanish on our website: [www.sfgov.org/elections](http://www.sfgov.org/elections)

**中文選民服務**

依照聯邦法律和地方法令，選務處提供選民中文服務和官方選舉資料。中文服務包括：

- 已翻譯的選舉資料，其中包括：選舉、選民登記表、選舉預告、郵寄投票申請表和指南以及選民資料手冊。
- 於星期一至星期五上午8時至下午5時及選舉日上7時至晚上8時提供的中文電話協助：415-554-4367。
- 於選舉日在每個投票站提供中文的說明標牌。
- 於選舉日在指定的投票站提供中文語言協助。
- 在選務處網站([www.sfgov.org/elections](http://www.sfgov.org/elections)) 提供中文選舉資料。

**中文版的選民資料手冊**

除了英文版選民資料手冊之外，選務處還提供中文版的選民資料手冊。如果你想要選務處郵寄給你一本中文版的選民資料手冊，請致電：415-554-4367。

**Asistencia para los Electores en Español**

Conforme a la ley federal y el reglamento municipal, el Departamento de Elecciones proporciona materiales electorales y asistencia a los electores en español. Servicios para los electores en español incluyen:

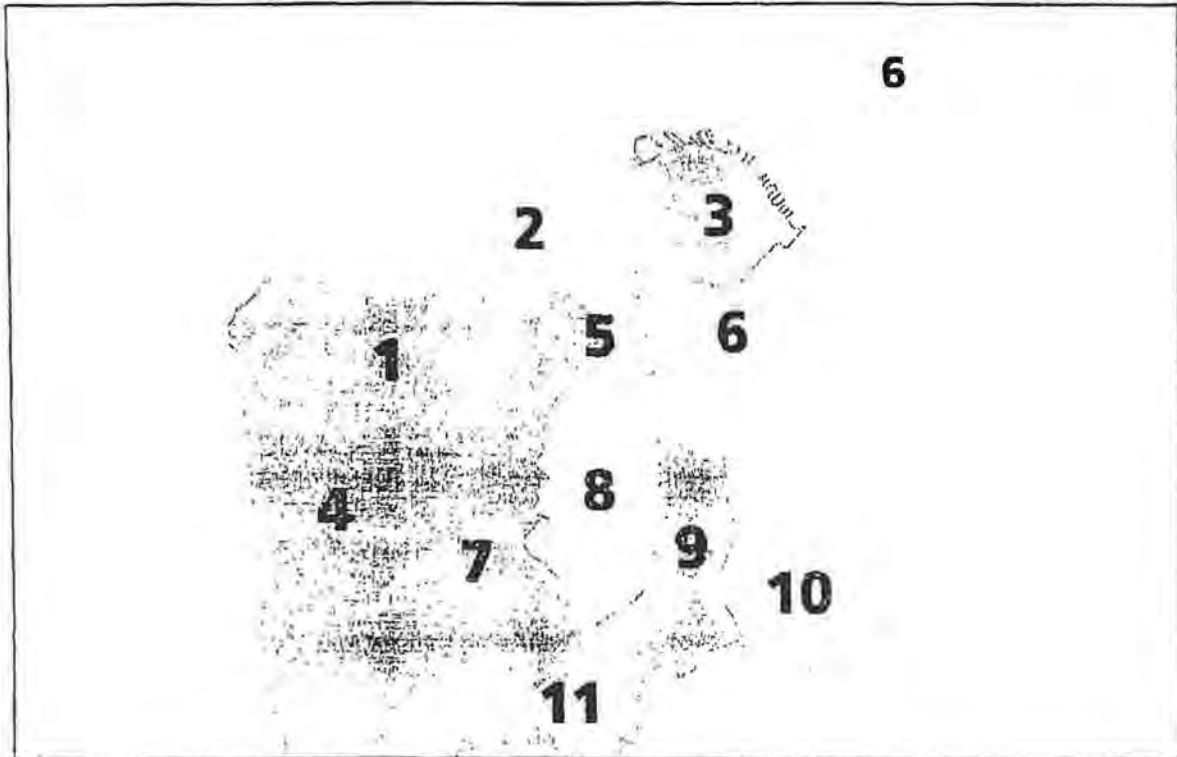
- Materiales electorales traducidos incluyendo: la boleta electoral, el formulario de inscripción para votar, avisos a los electores, solicitudes e instrucciones para votar por correo y el Folleto de Información para los Electores.
- Asistencia telefónica en español disponible de lunes a viernes de 8 a.m. a 5 p.m. y en el Día de las Elecciones de 7 a.m. a 8 p.m. llamando al 415-554-4366.
- Rótulos con instrucciones en español en los lugares de votación el Día de las Elecciones.
- Trabajadores electorales bilingües en los lugares de votación designados el Día de las Elecciones.
- Información electoral en nuestro sitio web en español: [www.sfgov.org/elections](http://www.sfgov.org/elections)

**El Folleto de Información para los Electores en español**

Además del Folleto de Información para los Electores en inglés, el Departamento de Elecciones provee un Folleto de información para los Electores en español a los electores que lo soliciten. Si desea recibir un Folleto de Información para los Electores en español, por favor llame al 415-554-4366.

## San Francisco's Supervisorial Districts

San Francisco is divided into eleven Supervisorial districts. For the November 4, 2008 election, San Francisco voters who live in Districts 1, 3, 4, 5, 7, 9 and 11 will elect their member of the Board of Supervisors. To find out which district you live in, please refer to the map below or the box at the top right of this pamphlet's back cover.



**District 1** covers most of the Richmond neighborhood.

**District 2** includes the Presidio, Cow Hollow, Marina and Pacific Heights neighborhoods, as well as part of the Richmond neighborhood.

**District 3** includes Chinatown, Nob Hill, Russian Hill, Telegraph Hill and the northern Embarcadero waterfront.

**District 4** covers most of the Sunset neighborhood.

**District 5** includes the Haight-Ashbury, Panhandle and Western Addition neighborhoods.

**District 6** includes the Civic Center and South of Market neighborhoods and Treasure Island.

**District 7** includes Park Merced and Twin Peaks.

**District 8** includes the Castro, Noe Valley, Glen Park and Upper Market neighborhoods.

**District 9** includes the Mission and Bernal Heights neighborhoods and part of the Portola neighborhood.

**District 10** includes the Bayview, Hunter's Point and Potrero Hill neighborhoods and part of the Portola neighborhood.

**District 11** includes the Ingleside, Excelsior, Ocean View and Merced Heights neighborhoods.





# Early Voting in Person or by Mail

(Absentee Voting)



Any voter may request a vote-by-mail ballot (absentee ballot). You can request that a ballot be mailed to you, or you can come to the Department of Elections and vote in person starting on October 6, 2008.

## VOTING IN PERSON

You can vote on or before Election Day at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 48.

Office hours for early voting are as follows:

- 8 a.m. to 5 p.m., Monday through Friday (except holidays), October 6–November 3;
- 10 a.m. to 4 p.m., Saturday and Sunday, October 18–19, October 25–26 and November 1–2 (enter on Grove Street);
- 7 a.m. to 8 p.m. on Election Day, Tuesday, November 4, 2008.

## VOTING BY MAIL FOR THIS ELECTION ONLY

To request a ballot by mail, complete the application on the back cover of this pamphlet, and mail it to the Department of Elections. You may also request a ballot by sending a written request or postcard to the Department of Elections. Remember to include your home address, the address to which you want the ballot mailed, your birthdate, name and signature. Your signature must be included! Mail your request to the address on the front cover of this pamphlet, or fax it to 415-554-4372. Your request must be received by the Department of Elections before 5 p.m. on October 28, 2008. (By law, the Department of Elections cannot accept requests for mailed ballots received after 5 p.m. on October 28, 2008, regardless of when these requests were postmarked!) Once we process your request, a ballot will be sent to you.

When you receive your ballot, please read the instructions carefully. You can mark your ballot using a #2 pencil (recommended) or a black pen. If you use another type of marking device, the vote-counting machines may not record your votes properly. (Do not use a felt-tip pen because these can bleed through to the reverse side of the ballot card.) You can mail your ballot back to the Department of Elections—free-of-charge—by inserting your ballot into the envelope provided, signing and sealing the envelope, and dropping it in any mailbox—no stamp is required. You can also drop off your voted ballot at any San Francisco polling place on Election Day, Tuesday, November 4, 2008. The Department of Elections MUST receive your ballot by 8 p.m. on Tuesday, November 4, 2008.

If your ballot is damaged or you make a mistake, check the "Spoiled Ballot" box on the back of the return envelope and return it to the Department of Elections, no later than 5 p.m. on October 28, 2008, to be mailed a new one. You may also surrender the spoiled ballot at your polling place or at the Department of Elections in City Hall, Room 48, to obtain a new ballot.

## VOTING BY MAIL FOR ALL ELECTIONS

Any voter may request to be a permanent vote-by-mail voter (permanent absentee voter).

Once you become a permanent vote-by-mail voter, we will mail you a ballot automatically for every election until you move, re-register, or do not vote in two consecutive statewide general elections.

If you do not vote in two consecutive statewide general elections, you will no longer be a permanent vote-by-mail voter. However, you will remain on the voter roll unless the Department of Elections has been informed that you no longer live at the address at which you are registered. To regain your permanent vote-by-mail status, you will need to re-apply as described below.

To become a permanent vote-by-mail voter, complete the Vote-by-Mail Application on the back cover and return it to the Department of Elections, or call for an application at 415-554-4375. Be sure to check the box that says, "Permanent Vote-by-Mail Voter" and sign your name where indicated.



### IMPORTANT NOTICE TO PERMANENT VOTE-BY-MAIL VOTERS

If you have already registered as a permanent vote-by-mail voter, your ballot will be mailed on or about October 6. To find out if you are registered as a permanent vote-by-mail voter, please use the Voter Registration Status Lookup tool on the Department of Elections website, [www.sfgov.org/elections](http://www.sfgov.org/elections), or call the Department of Elections at 415-554-4411. If you have not received your ballot by October 20, please call 415-554-4375.

### Track and Confirm Receipt of Your Vote-by-Mail Ballot

Vote-by-mail voters can track and confirm when their voted ballot was received by the Department of Elections. To determine the receipt status of your ballot, visit our website at [www.sfgov.org/elections](http://www.sfgov.org/elections) or call the Department of Elections at 415-554-4411.



# Always Check the Location of Your Polling Place

Each election an average of 13% of San Francisco's  
polling places change due to cancellations.

Check the back cover of this pamphlet:

Back cover



**NOTE:**

Your polling place address is located on the upper left-hand side of the back cover of this pamphlet. Please make a note of it. Even if you request a vote-by-mail ballot, you may still wish to turn in your ballot at your polling place on Election Day.

Check whether your polling place is accessible for people with disabilities.

**Your Polling Place Address Is:**

Eureka Valley Playground  
100 Collingwood Street  
Between Stevens and Broadway  
PRECINCT 3623



**Access:**

Are the entryway and the voting area accessible?

YES

5.1% Slope

Your precinct number

A physical description of your polling place entryway, such as slope, ramped access or height clearance.

Your polling place address is also available at the Department of Elections website:  
[www.sfgov.org/elections](http://www.sfgov.org/elections)

If your polling place is not functionally accessible, you may call 415-554-4551 prior to Election Day to find the nearest accessible polling place within your district. For accessible polling place information on Election Day, call 415-554-4375.

# Late Polling Place Changes

If a polling place becomes unavailable after the Voter Information Pamphlet is mailed, the Department of Elections notifies affected voters with:



## Change of Polling Place Cards

The Department of Elections sends change notification postcards to all registered voters within the precinct to inform them of the new location.



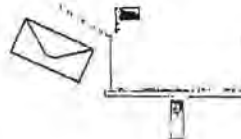
## Change of Polling Place Signs

For those voters who are unaware that their polling place has changed, the Department of Elections posts "Change of Polling Place" signs at the address of the old location on Election Day. Voters can tear off a sheet of paper with the address and cross-streets of their new polling place from a pad attached to the "Change of Polling Place" sign.

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## Some Precincts Do Not Have a Polling Place

Voting precincts with fewer than 250 registered voters may be designated "Mail Ballot Precincts". An official ballot and postage-paid return envelope will be mailed automatically to all voters in those precincts approximately four weeks before every election.



For those voters who would prefer to drop off their official mail ballot at a polling place, the addresses of the two polling places nearest to their precinct are provided with the ballot.

Visit our website  
[www.sfgov.org/elections](http://www.sfgov.org/elections) for information on:

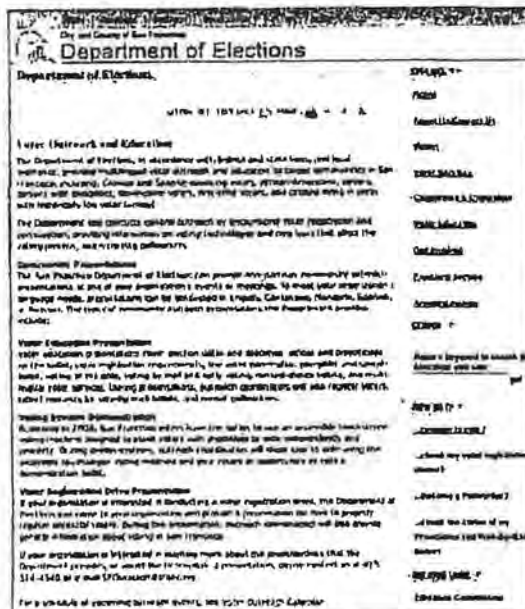


VOTING

- Voter Registration Status Lookup tool
- Voting by mail
- Voting at the polls on Election Day
- Ranked-choice voting
- Polling Place and Sample Ballot Lookup tool
- Access for voters with disabilities

MULTILINGUAL VOTER SERVICES

- List of services available in English, Chinese and Spanish
- Bilingual voter registration forms and vote-by-mail ballot applications
- Voter Information Pamphlets in Chinese and Spanish
- Contact numbers for Chinese and Spanish telephone assistance



UPCOMING ELECTIONS

- Election calendar
- Official list of local ballot measures
- Qualified candidate lists
- Voter Information Pamphlet

HOW TO GET INVOLVED

- Become a pollworker on Election Day
- High school student pollworker program
- Provide your property as a polling place
- Voter education programs

ANNOUNCEMENTS

- Press releases and memoranda
- Employment opportunities
- Local election results

ELECTIONS ARCHIVE

- Historical Voter Information Pamphlets going back to 1907
- Election results dating back to 1995
- Historical voter turnout records

Your first source for election information is [www.sfgov.org/elections](http://www.sfgov.org/elections)

## Important Election Dates

► First day of early voting at City Hall (see page 7):	October 6
► Deadline to register to vote (see page 12):	October 20
► Deadline to notify Department of Elections of address change (see page 12):	October 20
► First weekend of early voting at City Hall (see page 7):	October 18–19
► Deadline for Department of Elections to receive request for a vote-by-mail ballot (see page 7):	October 28, 5 p.m.
► Deadline for new residents or new citizens to register and vote (see page 12):	October 28, 5 p.m.
► Last weekend of early voting at City Hall (see page 7):	November 1–2
► Election Day:	November 4, 7 a.m. to 8 p.m.



## Contacting the Department of Elections

The Department of Elections has telephone lines for specific purposes:

- For general information, call 415-554-4375;
- To register to vote, call 415-554-4375;
- To request a Vote-by-Mail Application, call 415-554-4375;
- For assistance in Chinese, call 415-554-4367; 中文電話協助: 415-554-4367;
- For assistance in Spanish, call 415-554-4366; Para recibir asistencia en español, llame al 415-554-4366;
- For TTY assistance, call 415-554-4386;
- For information about becoming a pollworker, call 415-554-4395;
- For election results on Election Night, call 415-554-4375;
- To offer your facility as a polling place, call 415-554-4551;
- To request a voter education presentation or voter education materials for distribution, call 415-554-4340.

Our office hours are Mondays through Fridays (except holidays) from 8 a.m. until 5 p.m.

# Eligibility, Registration and Voting Information

## Eligibility

To be eligible to register to vote in San Francisco:

- You must be a citizen of the United States;
- You must be a resident of San Francisco;
- You must be at least 18 on or before Election Day; and
- You must not be in prison or on parole for the conviction of a felony.

## Registration

For this election, the registration deadline is October 20. To obtain a voter registration form:

- Visit [www.sfgov.org/elections](http://www.sfgov.org/elections) to fill out or download a form;
- Call the Department of Elections at 415-554-4376 and request that one be mailed to you; or
- Pick one up at the Department of Elections or the County Clerk's office in City Hall, the Department of Motor Vehicles, or at public libraries and post offices throughout San Francisco.

Once the Department of Elections receives a completed voter registration form, the new voter will receive a card in the mail confirming his or her right to vote.

Each registrant must provide a current and valid California driver's license or California identification number on his or her voter registration form. Registrants who do not have either must provide the last four digits of their Social Security number to meet the identification requirements. If a voter does not have any of these three forms of identification, a unique identifying number will be assigned for voter registration purposes only. Any registrant who does not provide this information prior to Election Day may have to vote a provisional ballot; if the identification cannot be confirmed, the provisional ballot cannot be counted.

## Have You Moved?

Voters must inform the Department of Elections of address changes at least 15 days before an election to vote in that election. Voters may change their address by:

- Completing and submitting a voter registration form; or
- Submitting a written notice of their change of address along with their signature, printed name, date of birth, and previous and new addresses.

**Voters who moved within San Francisco** and were unable to change their address prior to the deadline 15 days before the election are encouraged to:

- Come to City Hall, Room 48, on or before Election Day, complete a new voter registration form and vote at the Department of Elections.
- Go to their new polling place on Election Day, complete a new voter registration form and cast a provisional ballot. Voters can check the address of their new polling place by entering their new address on our website, or by calling the Department of Elections.

**New residents** who establish San Francisco residency after the close of registration on October 20 may, no later than

October 28, register and vote at the Department of Elections. New residents are eligible to vote for President and Vice-President only.

## Not Yet 18?

Anyone who will turn 18 years of age on or before Election Day is eligible to register and vote in that election. To register:

- Complete a voter registration form; and
- Submit the registration form either in person or by mail no later than 15 days before that election.

## New Citizen Registration and Voting

California election law extends the registration and voting deadline to the 7th day before the election for those who become new citizens after the close of registration on October 20. Anyone who becomes a new citizen between October 21 and October 28 must, no later than October 28:

- Present your Certificate of U.S. Naturalization to the Department of Elections;
- Complete a voter registration form; and
- Vote at the Department of Elections after registering.

## Overseas and Military Voters

Special Overseas and Military Voters are:

- Members of the armed forces;
- Spouses or dependents of members of the armed forces;
- United States citizens temporarily living outside of the country; or
- U.S. citizens serving on a merchant vessel documented under the laws of the United States.

Special Overseas and Military Voters can register to vote and receive a vote-by-mail (absentee) ballot by completing the Federal Post Card Application (FPCA). The application can be downloaded from <http://www.fvap.gov/pubs/online/fpa.pdf> or obtained from embassies, consulates or military voting assistance officers.

## Ex-Offenders' Right to Vote

California law allows a person who has been convicted of a felony to register and vote if he or she:

- Has completed his or her prison term for a felony, including any period of parole or supervised release.
- Is on federal or state probation.
- Is incarcerated in county jail as a condition of felony probation or as a result of a misdemeanor sentence.

Additionally, people who have been convicted of a misdemeanor can register and vote even while on probation, supervised release, or incarcerated in county jail.

In order to restore the right to vote, a person only needs to complete and return a voter registration form. No other documentation is required.



# Frequently Asked Questions (FAQs)

by the Ballot Simplification Committee

**Q — Who can vote?**

A — U.S. citizens, 18 years or older, who are registered to vote in San Francisco on or before October 20, 2008.

**Q — When do I vote?**

A — Election Day is Tuesday, November 4, 2008. Your polling place will be open from 7 a.m. to 8 p.m.

**Q — Where do I go to vote?**

A — Go to your polling place. The address is on the back cover of this book.

**Q — My 18th birthday is after October 20, 2008 but on or before November 4. May I vote in the November 4 election?**

A — Yes, if your 18th birthday is on or before November 4, but after October 20, you can register to vote on or before October 20 and vote November 4 — even though you were not 18 at the time you registered to vote.

**Q — If I was arrested or convicted of a crime, can I still vote?**

A — You can register and vote as long as you are not in prison or on parole for a felony conviction. You must complete a new registration form on or before October 20 to vote.

**Q — I have just become a U.S. citizen. Can I vote in the November 4 election?**

A — If you became a U.S. citizen on or before October 20, you may vote in the election, but you must register to vote by October 20;

**OR**

If you became a U.S. citizen after October 20, but on or before October 28, you may register and vote at the Department of Elections office by October 28 with proof of citizenship.

**Q — I have moved within San Francisco but have not re-registered. Can I vote in this election?**

A — Yes, but you must go to your new polling place or City Hall, Room 48, and complete a voter registration form to update your registration information. You can look up the address of your new polling place by entering your new home address on the Department of Elections website ([www.sfgov.org/elections](http://www.sfgov.org/elections)). You may be asked to vote a provisional ballot at your new polling place.

**Q — What do I do if my polling place is not open?**

A — Check the back cover of this book to make sure you have gone to the right place. Polling places often change. If

you *are* at the right place, call the Department of Elections immediately at 415-554-4375.

**Q — If I don't know what to do when I get to my polling place, is there someone there to help me?**

A — Yes, the pollworkers at the polling place will help you.

**Q — Can I take my sample ballot or my own written list into the voting booth?**

A — Yes. Deciding your votes before you get to the polls is helpful. Your sample ballot is located inside this voter pamphlet, or you may use the Ballot Worksheet included in this pamphlet for this purpose.

**Q — Do I have to vote on every item on the ballot?**

A — No, you do not. The votes you cast will be counted whether you have voted on every item or not.

**Q — Is there any way to vote instead of going to the polling place on Election Day?**

A — Yes, you can vote before November 4 if you:

Fill out and mail the Vote-by-Mail Application printed on the back cover of this book. Once we process your request, a vote-by-mail ballot will be sent to you. Your request must be *received* by the Department of Elections no later than 5 p.m. on October 28, 2008;

**OR**

Go to the Department of Elections at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 48, from October 6 to November 4. The office hours are: 8 a.m. to 5 p.m., Monday through Friday (except holidays), 10 a.m. to 4 p.m.,

Saturday and Sunday on October 18-19, October 25-26 and November 1-2 (weekend entrance on Grove Street); and 7 a.m. to 8 p.m. on Election Day, November 4.

**Q — If I don't use an application, can I get a vote-by-mail ballot some other way?**

A — You can send a note, preferably on a postcard, to the Department of Elections asking for a ballot. This note must include: your printed home address, the address where you want the ballot mailed, your birthdate, your printed name and your *signature*. Mail your request to the address on the front cover of this pamphlet, or fax it to 415-554-4372. Your request must be received by the Department of Elections no later than 5 p.m. on October 28, 2008.

**Q — Who can vote?**

A — U.S. citizens,  
18 years or older, who  
are registered to vote  
in San Francisco on or  
before October 20, 2008.

## Voting at Your Polling Place on Election Day



Approach the table where pollworkers are issuing ballots and state your name and address. When one of the pollworkers finds your name in the roster of voters, the pollworker will repeat your name and address. Sign your name on the signature line next to your name in the roster of voters.

You can choose to vote with a paper ballot or an accessible touchscreen machine (see page 18). If you choose a paper ballot, a pollworker will give you your ballot, your ballot's stub receipt, a blue secrecy folder and a special ballot-marking pen. Your ballot will consist of multiple cards. Take your ballot to one of the voting booths, where you may mark your ballot in privacy.

## Marking the Ballot

Using the ballot-marking pen provided at your polling place, mark your paper ballot by connecting the head and tail of the arrow pointing to your choice for each contest, as shown in the picture. The ballot may be printed on both sides of the page – be sure to review both sides of each ballot card!

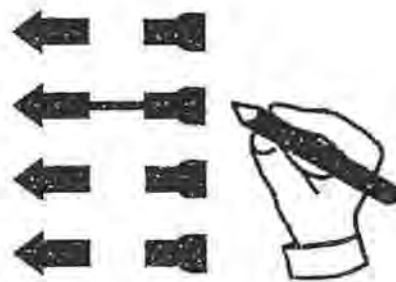
Please note: the number of candidates you may select for each contest or choice will be printed above the list of candidate names for each contest. If you overvote by marking more than the allowed number of candidates for any contest or choice, or by marking both "YES" and "NO" in a measure contest, your votes for that contest cannot be counted!

In addition to the candidates listed on the ballot, there may be other people running as qualified write-in candidates. For a list of qualified write-in candidates, please ask a pollworker. Voters with mailed ballots may access the list of qualified write-in candidates by visiting our website at [www.sfgov.org/elections](http://www.sfgov.org/elections) or by calling the Department of Elections at 415-554-4375.

To vote for a qualified write-in candidate, write the name of the candidate in the space marked "Write-in." You must connect the head and tail of the arrow pointing to the "Write-in" space for your write-in vote to be counted. Only write-in votes for qualified write-in candidates can be counted. Do not write in a vote for a candidate whose name is printed on the ballot.

If you make a mistake while voting, ask a pollworker for another ballot. Voters may request up to two replacement sets of ballots.

For information on ranked-choice voting, see page 16.



### PRESIDENT Vote For One

THOMAS A. EDISON	←	→
ALBERT EINSTEIN	←	→
FLORENCE NIGHTINGALE	←	→
BOOKER T. WASHINGTON	←	→
Write-in <i>John Hancock</i>	←	→

## Once You Have Marked Your Ballot



Make sure that your ballot stub receipt has been detached from the top of each ballot card. Insert your ballot, one card at a time, into the slot in the front of the "Insight" optical-scan voting machine. The ballot can be inserted into the voting machine in any direction: upside down, right side up, backwards or forwards. The voting machine counts the votes electronically when the ballots are inserted by the voter. The ballots are stored in a locked compartment inside the voting machine.

## Guidelines for Provisional Voting

If you are a registered San Francisco voter, you have the right to cast a provisional ballot if:

- You were issued a vote-by-mail ballot that you are unable to surrender and you want to vote at the polls;
- Your name does not appear in the roster of voters for the precinct;
- You have moved within San Francisco but did not provide written notice of the address change to the Department of Elections by the deadline; or
- You are a first-time voter listed in the pink Provisional Roster and did not provide a valid California driver's license or state identification number or the last four digits of your Social Security number on your voter registration form.

**How to cast a provisional ballot:**

You will receive a ballot and a pink provisional ballot envelope from a pollworker. The pollworker will fill out the pollworker section of the envelope. You must complete the voter's section of the provisional envelope, including providing your name, date of birth, current address and previous address, if applicable. You must also sign the declaration confirming that you are a resident of San Francisco and are registered and eligible to vote in this election. **It is very important that you sign your name at the bottom of the envelope – without your signature your provisional ballot cannot be counted.**

Once you have filled out the voter's section of the provisional envelope and marked your ballot, insert your ballot into the envelope, **seal the envelope**, and return it to a pollworker.

A receipt on the back of the provisional envelope includes a website and a toll-free number which you may use to find out whether your provisional ballot was counted. To determine the status of your provisional ballot, call 1-866-325-9163 or visit the Department of Elections website ([www.sfelections.org/pv](http://www.sfelections.org/pv)) no sooner than December 15 and provide the number printed on your provisional voter receipt.

## Your Sample Ballot

Your sample ballot begins on page 20. It is a reduction in size of the official ballot you will use to cast your vote on Election Day. Feel free to mark your sample ballot and bring it to the polling place to use as a guide on Election Day. (You can also use the Ballot Worksheet, located on page 269 of this pamphlet, for the same purpose.)

[illegible]

# Ranked-Choice Voting

Ranked-choice voting was passed by San Francisco voters as an amendment to the City Charter in March 2002 (Proposition A).

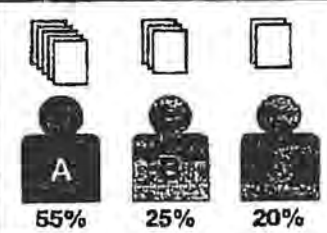
Ranked-choice voting allows San Francisco voters to rank up to three candidates for the same office.

## Who is elected using ranked-choice voting?

San Francisco voters use ranked-choice voting to elect the Mayor, Sheriff, District Attorney, City Attorney, Treasurer, Assessor-Recorder, Public Defender and Members of the Board of Supervisors.

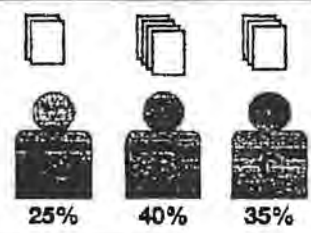
For the **November 4, 2008 election**, San Francisco voters who live in Supervisorial Districts 1, 3, 4, 5, 7, 9 and 11 will use ranked-choice voting to elect their **Member of the Board of Supervisors**. (San Francisco voters who live in Supervisorial Districts 2, 6, 8 and 10 will not use ranked-choice voting in this election.) To locate your district, please refer to the map on page 6 or the box at the top right of this pamphlet's back cover.

## How Ranked-Choice Voting Works:



**A** 55%    **B** 25%    **C** 20%

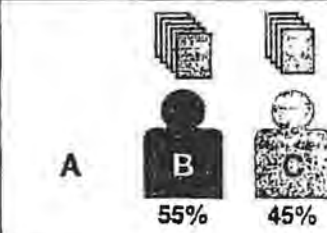
To start, every first-choice selection is counted. Any candidate who receives a majority (more than 50%) of the first-choice selections is declared the winner.



25%    40%    35%

If no candidate receives more than 50% of the first-choice selections, the candidate who received the fewest number of first-choice selections is eliminated.

Voters who selected the eliminated candidate as their first choice will have their vote transferred to their second choice.



**A**    **B** 55%    **C** 45%

The votes are then recounted. If any remaining candidate receives more than 50% of the votes, he or she is declared the winner.

If no remaining candidate receives more than 50% of the votes, the process of eliminating candidates and transferring votes to the next-ranked candidate is repeated until one candidate has a winning majority.

For more information and an interactive demonstration on ranked-choice voting, visit [www.sfgov.org/elections/rcv](http://www.sfgov.org/elections/rcv)



# Marking the Ranked-Choice Ballot

With ranked-choice voting, the names of all the candidates are listed in three repeating columns on the ballot. This allows you to rank up to three candidates for the same office.

## First Column

Select your **first-choice** candidate by completing the arrow pointing to your choice.

## Second Column

To indicate a **second choice**, select a different candidate in the second column by completing the arrow pointing to your choice.

## Third Column

To indicate a **third choice**, select a different candidate in the third column by completing the arrow pointing to your choice.

CITY AND COUNTY / 市縣 / CIUDAD Y CONDADO		
MEMBER, BOARD OF SUPERVISORS / 市參議員 / MIEMBRO DEL CONSEJO DE SUPERVISORES		
DISTRICT 0 / 第 0 選區 / DISTRITO 0		
VOTE YOUR FIRST, SECOND AND THIRD CHOICES / 投票第一、第二和第三選擇 / VOTE POR SU PRIMERA, SEGUNDA Y TERCERA SELECCIÓN		
FIRST CHOICE 第一選擇 PRIMERA SELECCIÓN	SECOND CHOICE 第二選擇 SEGUNDA SELECCIÓN	THIRD CHOICE 第三選擇 TERCERA SELECCIÓN
Vote for One 選一名 Vote por Uno	Vote for One - Must be different from your first choice 選一名 / 必須與第一選擇不同 Vote por Uno - Deberá ser diferente de su primera selección	Vote for One - Must be different from your first and second choices 選一名 / 必須與第一及第二選擇不同 Vote por Uno - Deberá ser diferente de su primera y segunda selección
ELEANOR ROOSEVELT 1290-20 • 1954-60 Incumbent Teacher 1290-20	ELEANOR ROOSEVELT 1290-20 • 1954-60 Incumbent Teacher 1290-20	ELEANOR ROOSEVELT 1290-20 • 1954-60 Incumbent Teacher 1290-20
CESAR CHAVEZ 1914 • 1977 Labor Organizer Organizador Laboral 1914-77	CESAR CHAVEZ 1914 • 1977 Labor Organizer Organizador Laboral 1914-77	CESAR CHAVEZ 1914 • 1977 Labor Organizer Organizador Laboral 1914-77
WALTER LUM 1912 • 1978 Publisher Editor 1912-78	WALTER LUM 1912 • 1978 Publisher Editor 1912-78	WALTER LUM 1912 • 1978 Publisher Editor 1912-78
JOHN HANCOCK 1910 • 1974 Physician Médico 1910-74	JOHN HANCOCK 1910 • 1974 Physician Médico 1910-74	JOHN HANCOCK 1910 • 1974 Physician Médico 1910-74
MARTIN LUTHER KING, JR. 1929 • 1968 • 68-69 Minister Pastor 1929-68	MARTIN LUTHER KING, JR. 1929 • 1968 • 68-69 Minister Pastor 1929-68	MARTIN LUTHER KING, JR. 1929 • 1968 • 68-69 Minister Pastor 1929-68
ANNA MAE PICTOU AQUASH 1910 • 1974 • 74-75 Indigenous Rights Organizer Organizadora para Derechos Indígenas 1910-74	ANNA MAE PICTOU AQUASH 1910 • 1974 • 74-75 Indigenous Rights Organizer Organizadora para Derechos Indígenas 1910-74	ANNA MAE PICTOU AQUASH 1910 • 1974 • 74-75 Indigenous Rights Organizer Organizadora para Derechos Indígenas 1910-74



Complete the arrow as shown here.

## Write-In Candidates

If you wish to vote for a qualified write-in candidate for any of your three choices, write the person's name in the space provided and complete the arrow pointing to your choice.

## When Marking the Ranked-Choice Ballot, Keep in Mind:

You may—but are not required to—rank three candidates. To rank fewer than three candidates, or if there are fewer than three candidates for the same office, leave any of the remaining columns blank.

If you select the same candidate in more than one column, your vote for that candidate will count only once.

Your second choice will be counted only if your first-choice candidate has been eliminated. Your third choice will be counted only if BOTH your first-choice and second-choice candidates have been eliminated.

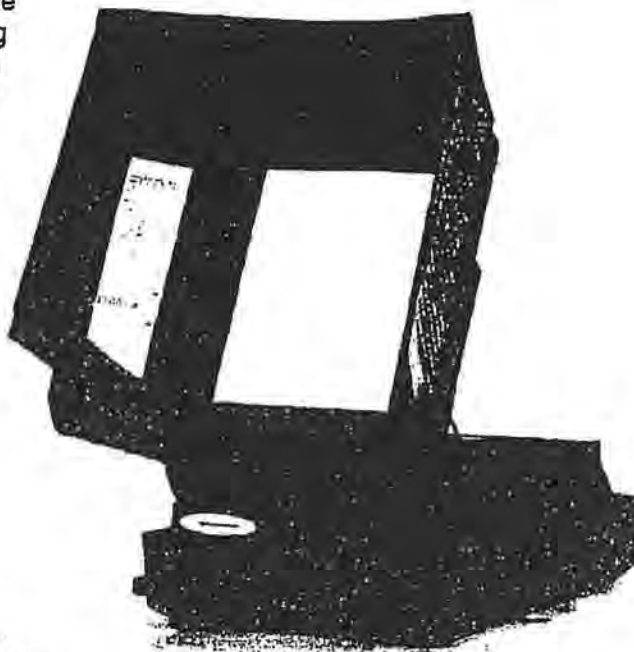


## Voting with the Accessible Touchscreen Voting Machine

For every election, each polling place will have one "Edge" accessible touchscreen voting machine that assists voters with disabilities to vote independently and privately. This accessible voting machine allows voters to make ballot selections using a touchscreen and review their selections on a paper record before casting their vote.

Additionally, the touchscreen voting machine provides an audio ballot feature that allows voters to listen to instructions and ballot selections while voting. The touchscreen machine also has an option for voters to use their own personal assistive device such as a sip/puff switch.

The accessible touchscreen voting machine will be available for use at each of the City's polling places and during early voting in City Hall. If you would like to vote using the touchscreen voting machine on Election Day, please tell a pollworker.



## Audio Ballot and Hand-held Keypad

For audio voting, the accessible voting machine is equipped with headphones and a Braille-embossed hand-held keypad. When you use the audio ballot feature, the voting machine will provide you with audio instructions and guide you through the ballot. The keypad is used to move through the ballot and make selections. If you would like to use the audio ballot feature, please tell a pollworker.



## Ranked-Choice Voting with the Accessible Voting Machine

Voters in districts with contests for Member of the Board of Supervisors will use ranked-choice voting. The accessible voting machine will indicate through visual or audio instructions that the contest uses ranked-choice voting and will present one list of all the candidates. From this list, voters may select up to three candidates in order of preference. After each selection, there will be a visual or audio confirmation of the candidate's ranking.

For more information on Ranked-Choice Voting, see page 16.

# Steps for Voting Using the Touchscreen

## Step 1: Insert Voter Card

Insert **Voter Card** into the yellow slot on the lower left-hand side of the machine.



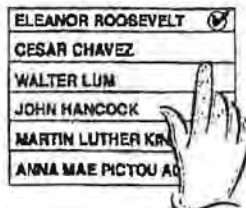
## Step 2: Select Language

Select the language in which you want to vote. Voters can choose English, Chinese or Spanish.



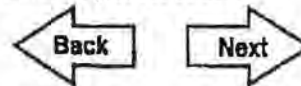
## Step 3: Select Candidates and Ballot Measure Choices

Make your selections by touching the name of the candidate or the choice for which you intend to cast your vote. A green check mark will appear in the circle, indicating your selection.

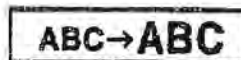


To change your selection, touch your selection again. The check mark will disappear and you can make a new selection.

To go to the next contest or measure, touch the "Next" arrow button at the bottom of the screen. Touch the "Back" arrow button to return to the previous screen.



Touch the "ABC" button to enlarge the text on the screen.



## Step 4: Print and Review Selections

At the end of the ballot, a review screen is displayed showing all your selections.

To change a selection, touch the box of the contest or measure and select a new candidate or choice.

After completing your on-screen ballot review, print and review a paper record of your ballot. A paper record of your selections will appear in the window on the left side of the screen.

Touch Here to Print and Review a Paper Record of Your Ballot.



### Write-In Candidates

To vote for a qualified write-in candidate, touch "Write-In" and a keyboard will appear on screen. Type the name of the candidate and press "OK."



## Step 5: Cast Ballot or Make Changes

After verifying the paper record touch either "Cast Ballot" or "Make Changes."

Touch "Cast Ballot" to finish voting. The printer will show "Accepted" on the paper record. The voter card will eject for you to return it to the pollworker.

**IMPORTANT!** – You cannot change your vote after "Cast Ballot" is pressed.

Touch "Make Changes" to change a selection. After you make a change you can review a new paper record of your ballot.

**IMPORTANT!** – You can print only two paper records of your ballot for review. After this you will need to cast your ballot.

Please review the paper record of your ballot.

You may now cast your ballot or make changes.

Make Changes

Cast Ballot

### Ballot Review

At any time you can review your ballot selections by touching "Review." The review screen will show you a summary of your selections. To change a selection, touch the box of the contest or measure and select a new candidate or choice.

# Voter Bill of Rights

1. **You have the right to cast a ballot if you are a valid registered voter.**  
A valid registered voter means a United States citizen who is a resident in this state, who is at least 18 years of age and not in prison or on parole for conviction of a felony, and who is registered to vote at his or her current residence address.
2. **You have the right to cast a provisional ballot if your name is not listed on the voting rolls.**
3. **You have the right to cast a ballot if you are present and in line at the polling place prior to the close of the polls.**
4. **You have the right to cast a secret ballot free from intimidation.**
5. **You have the right to receive a new ballot if, prior to casting your ballot, you believe you made a mistake.**  
If, at any time before you finally cast your ballot, you feel you have made a mistake, you have the right to exchange the spoiled ballot for a new ballot. Vote-by-mail voters may also request and receive a new ballot if they return their spoiled ballot to an elections official prior to the closing of the polls on Election Day.
6. **You have the right to receive assistance in casting your ballot, if you are unable to vote without assistance.**
7. **You have the right to return a completed vote-by-mail ballot to any precinct in the county.**
8. **You have the right to election materials in another language, if there are sufficient residents in your precinct to warrant production.**
9. **You have the right to ask questions about election procedures and observe the elections process.**  
You have the right to ask questions of the precinct board and election officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the board or election officials may discontinue responding to questions.
10. **You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's Office.**

If you believe you have been denied any of these rights, or you are aware of any election fraud or misconduct, please call the Secretary of State's confidential toll-free **Voter Protection Hotline** at 1-800-345-VOTE (8683).

CALIFORNIA SECRETARY OF STATE **DEBRA BOWEN**

Any voter has the right under California Elections Code Sections 9295 and 13314 to seek a writ of mandate or an injunction, prior to the publication of the Voter Information Pamphlet, requiring any or all of the materials submitted for publication in the Pamphlet to be amended or deleted.

# Confidentiality and Voter Records

## Permissible Uses of Voter Registration Information

To protect your privacy and the integrity of voting, laws that took effect in 2006 create safeguards for voter records as follows:

Information on your voter registration form will be used by election officials to send you official information on the voting process, such as the location of your polling place and the issues and candidates that will appear on the ballot. Commercial use of voter registration information is prohibited by law and is a misdemeanor. Voter information may be provided to a candidate for office, a ballot measure committee, or other person for election, scholarly, journalistic, political, or governmental purposes, as determined by the Secretary of State. Driver's license, state identification and social security numbers, or your signature as shown on your voter registration form cannot be released for these purposes. If you have any questions about the use of voter information or wish to report suspected misuse of such information, please call the Secretary of State's Voter Protection and Assistance Hotline: 1-800-345-VOTE (8683).



Additionally, any person obtaining information on your voter registration form shall not send that information outside of the United States or make it available in any way electronically to persons outside the United States, including, but not limited to, access over the Internet.

## Secretary of State's Safe At Home Program

Certain voters facing life-threatening situations may qualify for confidential voter status. For more information, please contact the Secretary of State's Safe At Home program at 1-877-322-5227, or visit the Secretary of State's website at [www.sos.ca.gov](http://www.sos.ca.gov)

Absentee voting has a new name:



## Voting by Mail!

"Absentee voting" is now referred to as "voting by mail" in all of the Department of Elections' materials. A new state law mandates this change, but all the benefits and requirements remain the same!

To receive your ballot in the mail, send in the application on the back cover of this pamphlet. The Department of Elections must receive your application by 5:00 p.m. on Tuesday, October 28, 2008.

For more information about voting by mail, see page 7.





## Before Casting a Write-In Vote, Read This:



Every write-in vote must be manually reviewed by the Department of Elections.

Unfortunately, a great majority of write-in votes cast each election *cannot* be counted.

### Here's why:

- ☒ **The write-in vote was not for a qualified write-in candidate.** Only votes for qualified write-in candidates can be counted. Write-in votes for anyone else CANNOT be counted. Qualified write-in candidates can be found on the Certified Write-In List, available at your polling place, on the Department of Elections Web site ([www.sfgov.org/elections](http://www.sfgov.org/elections)) or by calling the Department of Elections.
- ☒ **The write-in vote was not correctly marked.** Write-in votes must be indicated by both writing the candidate's name in the space provided and completing the arrow next to the "Write-In" space.
- ☒ **Overvoting by selecting a candidate listed on the ballot and also marking a write-in vote for the same candidate** will invalidate your vote for that contest.

**Make sure your write-in vote counts!**



# **DO YOU KNOW WHERE TO GO TO VOTE?**

## **YOUR POLLING PLACE MAY HAVE CHANGED.**

The location of your polling place is printed on the back cover of this pamphlet, on the top left-hand side.

You can also check the location of your polling place online at:

***[www.sfgov.org/elections](http://www.sfgov.org/elections)***

or by calling:

**415-554-4375**

Election Day is **Tuesday, November 4, 2008.**

The polls will be open from **7 a.m. to 8 p.m.**

Please vote at your assigned polling place or vote by mail. There is an application to vote by mail on the back cover of this pamphlet.

# Important Notice

## Residential Confirmation Postcard

### Will you vote in the upcoming election?

When people don't vote, we begin to think they may no longer live in San Francisco.

When our records include people who no longer live in San Francisco, tax money is needlessly spent maintaining their records, mailing election materials to them, and preparing to count votes that will never be cast.

In January 2009, we will update our voter records, but we do not want to lose track of anybody still living in San Francisco just because they haven't voted in recent elections.

As part of this update, we will mail several thousand residential confirmation postcards to people who, in the past four years:

- have not voted in any election, or
- have not updated their name, address or party affiliation.

If you receive one of these postcards, please take the time to mail it back to us **within 15 days of receipt** to confirm your residential and mailing addresses. ***If we don't hear from you, we will inactivate your voter registration.*** Voters whose files are inactivated will not receive a Voter Information Pamphlet for future elections.

So, let us know if you still live in San Francisco and want to remain on the active voter roll. PLEASE take the time to vote, respond to our mailing, or write to let us know that you want to stay on the active voter roll. If you write to us, please sign the letter and include the date, your current San Francisco residential address, your mailing address if different from your San Francisco residential address, your birthplace, and your date of birth.

We thank you in advance for your cooperation!

Voter Services Division,  
Department of Elections



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**Fill in your choices - Cut out and take with you to the polls**

Not all voters are eligible to vote on all contests. Your sample ballot includes the contests for which you are eligible to vote. For more information, see your sample ballot.

OFFICES		
President and Vice President	Vote for one party	
United States Representative	Vote for one	
State Senator	Vote for one	
Member, State Assembly	Vote for one	
Judge of the Superior Court, Seat #12	Vote for one	
Member, Board of Education	Vote for no more than four	
Member, Community College Board	Vote for no more than four	
BART Director	Vote for one	
Member, Board of Supervisors	Rank up to three choices	First choice
		Second choice
		Third choice

PROPOSITIONS		
TITLE	YES	NO
<b>1A:</b> Safe, Reliable High-Speed Passenger Train Bond Act.		
<b>2 :</b> Standards for Confining Farm Animals. Initiative Statute.		
<b>3 :</b> Children's Hospital Bond Act. Grant Program. Initiative Statute.		
<b>4 :</b> Waiting Period and Parental Notification Before Termination of Minor's Pregnancy. Initiative Constitutional Amendment.		
<b>5 :</b> Nonviolent Drug Offenses. Sentencing, Parole and Rehabilitation. Initiative Statute.		
<b>6 :</b> Police and Law Enforcement Funding. Criminal Penalties and Laws. Initiative Statute.		
<b>7 :</b> Renewable Energy Generation. Initiative Statute.		
<b>8 :</b> Eliminates Right of Same-Sex Couples to Marry. Initiative Constitutional Amendment.		
<b>9 :</b> Criminal Justice System, Victims' Rights. Parole. Initiative Constitutional Amendment and Statute.		
<b>10:</b> Alternative Fuel Vehicles and Renewable Energy. Bonds. Initiative Statute.		
<b>11:</b> Redistricting. Initiative Constitutional Amendment and Statute.		
<b>12:</b> Veterans' Bond Act of 2008.		

(The ballot worksheet continues on the next page)

## Ballot Worksheet *(continued)*

**Fill in your choices - Cut out and take with you to the polls**

PROPOSITIONS		
TITLE	YES	NO
<b>A</b> : San Francisco General Hospital and Trauma Center Earthquake Safety Bonds, 2008.		
<b>B</b> : Establishing Affordable Housing Fund		
<b>C</b> : Prohibiting City Employees from Serving on Charter Boards and Commissions		
<b>D</b> : Financing Pier 70 Waterfront District Development Plan upon Board of Supervisors' Approval		
<b>E</b> : Changing the Number of Signatures Required to Recall City Officials		
<b>F</b> : Holding All Scheduled City Elections Only in Even-Numbered Years		
<b>G</b> : Allowing Retirement System Credit for Unpaid Parental Leave		
<b>H</b> : Setting Clean Energy Deadlines; Studying Options for Providing Energy; Changing Revenue Bond Authority to Pay for Public Utility Facilities		
<b>I</b> : Creating the Office of an Independent Rate Payer Advocate		
<b>J</b> : Creating a Historic Preservation Commission		
<b>K</b> : Changing the Enforcement of Laws Related to Prostitution and Sex Workers		
<b>L</b> : Funding the Community Justice Center		
<b>M</b> : Changing the Residential Rent Ordinance to Prohibit Specific Acts of Harassment of Tenants by Landlords		
<b>N</b> : Changing Real Property Transfer Tax Rates		
<b>O</b> : Replacing the Emergency Response Fee with an Access Line Tax and Revising the Telephone Users Tax		
<b>P</b> : Changing the Composition of the San Francisco County Transportation Authority Board		
<b>Q</b> : Modifying the Payroll Expense Tax		
<b>R</b> : Renaming the Oceanside Water Treatment Plant		
<b>S</b> : Policy Regarding Budget Set-Asides and Identification of Replacement Funds		
<b>T</b> : Free and Low-Cost Substance Abuse Treatment Programs		
<b>U</b> : Policy Against Funding the Deployment of Armed Forces in Iraq		
<b>V</b> : Policy Against Terminating Junior Reserve Officers' Training Corps (JROTC) Programs in Public High Schools		

**Notes:**

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The Department of Elections makes every effort to print candidates' statements of qualifications and proposition arguments exactly as submitted – mistakes and all.



However, with all the items that are included in the Voter Information Pamphlet, it is possible that we have made a mistake of some kind in the layout and printing process. If we learn of any substantial errors on our part after the pamphlet has been printed and mailed, we will publish a correction notice in local newspapers in the days preceding the election.

If necessary, a correction notice will appear in the Public Notices section of the *San Francisco Chronicle* and in *Sing Tao Daily* on October 21, 22 and 23, in *El Reportero* on October 22 and in *El Mensajero* on October 26.

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# Information on Local Ballot Measures

## DIGEST AND ARGUMENT PAGES

On the following pages, you will find information about local ballot measures. For each measure, a digest has been prepared by the Ballot Simplification Committee. This digest includes a brief explanation of "The Way it is Now," what each proposal would do, what a "Yes" vote means, and what a "No" vote means. Also included is a statement by the City Controller about the fiscal impact or cost of each measure. There is also a statement of how the measure qualified to be on the ballot. Following the digest page, you will find arguments for and against each measure.

**NOTE:** All arguments are strictly the opinions of their authors. They have not been checked for accuracy by the Department of Elections or any other City official or agency. Arguments and rebuttals are reproduced as they are submitted, including any typographical, spelling or grammatical errors.

## PROPONENT'S AND OPPONENT'S ARGUMENTS

For each measure, one argument in favor of the measure ("proponent's argument") and one argument against the measure ("opponent's argument") is printed in the Voter Information Pamphlet free of charge.

The designations "proponent's argument" and "opponent's argument" indicate only that the arguments were selected in accordance with criteria in Section 540 of the San Francisco Municipal Elections Code and were printed free of charge. The Director of Elections does not edit the arguments and makes no claims as to the accuracy of statements in the arguments.

## SELECTION OF PROPONENT'S AND OPPONENT'S ARGUMENTS

The proponent's argument and the opponent's argument are selected according to the following priorities:

PROPONENT'S ARGUMENT	OPPONENT'S ARGUMENT
1. The official proponent of an initiative petition; or the Mayor, the Board of Supervisors, or four or more members of the Board, if the measure was submitted by same.	1. For a referendum, the person who files the referendum petition with the Board of Supervisors.
2. The Board of Supervisors, or any member or members designated by the Board.	2. The Board of Supervisors, or any member or members designated by the Board.
3. The Mayor.	3. The Mayor.
4. Any bona fide association of citizens, or combination of voters and association of citizens, any individual voter.	4. Any bona fide association of citizens, or combination of voters and association of citizens, any individual voter.

## REBUTTAL ARGUMENTS

The author of a proponent's argument or an opponent's argument may also prepare and submit a rebuttal argument. Rebuttals are also the opinions of the author and are not checked for accuracy by the Director of Elections or any other City official or agency. Rebuttal arguments are printed below the corresponding proponent's argument and opponent's argument.

## PAID ARGUMENTS

In addition to the proponents' arguments, opponents' arguments, and rebuttals, which are printed without charge, any eligible voter, group of voters, or association may submit paid arguments.

Paid arguments are printed in the pages following the proponents' and opponents' arguments and rebuttals. All of the paid arguments in favor of a measure are printed together, followed by the paid arguments opposed to that measure. Paid arguments for each measure are printed in order of submission.

Arguments and rebuttals are solely the opinions of their authors. Arguments and rebuttals are not checked for accuracy by the Director of Elections, or by any other City official or agency. Information about those submitting arguments is available from the Department of Elections.



# Words You Need to Know

by the Ballot Simplification Committee

## LISTED BELOW ARE DEFINITIONS OF TERMS:

**ABSENTEE (VOTE-BY-MAIL) BALLOTS** (FREQUENTLY ASKED QUESTIONS) — Ballots mailed to voters or given to voters in person at the Department of Elections. Absentee ballots can be mailed to the Department of Elections, turned in at the Department of Elections office in City Hall, or turned in at any San Francisco polling place on election day. Also known as vote-by-mail ballots. See page 7 for more information.

**ACUTE CARE (PROPOSITION A)** — Providing emergency services and general medical and surgical treatment for brief and severe disorders rather than long-term residential care for chronic illnesses.

**AFFORDABLE HOUSING (PROPOSITIONS B AND N)** — Residential units that persons or households within a certain range of incomes would be able to afford.

**AMEND (PROPOSITIONS B-K AND M)** — To change.

**AUDIT (PROPOSITION A)** — A formal examination of financial or management accounts and information.

**BATTERY (PROPOSITION K)** — The willful and unlawful use of force or violence against another person.

**BOND (PROPOSITIONS A, D, H AND I)** — A bond is a promise by the City to pay back money borrowed, plus interest, by a specific date. If the City needs to raise a large amount of money to pay for a library, sewer line, school, hospital or other project or program, it may borrow the money by selling bonds. (See also "General Obligation Bond" and "Revenue Bond".)

**BUDGETARY AND FISCAL PROVISIONS (PROPOSITION I)** — Provisions addressing financial resources, spending, and debt.

**CALIFORNIA SPECIAL SUBJECT TEACHING CREDENTIAL (PROPOSITION V)** — A state-issued certificate that authorizes a person to teach a particular subject.

**CHARTER AMENDMENT (PROPOSITIONS B-J)** — A change to the City's Charter. The Charter is the City's Constitution. The Charter can only be changed by a majority of the votes cast.

**CHARTER-CREATED BOARDS AND COMMISSIONS (PROPOSITION C)** — The following boards and commissions are created by the Charter: Airport Commission, Board of Appeals, Building Inspection Commission, Civil Service Commission, Commission

on Aging, Commission on the Environment, Commission on the Status of Women, Elections Commission, Entertainment Commission, Ethics Commission, Fire Commission, Health Commission, Human Rights Commission, Human Services Commission, Juvenile Probation Commission, Library Commission, Municipal Transportation Agency Board of Directors, Planning Commission, Police Commission, Port Commission, Public Utilities Commission, Recreation and Parks Commission, Rent Board, Small Business Commission and Taxi Commission.

**CITIZEN ADVISORY COMMITTEE (PROPOSITION C)** — A committee created by the City to obtain the input and views of San Franciscans. The following citizen advisory committees are created by the Charter: Municipal Transportation Agency Citizens' Advisory Council; Public Utilities Commission Citizens' Advisory Committee; Park, Recreation and Open Space Fund Citizens Advisory Committee; and Citizens Audit Review Board.

**CITY ADMINISTRATOR (PROPOSITIONS E, H AND I)** — The City official responsible for managing services within the City's executive branch.

**CLEAN ENERGY (PROPOSITION H)** — Although there is no official definition, it is often used to refer to a source of energy that is either renewable, such as solar power or wind power, or emits very little pollution when it is generated.

**COMMON AREA (PROPOSITION M)** — An area that may be accessed or used by all tenants.

**CONSERVATION DISTRICT (PROPOSITION J)** — A geographical area legally designated to preserve and protect historical or natural resources.

**COST-OF-LIVING ADJUSTMENT (PROPOSITION S)** — An amount added to a base to adjust for inflation.

**DECLARATION OF POLICY (PROPOSITIONS U AND V)** — A statement or expression of the will of the voters.

**DEPLOYMENT (PROPOSITION U)** — The placement or stationing of troops.

(continued on the next page)

## WORDS YOU NEED TO KNOW (continued)

**DOWNTOWN (PROPOSITION J)** — The area generally bounded by Washington or California streets on the north, Harrison or Folsom streets on the south, the Embarcadero on the east, and Fifth or Taylor on the west. The downtown also extends west for one block along Market Street to Van Ness Avenue. (see the City's Zoning Map, which is available on the City's website at [www.sfgov.org/site/planning\\_index.asp?id=35228](http://www.sfgov.org/site/planning_index.asp?id=35228))

**EARLY VOTING** — Voting in person at City Hall before election day or mailing an absentee ballot before election day. See page 7 for more information.

**EXEMPTION (PROPOSITIONS O AND Q)** — Freedom from an obligation or requirement that others must follow.

**EXTORTION (PROPOSITION K)** — The threat of physical force or fear against another person to obtain money or property.

**FELONY (PROPOSITION L)** — A major crime or offense that is punishable by a fine and/or a jail sentence of more than a year.

**FISCAL YEAR (PROPOSITIONS L AND S)** — The City's 12-month budget period, starting July 1<sup>st</sup> and ending June 30<sup>th</sup> of the following calendar year.

**GENERAL FUND (PROPOSITIONS N, O AND S)** — That part of the City's annual budget that can be used for any City purpose. Each year, the Mayor and the Board of Supervisors decide how the General Fund will be used. Money for the General Fund comes from property, business, sales, and other taxes and fees. Currently, the General Fund is 47% of the City's budget.

**GENERAL OBLIGATION BOND (PROPOSITION A)** — A promise issued by the City to pay back money borrowed, plus interest, by a certain date. When the City wants to raise money to pay for a large public project, it can borrow money by issuing General Obligation Bonds. The City then repays the money plus interest over a period of years with property taxes. General obligation bonds must be approved by the voters. (See also "Revenue Bond".)

**HISTORIC DISTRICT (PROPOSITION J)** — A geographical area legally designated to protect and preserve historic buildings and structures.

**HOTEL TAX (PROPOSITION D)** — A tax added to the rental of hotel rooms.

**HUMAN TRAFFICKING (PROPOSITION K)** — The transportation and sale of persons into forced labor.

**INFRASTRUCTURE (PROPOSITION D)** — The basic facilities and services needed for the functioning of a community, such as transportation and communications systems, and water and power lines.

**INITIATIVE (PROPOSITIONS K, V AND R)** — A proposition placed on the ballot by voters. Any voter may place an Initiative on the ballot by gathering the required number of signatures on a petition.

**LANDLINE (PROPOSITION O)** — A telephone line such as metal wire or optic fibers.

**LOW AND MODERATE INCOME (PROPOSITION B)** — Annual incomes which fall within a specified range used to determine eligibility for specific programs or benefits.

**MAYOR'S OFFICE OF HOUSING (PROPOSITION B)** — The Mayor's Office of Housing coordinates efforts to maximize housing opportunities for low-income households and individuals. It administers a variety of housing programs funded by federal, state, and local sources. It also works to coordinate the efforts of federal, state, and local housing agencies.

**MEDIAN INCOME (PROPOSITION B)** — A level of income based on all incomes earned within San Francisco. Half of all San Francisco households have incomes above this level and half have incomes below this level.

**MISDEMEANOR (PROPOSITION L)** — A minor crime or offense that is punishable by a fine and/or a jail sentence of one year or less.

**MIXED USE AREA (PROPOSITION D)** — An area where there are multiple significant uses such as housing, office buildings, retail, and industrial uses, and open space and parks.

**ORDINANCE (PROPOSITIONS K-T)** — A local law passed by the Board of Supervisors or by the voters.

**OVERSIGHT (PROPOSITION A)** — Watchful care or management; supervision.

**PARENTAL LEAVE (PROPOSITION G)** — Policy that allows parents to temporarily leave their jobs to care for a child.

(continued on the next page)



## WORDS YOU NEED TO KNOW (continued)

**PASS-THROUGH (PROPOSITION A)** — To recover an increase in property taxes by passing on a portion of the cost to tenants.

**PLANNING COMMISSION (PROPOSITION J)** — The City commission responsible for adopting and maintaining a comprehensive, long term general plan for future improvement and development of the City.

**PROPOSITION (PROPOSITIONS A-V)** — Any measure that is submitted to the voters for approval or disapproval.

**PUBLIC UTILITIES COMMISSION (PUC) (PROPOSITIONS H, I AND R)** — A City agency that provides water, wastewater, and municipal power services to San Francisco.

**PUBLIC UTILITY (PROPOSITIONS C, H, I AND R)** — A privately owned company that provides utility services to the general public, such as an electric company, cable company, or bus line. State law regulates public utilities.

**QUALIFIED WRITE-IN CANDIDATE** — A person who has completed the required paperwork and signatures for inclusion as a write-in candidate. Although the name of this person will not appear on the ballot, voters can vote for this person by writing the name of the person in the space on the ballot provided for write-in votes and following the specific ballot instructions. The Department of Elections counts write-in votes only for qualified write-in candidates.

**RECALL (PROPOSITIONS E AND F)** — The process by which voters can remove an elected official from office.

**REFERENDUM (PROPOSITION F)** — The process by which voters can overturn legislation enacted by a governing body such as the Board of Supervisors.

**REVENUE BOND (PROPOSITION H)** — If the City needs money to pay for something, such as the construction or repair of a facility, the City may borrow the money by selling bonds. The City pays back the money with interest. Revenue bonds are bonds that are paid back using money such as fees collected by the department which issued the bonds. These bonds are not repaid with property tax money. (See also "General Obligation Bond".)

**SALES TAX (PROPOSITION P)** — A tax added to the sale of certain retail goods.

**SAN FRANCISCO MEDIAN INCOME (PROPOSITION B)** — See "Median Income".

**SEISMIC (PROPOSITIONS A AND N)** — Relating to earthquakes.

**SET-ASIDE (PROPOSITIONS B AND S)** — The amount of money in the City's budget that must be used for a particular purpose.

**SEX WORKERS (PROPOSITION K)** — Prostitutes or other people who work in the sex industry.

**SIGNATURE REQUIREMENTS (PROPOSITION E)** — The number of signatures required by law.

**TERM (PROPOSITIONS E, F, J AND P)** — The period of time for which a public official may hold his or her office.

**TRAUMA CENTER (PROPOSITION A)** — A hospital equipped to provide comprehensive emergency medical services.

**VOTING BY MAIL (FREQUENTLY ASKED QUESTIONS)** — Also known as absentee voting. See page 7 for more information.



# AN OVERVIEW OF SAN FRANCISCO'S DEBT

## WHAT IS BOND FINANCING?

Bond financing is a type of long-term borrowing used to raise money for projects. The City receives money by selling bonds to investors. The City must pay back the amount borrowed plus interest to those investors. The money raised from bond sales is used to pay for large capital projects such as fire and police stations, affordable housing programs, schools, libraries, parks, and other city facilities. The City uses bond financing because these buildings will last many years and their large dollar costs are difficult to pay for all at once.

**Types of Bonds.** There are two major types of bonds – General Obligation and Revenue.

**General Obligation Bonds** are used to pay for projects that benefit citizens but do not raise revenue (for example, police stations or parks are not set up to pay for themselves). When general obligation bonds are approved and sold, they are repaid by property taxes. General obligation bonds issued by the City must be approved by a two-thirds vote. The San Francisco General Hospital and Trauma Center Rebuild Bond on this ballot is a general obligation bond to be issued by the City.

**Revenue Bonds** are used to pay for projects such as major improvements to an airport, water system, garage or other large facilities which generate revenue. When revenue bonds are approved and sold, they are generally repaid from revenues generated by the bond-financed projects, for example usage fees or parking fees. The City's revenue bonds must be approved by a majority vote. There is no revenue bond on this ballot.

## WHAT DOES IT COST TO BORROW?

The City's cost to borrow money depends on the amount borrowed, the interest rate on the debt and the number of years over which the debt will be repaid. Large debt is usually paid off over a period of 10 to 35 years. Assuming an average interest rate of 6% the cost of paying off debt over 20 years is about \$1.73 for each dollar borrowed – \$1 for the dollar borrowed and 73 cents for the interest. These payments, however, are spread over the 20-year period. Therefore inflation reduces the effective cost of borrowing because the future payments are made with cheaper dollars. Assuming a 4% annual inflation rate, the cost of paying off debt in today's dollars would be about \$1.18 for every \$1 borrowed.

## THE CITY'S CURRENT DEBT SITUATION

**Debt Payments.** During fiscal year 2008-2009 property tax payers in the City will pay approximately \$245.6 million of principal and interest on outstanding bonds of the City and the other issuers of general obligation debt (San Francisco Community College District, San Francisco Unified School District and Bay Area Rapid Transit District). The property tax rate for the year will be 16.3 cents per \$100 of assessed valuation or \$641 on a home assessed at \$400,000.

**Legal Debt Limit.** The City Charter imposes a limit on the amount of general obligation bonds the City can have outstanding at any given time. That limit is 3% of the assessed value of taxable property in the City – or currently about \$4.3 billion. Voters give the City *authorization* to issue bonds. Those bonds that have been issued and not yet repaid are considered to be *outstanding*. As of August 1, 2008, there were \$1.14 billion in general obligation bonds issued by the City outstanding, which is equal to 0.80% of the assessed value of taxable property. There were an additional \$447.8 million in bonds that are *authorized but unissued*. If all of these bonds were issued and outstanding, the total debt burden would be 1.12% of the assessed value of taxable property. Bonds issued by the School District and

Community College District and Bay Area Rapid Transit District (BART) do not increase the City's debt burden for the purposes of the Charter limit, however they are repaid by property taxes (see Prudent Debt Management below). Part of the City's current debt management policy is to issue new general obligation bonds as old ones are retired, keeping the property tax rate from City general obligation bonds approximately the same over time.

**Prudent Debt Management.** Even though the City is well within its legal debt limit in issuing general obligation bonds, there are other "prudent" debt calculations used by bond rating agencies when they view the City's financial health. These agencies look at most types of local and regional debt that are dependent on the City's tax base – our general obligation bonds, lease revenue bonds, certificates of participation, special assessment bonds, school and community college district bonds and BART bonds. They then take that debt as a percentage of taxable assessed property value for the City and the result is called the overall debt ratio. Municipalities comparable to San Francisco have an average overall debt ratio of 4.0%. The City currently has an overall debt ratio of 2.29%. **While this is under the national average debt ratio, the City needs to continue to set priorities for future debt to continue to maintain good credit ratings that, in turn, are a sign of good financial health.**

#### **CITIZEN OVERSIGHT OF GENERAL OBLIGATION BONDS**

Voters must approve the purpose and amount of the money to be borrowed through bonds. Bond money may be spent only for the purposes approved by the voters.

For general obligation bonds issued by the City of San Francisco, the Citizens' General Obligation Bond Oversight Committee reviews and reports on how bond money is spent. The nine members of the Committee are appointed by the Mayor, Board of Supervisors, Controller, and Civil Grand Jury. If the Committee finds that bond money has been spent for purposes not approved by the voters, the Committee can require corrective action and prohibit the sale of any authorized but unissued bonds until such action is taken. The Board of Supervisors can reverse the decisions of the committee by a two-thirds vote. The Controller may audit any of the City's bond expenditures.

Prepared by *Ben Rosenfield*, Controller



## Looking for the legal text?

*The full legal text of all ballot measures  
is printed at the back of the book.*

The text starts on page 227.

# Modifying the Payroll Expense Tax

# Q

## PROPOSITION Q

Shall the City specify that certain partnerships and other businesses are subject to the City's payroll expense tax and expand the payroll expense tax exemption for small businesses so that businesses with annual payroll expenses of \$250,000 or less would not have to pay the tax?

YES  
NO



## Digest

by the Ballot Simplification Committee

**THE WAY IT IS NOW:** The City imposes a 1.5% tax on the payroll expenses of businesses that have employees working for them in San Francisco. Payroll expenses include salaries, wages, bonuses, and commissions. The payroll expense tax does not apply to compensation to owners of certain partnerships and businesses.

The City's payroll expense tax does not apply to small businesses. A company qualifies as a small business if its payroll expenses do not exceed \$166,667.

**THE PROPOSAL:** Proposition Q would specify that the City's 1.5% payroll expense tax applies to compensation paid to shareholders of professional corporations, members of limited liability companies, and owners of partnerships for their services.

Proposition Q would allow these types of businesses to choose one of two ways to calculate how much of the payments to their owners is a taxable payroll expense. The business could:

- determine how much of the payment to its owners is taxable compensation for services, or
- calculate payroll expenses for each owner using a formula specified in the Tax Code.

Proposition Q would also expand the City's payroll expense tax exemption for small businesses. Beginning January 1, 2009, small businesses with annual payroll expenses of \$250,000 or less would not have to pay the City's payroll expense tax. Every two years, the City would increase the \$250,000 ceiling to reflect inflation.

**A "YES" VOTE MEANS:** If you vote "yes," you want to specify that certain partnerships and other businesses are subject to the City's payroll expense tax, and you want to expand the payroll expense tax exemption for small businesses.

**A "NO" VOTE MEANS:** If you vote "no," you do not want to make these changes.

## Controller's Statement on "Q"

City Controller Ben Rosenfield has issued the following statement on the fiscal impact of Proposition Q:

Should this ordinance be approved, in my opinion, it would result in a net annual tax revenue increase to the City of approximately \$10.5 million. The ordinance would change the number and types of businesses in the City that pay the payroll tax.

Some types of corporations compensate their partners by paying them a share of the firm's annual profits in addition to any salary paid for services rendered. Currently, the City's payroll tax is not paid on these profits. The proposed ordinance would require the payroll tax to be paid on all partner compensation, excluding returns on investment, and would result in additional gross annual tax revenue of approximately \$17 million. The businesses that would be affected are typically law, accounting, medical, and other types of professional corporations.

The ordinance would also increase the small business tax exemption. Currently, businesses with a payroll of up to \$167,000 do not have to pay the payroll tax. The ordinance would raise this limit to \$250,000 exempting additional businesses, and resulting in decreased gross tax revenue of approximately \$6.5 million.

## How "Q" Got on the Ballot

On July 29, 2008 the Board of Supervisors voted 10 to 0 to place Proposition Q on the ballot.

The Supervisors voted as follows:

**Yes:** Supervisors Ammiano, Chu, Daly, Duffy, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin and Sandoval.

**Excused:** Supervisor Alioto-Plat.

**THIS MEASURE REQUIRES 50%+1 AFFIRMATIVE VOTES TO PASS.**

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE. THE FULL TEXT BEGINS ON PAGE 264. SOME OF THE WORDS USED IN THE BALLOT DIGEST ARE EXPLAINED ON PAGE 61.

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**Q**

## Modifying the Payroll Expense Tax

This disclaimer applies to the proponent's argument on this page. *The Board of Supervisors authorized the submission of the following argument. As of the date of the publication of this Voter Information Pamphlet, the following Supervisors endorse the measure: Supervisors Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin and Sandoval; take no position on the measure: Supervisor Alioto-Pier.*

### PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION Q

**CLOSE THE TAX LOOPHOLE; HELP SMALL BUSINESS.  
VOTE YES ON Q**

San Francisco's small businesses are the backbone of our neighborhoods and local economy. They create jobs, provide services and contribute to the vibrant, diverse city we love. Voting YES on Proposition Q helps small business by increasing the small business payroll tax exemption – and at the same time closing a loophole for large downtown firms that aren't paying their fair share.

#### YES ON Q HELPS SMALL BUSINESS

Proposition Q significantly increases the number of small businesses who will be exempt from our local payroll tax. Currently, a business is exempt if its total payroll is under \$166,000 per year. Proposition Q increases the threshold to \$250,000 – helping more than 1,600 borderline and at-risk businesses who need a boost.

This will enable our small businesses to hire more employees, expand benefits, and provide additional services to our communities.

#### YES ON Q CLOSES A TAX LOOPHOLE

While local small businesses pay their fair share, many large partnerships – such as downtown law firms – have found a way to avoid paying their share of the payroll tax. Tax experts estimate that the city loses up to \$19 million each year because of this loophole.

#### SAN FRANCISCO IS UNITED FOR PROPOSITION Q

Democrats and Republicans, labor and business, and neighborhood advocates from every corner of San Francisco are uniting to close the loopholes and help small business. Please join us and vote YES on Proposition Q.

*San Francisco Democratic Party  
San Francisco Small Business Advocates  
San Francisco Firefighters Local 798  
Board of Supervisors President Aaron Peskin*

### REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION Q

**NO REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION Q WAS SUBMITTED**

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.  
Arguments are printed as submitted. Spelling and grammatical errors have not been corrected.



# Modifying the Payroll Expense Tax

# Q

## OPPONENT'S ARGUMENT AGAINST PROPOSITION Q

NO OPPONENT'S ARGUMENT AGAINST PROPOSITION Q WAS SUBMITTED

## REBUTTAL TO OPPONENT'S ARGUMENT AGAINST PROPOSITION Q

NO REBUTTAL TO OPPONENT'S ARGUMENT AGAINST PROPOSITION Q WAS SUBMITTED

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**Q**

## Modifying the Payroll Expense Tax

### PAID ARGUMENTS IN FAVOR OF PROPOSITION Q

*These difficult economic times are plunging more and more San Franciscans into poverty and homelessness. Increased revenue is imperative for the protection of these most vulnerable members of our community. Therefore, Religious Witness strongly supports Proposition Q.*

*- The Steering Committee of Religious Witness with Homeless People*

The true source of funds for the printing fee of this argument is Religious Witness with Homeless People.

#### SUPPORT OUR KIDS! VOTE YES ON Q!

By closing a corporate tax loophole Proposition Q will provide vital revenue the City needs to support essential services like quality child care, violence prevention programs and housing for families. Stop the corporate giveaway and support SF kids by voting YES on Q!

*Coleman Action Fund for Children*

The true source of funds for the printing fee of this argument is the Coleman Action Fund for Children.

#### SF LABOR SAYS CLOSE THE LAWYER LOOPHOLE AND SUPPORT SMALL BUSINESS -- VOTE YES ON Q!

Small businesses are a vital part of San Francisco's economy, employing thousands of workers and fueling economic growth. Vote YES on Q to close an unjust tax loophole and promote jobs and a stronger SF economy.

*San Francisco Labor Council*

The true source of funds for the printing fee of this argument is Close the Loopholes - Yes on N, Yes on Q.

The contributor to the true source recipient committee is the San Francisco Democratic Party.

#### JOIN LGBT LEADERS IN VOTING YES ON Q - SUPPORT SMALL BUSINESSES!

San Francisco's LGBT leaders urge you to support small businesses by reforming our payroll tax and closing the unfair partnership loophole.

*State Senator Carole Migden  
Assemblyman Mark Leno  
Treasurer Jose Cisneros  
Supervisor Tom Ammiano  
Supervisor Bevan Dufty  
Harvey Milk LGBT Democratic Club*

The true source of funds for the printing fee of this argument is Close the Loopholes - Yes on N, Yes on Q.

The contributor to the true source recipient committee is the San Francisco Democratic Party.

Our small business owners pay more than their fair share of the tax burden. Vote Yes on Q to support San Francisco's many Asian American small businesses!

*Supervisor Carmen Chu  
David Chiu, Small Business Commissioner\**

\*For identification purposes only; author is signing as an individual and not on behalf of an organization.

The true source of funds for the printing fee of this argument is Close the Loopholes - Yes on N, Yes on Q.

The contributor to the true source recipient committee is the San Francisco Democratic Party.

Small businesses are the cornerstone of our community and the heart of the city's economic engine. Proposition Q closes an unfair loophole while helping to support our local small businesses.

*San Francisco Democratic Party*

The true source of funds for the printing fee of this argument is Close the Loopholes - Yes on N, Yes on Q.

The contributor to the true source recipient committee is the San Francisco Democratic Party.

#### POLICE, FIREFIGHTERS, SHERIFFS, AND LAW ENFORCEMENT OFFICIALS SAY "YES ON Q!"

Budget deficits have meant cuts to public safety programs in San Francisco this year. Proposition Q closes an unjust tax loophole and will provide additional funding for crucial local services. Join us by voting YES on Q!

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# Modifying the Payroll Expense Tax

# Q

## PAID ARGUMENTS IN FAVOR OF PROPOSITION Q

*San Francisco Police Officers Association  
San Francisco Firefighters Local 798  
Sheriff Michael Hennessey  
David Wong, SF Deputy Sheriffs' Association\*  
District Attorney Kamala Harris  
Public Defender Jeff Adachi*

\*For identification purposes only; author is signing as an individual and not on behalf of an organization.

The true source of funds for the printing fee of this argument is Close the Loopholes - Yes on N, Yes on Q.

The contributor to the true source recipient committee is the San Francisco Democratic Party.

### **Prevent the closure of essential services - Vote YES on Propositions N & Q**

San Francisco community nonprofit health and human services agencies have experienced significant cuts this year. Next year, projections show that the deficit will be just as devastating to essential services.

It is time to address our budget issues with additional revenue.

Propositions N & Q will raise critically needed revenue to prevent the closure of programs serving the most vulnerable San Franciscans. These fair revenue measures provide resources to the City to prevent the loss of mental health and homeless services.

### **Support community services - Vote YES on Propositions N & Q**

*Progress Foundation*

The true source of funds for the printing fee of this argument is the Progress Foundation.

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency. Arguments are printed as submitted. Spelling and grammatical errors have not been corrected.



## Modifying the Payroll Expense Tax

### PAID ARGUMENTS AGAINST PROPOSITION Q

While we applaud any tax reduction, especially for small business, this is a wolf in sheep's clothing. Instead of reducing taxes, Measure Q will increase net taxes by over \$10 million - a hit that San Francisco businesses can't afford. Send a message to our elected leaders: stop playing games and reduce taxes across the board.

No on Q

*San Francisco Republican Party*

#### Endorsed Candidates

*Conchita Applegate, Assembly District 12\**

*Harmeet Dhillon, Assembly District 13*

*Mike DeNunzio, Supervisorial District 3*

#### Officers

*Howard Epstein, Chairman*

*Walter Armer, VC Political Affairs*

*Janet Campbell, VC - Special Events*

*Leo Lacayo*

*Christopher L. Bowman, VC - Precinct Operations*

#### Members

*12<sup>th</sup> Assembly District*

*Michael Antonini*

*Stephanie Jeong*

*Barbara Kiley*

*13<sup>th</sup> Assembly District*

*John Brunello*

*Alisa Farenzena*

*Sue C. Woods*

\*For identification purposes only; author is signing as an individual and not on behalf of an organization.

The true source of funds for the printing fee of this argument is the San Francisco Republican Party.

The three largest contributors to the true source recipient committee are: 1. DGF Y2K Special Purpose Trust, 2. PG&E, 3. CA. Republican Party.

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Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency. Arguments are printed as submitted. Spelling and grammatical errors have not been corrected.

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## LEGAL TEXT OF PROPOSITIONS P AND Q

*(b) The voters urge the Transportation Authority, as a matter of City policy, to maximize efficiency by having staff functions for the Transportation Authority performed, to the extent practicable, by agencies and departments of the City and County to maximize fiscal accountability by obtaining expert financial review before adoption of Authority budgets, and to maximize public accountability by adopting the same ethics and public records laws that apply to the City and County.*

### PROPOSITION Q

Ordinance submitting to the voters an ordinance amending the Business and Tax Regulations Code by (1) amending Section 902.1 and adding Section 902.2 to clarify the tax liability of "pass through entities" under the Payroll Expense Tax Ordinance, including 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 *and specifying safe harbor measure of taxable payroll expense for owners of pass through entity (200% of compensation for its most highly paid quartile of employees, provided entity has at least 4 employees); and (2) amending Section 905-A to increase the Small Business Tax Exemption to include all taxpayers whose taxable payroll expense is \$250,000 or less.*

Note: Additions are single-underline italics Times New Roman.  
Deletions are ~~strike-through italics Times New Roman~~.

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

Section 1. *ORDAINED* that Pursuant to Article XIII C of the Constitution of the State of California, ~~the Board of Supervisors hereby submits this ordinance shall be submitted to the qualified electors of the City and County of San Francisco at the November 4, 2008 general municipal election and that this ordinance shall become operative only if approved by the qualified electors at such election.~~

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

Section 12. The San Francisco Business and Tax Regulations Code is hereby amended by amending Section 902.1 and adding Section 902.2 to read as follows:

SEC. 902.1. PAYROLL EXPENSE. (a) The term "Payroll Expense" means the compensation paid to, on behalf of, or for the benefit of an individual, *including shareholders of a professional corporation or a Limited Liability Company ("LLC").* Including salaries, wages, bonuses, commissions, property issued or transferred in exchange for the performance of services (including but not limited to stock options), *compensation for services to owners of pass-through entities,* and any other form of compensation, who during any tax year, perform work or render services, in whole or in part in the City; and if more than one individual or *shareholders of a professional corporation or members of an LLC,* during any tax year performs work or renders services in whole or in part in the City, the term "Payroll Expense" means the total compensation paid including salaries, wages, bonuses, commissions, property issued or transferred in exchange for the performance of services (including but not limited to stock options) *in addition to any compensation for services to owners of pass-through entities,* and any other form of compensation *for services,* to all such individuals *and shareholders of a professional corporation or members of an LLC.*

(b) Any person that grants a service provider a right to acquire an ownership interest in such person in exchange for the performance of services shall include in its payroll expense for the tax year in which such right is exercised an amount equal to the excess of

- (i) the fair market value of such ownership interest on the date such right is exercised over
- (ii) the price paid for such interest.

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

(d) All compensation, including all pass-through compensation for services paid to, on behalf of, or for the benefit of owners of a pass-through entity, shall be included in the calculation of such entity's payroll expense tax base for purposes of determining such entity's tax liability under this Article. For purposes of this section, the "pass-through compensation for services" of a pass-through entity shall be the aggregate compensation paid by such entity for personal services rendered by all such owners, and shall not include any return on capital investment. The taxpayer may calculate the amount of compensation to owners of the entity subject to the Payroll Expense Tax, or the taxpayer may presume that, in addition to amounts reported on a W-2 form, the amount subject to the payroll expense tax is, *90% of the amount of net earnings from self-employment derived from the entity for federal income tax purposes for each owner, an amount that is two hundred percent (200%) of the average annual compensation paid to, on behalf of, or for the benefit of the employees of the pass-through entity whose compensation is in the top quartile (i.e., 25%) of the entity's employees who are based in the City; provided, the total number of employees of the entity based in the City is not less than twenty-four.*

SEC. 902.2. PASS-THROUGH ENTITY. The term "pass-through entity" *includes a trust, partnership, corporation described in Subchapter S of the Internal Revenue Code of 1986, as amended, limited liability company, limited liability partnership, professional corporation, and any other person or entity (other than a disregarded entity for federal income tax purposes) which is not subject to the income tax imposed by Subtitle A, Chapter 1 of the Internal Revenue Code of 1986, as amended, or which is allowed a deduction in computing such tax for distributions to the owners or beneficiaries of such person or entity. Any person exempt from payment of the Payroll Expense Tax under Section 905-A or 906 of this Article shall not be disqualified from or denied such exemption as a result of being a "pass-through entity" under this Section.*

Section 2. *The San Francisco Business and Tax Regulations Code is hereby amended by amending Section 905-A to read as follows:*

SEC. 905-A. SMALL BUSINESS TAX EXEMPTION.

(a) *Notwithstanding any other provisions of this Article, "small business enterprises" as hereinafter defined, shall be exempt from payment of the Payroll Expense Tax; provided, however, that small business enterprises shall pay the annual registration fee pursuant to Section 855 of Article 12.*

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

- (1) *Whose tax liability under this Article, but for this exemption provision, would not exceed \$2,500 and, or, effective January 1, 2009, whose taxable payroll expense does not exceed \$250,000 and;*



## LEGAL TEXT OF PROPOSITIONS Q, R AND S

(2) Who has filed a tax return by the last date of February for the preceding tax year. If the taxpayer fails to file a return by that date, the taxpayer shall be subject to a penalty as specified in subsection (d).

(c) For the 2011 tax year, and each second succeeding tax year, the Tax Collector shall increase the ceiling for the Small Business Tax Exemption (rounded to the nearest \$10,000 increment) to reflect increases in the United States Department of Labor's Bureau of Labor Statistics consumer price index for all urban customers for the San Francisco-Oakland-San Jose area for each of the preceding two tax years.

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

(1) If the person's Payroll Expense Tax liability under this Article, but for the small business exemption under this section, would be less than \$1,000, the penalty shall be \$100 plus 10% of the amount of such liability for each month, or fraction thereof, that the return is delinquent, up to a maximum amount equal to the person's liability for such tax but for the small business exemption;

(2) If the person's Payroll Expense Tax liability under this Article, but for the small business exemption under this section, would be \$1,000 or more, then the penalty shall be \$250 plus 10% of the amount of such liability for each month, or fraction thereof, that the return is delinquent, up to a maximum amount equal to the person's liability for such tax but for the small business exemption.

(e) The Tax Collector may, in his or her discretion, reduce the penalty set forth in subsection (c) to not less than \$100 upon a showing that the late filing of the return was due to reasonable cause and not due to willful neglect.

Section 3. This ordinance does not change any of the Payroll Expense Tax rates in Section 903.1 and reaffirms the current rates.

### PROPOSITION R

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

Section 1: The Oceanside Wastewater Treatment Facility, a public sewage and wastewater treatment facility serving the people of the City and County of San Francisco, shall be permanently renamed the George W Bush Sewage Plant.

Section 2: This name change shall take effect immediately upon the inauguration of the next US President.

Section 3: The facility's outdoor signage and website shall be updated when the name change takes effect.

Section 4: Stationary, business cards, city maps and other public references to the facility shall also be updated, but may be updated when old materials are replenished or reprinted.

### PROPOSITION S

Ordinance amending the San Francisco Administrative Code by adding Section 3.26, to establish as official City policy that the voters will not approve new set-asides or other mandated levels of spending without identifying a new funding source for the program, and that the duration and any annual growth in the set-aside or mandated level of spending be limited, and amending the San Francisco Municipal Elections Code by adding Section 521, to require that the voter information pamphlet include a specific Controller's analysis of the fiscal impact of a proposed new set-aside.

Note: Additions are single-underline *italics Times New Roman*; deletions are strike-through *italics Times New Roman*.

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

Section 1. The San Francisco Administrative Code is hereby amended by adding Section 3.26, to read as follows:

#### SEC. 3.26. BUDGET SET-ASIDES AND MANDATORY EXPENDITURES.

##### (a) Findings.

1. Various voter-approved provisions of the Charter require the City to set aside portions of the property tax levy or the General Fund for particular purposes or otherwise mandate continuing annual appropriations for specific programs. In addition, voter approved ordinances, although not fiscally binding, also have the same practical effect. This initiative ordinance refers to all these measures, including increases to existing mandates, as "Set-Asides". Only the voters at another election have the authority to change the provisions of these Set-Asides.

2. The City's total revenue for fiscal year 2007-08 was approximately \$6.07 billion. But only \$2.83 billion of that revenue was General Fund money. And of the General Fund portion of the budget, only approximately \$1.11 billion or 18% of the total revenue remained available for discretionary spending for any lawful governmental purpose.

3. While these Set-Asides often individually promote laudable public purposes, collectively they impair the capacity of the Mayor and the Board of Supervisors to carry out one of the most important functions they are elected to perform under the Charter: allocating the City's limited resources to best serve the public interest. The impact of these Set-Asides also has limited the ability of the Mayor and Board of Supervisors to effectively respond to recurring budget deficits, and has led to reductions in important public services due to the declining portion of the budget available for discretionary spending.

(b) Policy Regarding New Set-Asides and Mandatory Expenditures. The voters adopt the following as official policy of the City and County of San Francisco:

1. The voters will not approve the addition to the City Charter of any Set-Aside or other measures that has the effect of limiting the spending discretion of the Mayor and the Board of Supervisors unless the measure adding the new Set-Aside also provides a specific, adequate new source of funds so that the implementation of the Set-Aside will not cause a net decrease in General Fund revenues that the Mayor and Board would otherwise have the discretion to allocate through the budget process. Growth in revenues from existing funding sources shall not be considered a new source of funding for the purpose of this measure.

2. The voters will not approve any annual cost-of-living adjustment or other escalation in the dollar amount of any new Set-Aside that exceeds the amount of the prior year's Set-Aside by more than 2%; and.

3. The voters will not approve any new Set-Aside or proposed extension of an existing Set-Aside unless it expires automatically no later than 10 years after the effective date of its adoption.

Section 2. The San Francisco Municipal Elections Code is hereby amended by adding Section 521, to read as follows:

#### SEC. 521. CONTROLLER'S STATEMENT ON SET-ASIDES.

(a) Purpose. The ordinance is adopted to promote the policy contained in Administrative Code Section 3.26.

(b) Controller's Statement. Whenever a proposal appears on the ballot that includes a Set-Aside (as that term is defined in Administrative Code Section 3.26), the Controller shall prepare and the Director of Elections shall caused to be printed in the voter information pamphlet a statement analyzing the impact of the measure on the City's budget and finances during the term of the measure, considered alone and in combination with existing Set-Asides. The Controller's statement shall inform the voters of both the policy that this section of the Charter adopts and whether the proposal identifies a specific, adequate new funding source for the proposed Set-Aside so that the implementation of the Set-Aside

## LEGAL TEXT OF PROPOSITIONS S, T, U AND V

*will not cause any anticipated reduction in discretionary funding that the Mayor and Board of Supervisors may allocate in the budgetary process. The Controller may include any other material in the statement that he or she deems useful and appropriate.*

### PROPOSITION T

Ordinance amending the San Francisco Administrative Code by adding Section 19A.23 create the Treatment on Demand Act.

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough italics Times New Roman~~.

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

Section 1. The San Francisco Administrative Code is hereby amended by adding Section 19A.23, to read as follows:

Sec. 19.23 (A). [Treatment on Demand Act].

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

#### SECTION 1. Title.

This ordinance shall be known and may be cited as the "Treatment on Demand Act".

#### SECTION 2. Findings and Purpose.

a) Substance abuse treatment services are essential services that provide hope and dignity for individuals and a pathway out of addiction, which may lead to homelessness and criminal activity.

b) Substance abuse treatment services are a key component to San Francisco's Continuum of Care Plan, the official homeless policy of the City and County of San Francisco as approved by the Board of Supervisors on February 26, 2008 and by the Mayor on February 29, 2008.

c) Over the past several years, the City and County of San Francisco has inconsistently prioritized substance abuse treatment services.

d) As a result of these inconsistencies, many of the people in need of services are turned away for lack of available treatment slots.

e) This initiative requires that the City and County of San Francisco provide a level of treatment services commensurate with the demand for these services.

#### SECTION 3. New Administrative Code Section 19A.30 Treatment on Demand Act.

Section 19A.30 is added to Chapter 19A of the San Francisco Administrative Code, to read as follows:

#### SECTION 19A.30. TREATMENT ON DEMAND ACT

Notwithstanding any other provision of law, the Department of Public Health shall maintain an adequate level of free and low cost medical substance abuse services and residential treatment slots commensurate with the demand for these services.

Demand shall be measured by the total number of filled medical substance abuse slots plus the total number of individuals seeking such slots as well as the total number of filled residential treatment slots plus the number of individuals seeking such slots.

The City and County shall be flexible in providing various treatment modalities for both residential substance abuse treatment services and medical substance abuse treatment services.

The Department of Public Health shall report to the Board of Supervisors by February 1st of each year with an assessment of the demand for substance abuse treatment and present a plan to meet this demand. This plan should also be reflected in the City budget.

The City and County shall not reduce funding, staffing or the number of substance abuse treatment slots available for as long as slots are filled or there is any number of individuals seeking such slots.

Nothing in this section shall diminish, interfere with or otherwise alter the Mayor's authority under Article III, section 3.100(13) of the Charter.

#### SECTION 4. Effective Date.

The provisions of this ordinance shall take effect upon certification of the election.

#### SECTION 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this charter amendment that can be given effect without the invalid or unconstitutional provision of application, and to this end the provisions of this ordinance are severable.

#### SECTION 6. Amendments.

The provisions of this initiative, once enacted, may not be amended except by a subsequent initiative ordinance.

### PROPOSITION U

It is the Policy of the people of the City and County of San Francisco that:

Its elected representatives in the United States Senate and House of Representatives should vote against any further funding for the deployment of United States Armed Forces in Iraq, with the exception of funds specifically earmarked to provide for their safe and orderly withdrawal.

### PROPOSITION V

#### Choice for Students—JROTC

It is hereby the policy of the City and County of San Francisco that students in San Francisco public high schools should continue to be able to choose to participate in the schools' Junior Reserve Officers' Training Corps (JROTC) program.

JROTC is a 90 year old leadership program in the San Francisco Unified School District that teaches students discipline, leadership skills and the importance of civic responsibility. It is a during and after-school program that serves over 1600 students, the great majority of whom are from racial minority groups. Students and their instructors voluntarily commit hundreds of community service hours to their schools as well as to the community at large.

## LEGAL TEXT OF PROPOSITION V

In November 2006, a narrow majority of San Francisco school board members voted to phase out JROTC over a three year period. Recently, the board voted to delay this phase out for at least a year. However, without additional action, JROTC will end in the San Francisco schools in the near future.

High school students need more choice not less. High school deans and principals will attest to the need for students to make a "social" connection at school in order to avoid at-risk behavior. JROTC has been cited by program alumni, parents and teachers as saving at-risk students during high school. The program has the support 85% of the students polled (citywide), as well as all of the Parent Teacher Student Associations at the affected schools, and all of the principals at these schools.

JROTC does not discriminate in any way, shape or form, and does not abide by the "Don't Ask Don't Tell" policy. The steering committee of the Friends of JROTC, formed to support JROTC, has voted unanimously to oppose the Don't Ask Don't Tell policy, and sent a letter to Congress stating this opposition.

Because JROTC works, the people of the City and County of San Francisco hereby support the right of students to have academic and after-school program choices, and declare it policy to offer voluntary JROTC programs and to reverse the action by the Board of Education to terminate the program.

## **Exhibit C**



Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5998 | tel 415.983.1000 | fax 415.983.1200  
MAILING ADDRESS: P. O. Box 2824 | San Francisco, CA 94126-2824

Richard E. Nielsen  
tel 415.983.1964  
richard.nielsen@pillsburylaw.com

February 13, 2014

VIA CERTIFIED - #7013 1090 0000 6240 8472  
RETURN RECEIPT REQUESTED

City and County of San Francisco  
Controller's Office, Claims Division  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102-5402

Re: Pillsbury Winthrop Shaw Pittman LLP  
Certificate No. 022635  
Claim for Tax Refund of Payroll Tax

To Whom It May Concern:

Enclosed find original and one copy of Claim for Tax Refund. As indicated in the attachment to the enclosed refund claim, Pillsbury agrees, as set forth therein, to extend the period in which the City Attorney must act on this claim for refund.

The City Attorney has stipulated to a stay in Pillsbury's actions concerning tax years 2010 and 2011 pending resolution of the *Coblentz* case now in the Court of Appeal.

Please confirm receipt by returning a copy to the undersigned in the enclosed self-addressed stamped envelope.

Very truly yours,

Richard E. Nielsen

Enclosure



# CITY AND COUNTY OF SAN FRANCISCO

## Claim For Tax Refund

Before completing this form please read the instructions on the back. You have **one year** from the date of payment or the date the return accompanying the payment was due, whichever is later, to submit this form and supporting documentation to **CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7<sup>TH</sup> FLOOR, SAN FRANCISCO, CA 94102-5402.** You must file a separate claim for tax refund for each type of tax.

<b>1. CLAIMANT'S NAME:</b> <u>PILLSBURY WINTHROP</u> (DBA) <u>SHAW PITTMAN LLP</u> Owner's Name: _____ Address: <u>Four Embarcadero Center, 22nd Floor</u> <u>San Francisco CA 94111</u> Telephone: <u>(415) 983-1000</u>	<b>2. IF CLAIMANT IS A BUSINESS:</b> Type of Ownership <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other: _____
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>3. FEDERAL TAXPAYER ID #</b> <u>94-1311126</u>
---------------------------------------------------

<b>4. TAX PAID INFORMATION</b>					
Certificate Number/ BTS ID No. or Assessor's Parcel Number	Paid By	Date Paid	Receipt Number	Amount Paid	Period Covered
a. 022635	Pillsbury Winthrop	02/27/2013		\$879,827.00	2012
b.	Shaw Pittman LLP			(Includes 3 Installments & Final Payment)	
c.					

<b>5. BASIS OF CLAIM:</b> State all facts that support your claim for tax refund. If your refund applies to only a portion of the tax paid, please explain what portion it applies to.  <u>SEE ATTACHED</u> _____ _____ _____ _____ _____	<b>Applicable Tax (check one)</b> <input checked="" type="checkbox"/> Payroll Tax <input type="checkbox"/> Hotel Tax <input type="checkbox"/> Parking Tax <input type="checkbox"/> Utility Tax <input type="checkbox"/> Stadium Tax <input type="checkbox"/> Transfer Tax <input type="checkbox"/> Other _____
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>6. REFUND AMOUNT:</b> <u>\$408,695.00</u>
----------------------------------------------

<b>7. SIGNATURE OF CLAIMANT OR REPRESENTATIVE:</b> I declare under penalty of perjury that the foregoing is true and correct. "I certify I filed this claim within one year of my paying the tax or, within one year of the due date of my tax return." The undersigned is the taxpayer or other person determined to be liable for the tax or said person's guardian or conservator. I am not an agent or the taxpayer's attorney.	
X <u>Lori J. Swift</u> Signature of Claimant or Representative	<u>4/6/14</u> Date
<u>Lori J. Swift</u> Print Name	<u>Controller</u> Title

Attachment to Claim For Tax Refund  
by Pillsbury Winthrop Shaw Pittman LLP

Pillsbury Winthrop Shaw Pittman LLP seeks a refund of Payroll Expense Tax that it paid for tax year 2012 based on partnership profits under the amendments attributed to Proposition Q (eff. January 1, 2009), plus interest as provide by law. The \$408,695.00 refund sought represents the tax paid on partnership profits, which was calculated to be \$455,712.00 per owner less exempt amounts. Our calculations were based on using 200% of the average annual compensation paid to employees, all which work in San Francisco, whose compensation is in the top quartile (25%). In general, this refund claim is based on the grounds that partnership profits are not subject to tax under the terms of Proposition Q, and Proposition Q's alleged changes to the Payroll Expense Tax are unconstitutional and violate California statute. The reasons for this include but are not limited to (a) the plain language of the Payroll Tax as allegedly amended by Proposition Q cannot be interpreted to include profit distributions in the measure of a partnership's payroll tax; (b) local governments are barred from taxing income by Rev. & Tax. Code § 17041.5; (c) Proposition Q violated the single subject rule of Cal. Const. art. II, § 8(d); and (d) the enactment of Proposition Q violated art. XIIC, § 2(b) of the California Constitution (Proposition 218) requiring voter approval for all tax increases because it was not submitted to the voters for approval due to a serious error in the presentation of the measure in voter materials. Pillsbury Winthrop Shaw Pittman LLP reserves the right to supplement this claim, including adding additional grounds and providing more information regarding any of the foregoing grounds for its claim.

Pillsbury Winthrop Shaw Pittman LLP incorporates by reference those grounds alleged in *Hanson Bridgett LLP v. City and County of San Francisco* (514071, filed August 15, 2011), *Coblentz Patch Duffy & Bass v. City & County of San Francisco et al.* (Case A135509 1<sup>st</sup> District, Division 3) and all pleadings and other documents filed therein. Pursuant to SF Mun. Code sec.6.15-1(d), claimant Pillsbury Winthrop Shaw Pittman LLP agrees to extend the period in which the City Attorney must act on this claim for refund until 45-days following issuance of a final decision in the above actions (trial court, court of appeal or otherwise).

Pillsbury Winthrop Shaw Pittman LLP  
City of San Francisco  
Business Tax - 2012

Tax Calculation (originally filed)	
Total Timekeeper Comp	15,263,651
% of Atty/Paralegal work outside of SF Co	13.35%
Adjustment for Timekeeper Comp	2,037,697
Total Staff Payroll	33,446,518
Adjustment for Timekeeper Comp	(2,037,697)
Payroll - staff	31,408,821
Payroll - partner	27,246,309
Total Payroll	58,655,130
Exempt Payroll Expense	0
Total Taxable Payroll	58,655,130
Tax Rate	1.5%
Total Tax Due	879,827

Tax Calculation (without Prop Q)	
Total Timekeeper Comp	15,263,651
% of Atty/Paralegal work outside of SF Co	13.35%
Adjustment for Timekeeper Comp	2,037,697
Total Staff Payroll	33,446,518
Adjustment for Timekeeper Comp	(2,037,697)
Payroll - staff	31,408,821
Payroll - partner	0
Total Payroll	31,408,821
Exempt Payroll Expense	0
Total Taxable Payroll	31,408,821
Tax Rate	1.5%
Total Tax Due	471,132

Amount Subject  
to Refund

27,246,309
0
27,246,309
1.5%
408,695

## San Francisco City and County - Business Tax Calculation - Prop Q

[For internal use only; not for presentation or use outside the Firm]

### Method 5 - Average for Top Quartile in SF (all non-Partners)

Average for 12/31/11 Salary for Top Quartile in SF office	227,856	(1)
Multiplied by 200	200%	
	455,712	
Multiplied by number of SF Partners	69	(2)
Total	31,444,128	
Less 13.35% worked outside SF	(4,197,791)	
<b>Taxable amount (Prop Q)</b>	<b>27,246,337</b>	<b>(C)</b>
Tax rate	1.5%	
Tax Calculated	408,695	

(1) - Raw Data From Rosanna Kujala, Payroll Manager

(2) - C. Maffin - 12/31/11 MDR report

## **Exhibit D**



CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

Bob Long  
Claims Adjuster

DIRECT DIAL: (415) 554-4203  
E-MAIL: BOB.LONG@SFGOV.ORG

April 22, 2014

Lori J. Swift Controller  
Pillsbury Winthrop Shaw Pittman LLP  
P.O. Box 2824  
San Francisco, CA 94126-2824

RE: Claim of Pillsbury Winthrop Shaw Pittman LLP / Claim Number 14-01766

Department: TAXCOLLH Tax Refund Claims  
Claim Filed: February 13, 2014

NOTICE OF ACTION UPON CLAIM

PLEASE TAKE NOTICE THAT

An investigation of your firm's claim filed with the City and County of San Francisco has revealed no indication of liability on the part of the City and County. Accordingly, your client's claim is DENIED.

WARNING

Subject to certain exceptions, your client has only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code section 945.6. This time limitation applies only to causes of action arising under California law for which a claim is mandated by the California Government Claims Act, Government Code sections 900 et. seq. Other causes of action, including those arising under federal law, may have shorter time limitations for filing.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

A handwritten signature in black ink, appearing to read "Bob Long".  
Bob Long  
Claims Adjuster

Claim of: Pillsbury Winthrop Shaw Pittman LLP 14-01766  
Claim Filed: February 13, 2014

I, Bob Long, say: I am a citizen of the United States, over eighteen years of age, and not a party to the within action; that I am employed by the City Attorney's Office of San Francisco, Fox Plaza, 1390 Market Street, 7th Floor, San Francisco, CA 94102.

That on April 22, 2014, I served:

NOTICE OF ACTION UPON CLAIM


by placing a true copy thereof in an envelope addressed to:

Lori J. Swift, Controller  
Pillsbury Winthrop Shaw Pittman LLP  
P.O. Box 2824  
San Francisco, CA 94126-2824

and by then sealing and depositing said envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California. The mailbox that I deposited said envelope is regularly maintained by the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2014, at San Francisco, California.

  
Bob Long

DECLARATION OF SERVICE BY MAIL



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

Jul-23-2015 1:41 pm

Case Number: CSM-15-850229

Filing Date: Jul-23-2015 1:38

Filed by: PAUL FIOL

Juke Box: 001 Image: 05004738

CLAIM OF PLAINTIFF

LEILA AZAD, DDS, INC. VS. MAYOR, CITY OF SAN FRANCISCO

001C05004738

**Instructions:**

Please place this sheet on top of the document to be scanned.

**SC-100****Plaintiff's Claim and ORDER  
to Go to Small Claims Court****Notice to the person being sued:**

- You are the Defendant if your name is listed in ② on page 2 of this form. The person suing you is the Plaintiff, listed in ① on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

**Aviso al Demandado:**

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Clerk stamps date here when form is filed.

**FILED**  
San Francisco County Superior Court  
JUL 23 2015  
CLERK OF THE COURT  
BY: [Signature] Deputy Clerk

Fill in court name and street address:

Superior Court of California, County of  
**SMALL CLAIMS**  
**SUPERIOR COURT**  
400 McALLISTER, ROOM 103  
SAN FRANCISCO, CALIFORNIA 94102

Clerk fills in case number and case name:

Case Number:  
**CSM850229**  
Case Name:

**Order to Go to Court****The people in ① and ② must go to court:** (Clerk fills out section below.)

Trial Date	Date	Time	Department	Name and address of court if different from above
SEP 17 2015	7/30 PM	506	5TH FLOOR	
2.				
3.				
Date: 7/22/15	Clerk, by	<u>[Signature]</u> , Deputy		

**Instructions for the person suing:**

- You are the Plaintiff. The person you are suing is the Defendant.
- Before you fill out this form, read Form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to: [www.courts.ca.gov/smallclaims/forms](http://www.courts.ca.gov/smallclaims/forms).
- Fill out pages 2 and 3 of this form. Then make copies of all pages of this form. (Make 1 copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all 5 pages of this form and any pages this form tells you to attach. There are special rules for “serving,” or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.

Case Number:

Plaintiff (list names): Leila Azad, DDS, Inc.

**① The Plaintiff (the person, business, or public entity that is suing) is:**

Name: Leila Azad, DDS, Inc. Phone: (415)398-4110

Street address: 180 Montgomery Street, Suite 2440, San Francisco, CA 94104  
Street City State Zip

Mailing address (if different): Street City State Zip

**If more than one Plaintiff, list next Plaintiff here:**

Name: Phone: ( )

Street address: Street City State Zip

Mailing address (if different): Street City State Zip

☐ Check here if more than 2 Plaintiffs and attach Form SC-100A.

☒ Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach Form SC-103.

**② The Defendant (the person, business, or public entity being sued) is:**

Name: Mayor, City of San Francisco Phone: ( )

Street address: City Hall, Room 200, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102  
Street City State Zip

Mailing address (if different): Street City State Zip

**If more than one Defendant, list next Defendant here:**

Name: Phone: ( )

Street address: Street City State Zip

Mailing address (if different): Street City State Zip

☐ Check here if more than 2 Defendants and attach Form SC-100A.

☐ Check here if any Defendant is on active military duty, and write his or her name here: 5,000.00

**③ The Plaintiff claims the Defendant owes \$ 6,021.41. (Explain below):**

a. Why does the Defendant owe the Plaintiff money? Payroll tax liability for tax year 2013 was \$0.00, however because we were unaware of the Net New Business Exemption, we filed incorrectly and hence overpaid by \$6,021.41. The City now refuses to refund our money and has provided no reason.

b. When did this happen? (Date): 4/28/2014

If no specific date, give the time period: Date started: Through:

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.) We did so by filing an amended return using the Net New Business Exemption.

☐ Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-100, Item 3" at the top.





Case Number: \_\_\_\_\_

Plaintiff (list names): Leila Azad, DDS, Inc.

- 4 You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue. Have you done this? ☒ Yes ☐ No

If no, explain why not: \_\_\_\_\_

- 5 Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. ☒ (1) Where the Defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant or where the Defendant lived or did business when the Defendant made the contract.  
(2) Where the Plaintiff's property was damaged.  
(3) Where the Plaintiff was injured.
- b. ☐ Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).)
- c. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civil Code, § 1812.10.)
- d. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civil Code, § 2984.4.)
- e. ☐ Other (specify): \_\_\_\_\_

- 6 List the zip code of the place checked in 5 above (if you know): 94102

- 7 Is your claim about an attorney-client fee dispute? ☐ Yes ☒ No

If yes, and if you have had arbitration, fill out Form SC-101, attach it to this form, and check here: ☐

- 8 Are you suing a public entity? ☒ Yes ☐ No

If yes, you must file a written claim with the entity first. ☒ A claim was filed on (date): 4/3/2015

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

- 9 Have you filed more than 12 other small claims within the last 12 months in California?

☐ Yes ☒ No If yes, the filing fee for this case will be higher.

- 10 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

- 11 I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: 7/23/15 Kaveh Alizadeh  
Plaintiff types or prints name here

[Signature]  
Plaintiff signs here

Date: \_\_\_\_\_  
Second Plaintiff types or prints name here

[Signature]  
Second Plaintiff signs here



#### Requests for Accommodations

Assistive listening systems, computer-assisted, real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the trial. Contact the clerk's office for Form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civil Code, § 54.8.)

**"Small claims court"** is a special court where claims for \$5,000 or less are decided. A "natural person" (not a business or public entity) may generally claim up to \$10,000, including a sole proprietor. (\*See below for exceptions.) The process is quick and cheap. The rules are simple and informal.

You are the Defendant—the person being sued. The person who is suing you is the Plaintiff.

### Do I need a lawyer?

You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

### How do I get ready for court?

You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at [www.courts.ca.gov/smallclaims/prepare](http://www.courts.ca.gov/smallclaims/prepare).

### What if I need an accommodation?

If you have a disability or are hearing impaired, fill out Form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/Access Coordinator.

### What if I don't speak English well?

Bring an adult who is not a witness to interpret for you, or ask the court clerk for an interpreter at least five days before your court date. A court-provided interpreter may not be available or there may be a fee for using a court interpreter unless you qualify for a fee waiver. You may ask the court for a list of interpreters and also the *Application for Waiver of Court Fees and Costs* (form FW-001).

### Where can I get the court forms I need?

Go to any courthouse or your county law library, or print forms at: [www.courts.ca.gov/smallclaims/forms](http://www.courts.ca.gov/smallclaims/forms).

### What happens at the trial?

The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

### What if I lose the case?

If you lose, you can appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file Form SC-140, *Notice of Appeal*. You must file within 30 days after the judge's decision.
- If you were *not* at the trial, fill out and file Form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File Form SC-140.

For more information on appeals, see: [www.courts.ca.gov/smallclaims/appeals](http://www.courts.ca.gov/smallclaims/appeals).

\*Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc. § 116.220(c).) In an action brought by a natural person for damages for bodily injuries resulting from an automobile accident, a \$7,500 limit applies if a defendant is covered by an automobile insurance policy that includes a duty to defend. (See Code Civ. Proc. § 116.221.)

### Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, both of you must notify the court. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial, explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done this.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To make sure the witnesses go to the trial, fill out Form SC-107, and the clerk will subpoena (order) them to go.
- **Sue the person who is suing you.** File Form SC-120, *Defendant's Claim*. There are strict filing deadlines you must follow.
- **Agree with the Plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

### What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial) *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county) *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out Form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.



### Need help?

Your county's Small Claims Advisor can help for free.

Or go to [www.courts.ca.gov/smallclaims/advisor](http://www.courts.ca.gov/smallclaims/advisor).



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
Document Scanning Lead Sheet**

Sep-09-2015 3:14 pm

Case Number: CGC-15-547840

Filing Date: Sep-09-2015 3:10

Filed by: ARLENE RAMOS

Juke Box: 001 Image: 05068419

COMPLAINT

T-MOBILE WEST, LLC VS. CITY AND COUNTY OF SAN FRANCISCO ET AL

001C05068419

**Instructions:**

Please place this sheet on top of the document to be scanned.