Order ordinance amending the Business and Tax Regulations Code to repeal Article 3, which contains a license requirement and tax on transient merchants, both of which have been suspended.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in single-underline italics Times New Roman font. Deletions to Codes are in strikethrough italics Times New Roman font. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (* * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. The purpose of this ordinance is to repeal Article 3 of the Business and Tax Regulations Code. By Ordinance 117-00, effective in June 2000, the Board of Supervisors amended Article 3 to add Section 258, which suspended the operation of Article 3 in its entirety. The suspension has continued uninterrupted since June 2000.

Section 2. The Business and Tax Regulations Code is hereby amended by deleting Article 3, consisting of Sections 250, 251, 251.1, 252, 253, 254, 255, 256, 257, and 258, as follows:

ARTICLE 3: TRANSIENT MERCHANTS

SEC. 250. TRANSIENT MERCHANTS LICENSE REQUIRED.

Except as otherwise provided in Section 258 of this Article, it shall be unlawful for a transient merchant as defined in Section 251 of this Article to engage in such business within the City and
County of San Francisco without obtaining a license therefor in compliance with the provisions of this Article:

The provisions of this Article may be enforced by the issuance of citations under Section 6.191, and following, of Article 6 of Part III of the San Francisco Municipal Code.

SEC. 251. "TRANSIENT MERCHANT" DEFINED.

For the purposes of this Article, a "transient merchant" is defined as any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares and merchandise, other than food or food products, within said City and County, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, shop, tent, railroad boxcar, boat, or room in any hotel, motel, auto court, lodginghouse or apartment, within the City, for the exhibition and sale of such goods, wares and merchandise provided that such definition shall not be construed to include any person, firm or corporation who while occupying such location does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery, and further shall not include sales at public auction regulated by the provisions of the Police Code and Part III of the San Francisco Municipal Code, nor sale of Christmas trees or pumpkins. For purposes of this Article 3, the term "temporary business" shall mean a business conducted for less than seven (7) days in any calendar year. Any business conducted for seven (7) days or more in any calendar year must obtain a business tax registration certificate in accordance with the provisions of Part III of the San Francisco Municipal Code, to the extent applicable, including without limitation Section 1003 of Article 12-B.

SEC. 251.1. NOTIFICATION OF TRANSIENT MERCHANT ACTIVITY TO TAX COLLECTOR.

(a) Every person, firm or corporation engaged in the business of renting or leasing out any building, structure, shop, tent, railroad boxcar, boat, room in any hotel, motel, auto court,
lodginghouse, or apartment, within the City and County who knowingly rents such property or any portion thereof to a transient merchant (as defined in Section 251 of this article) shall notify the Tax Collector within 10 days prior to the exhibition and sale of goods, wares and merchandise for which the transient merchant has engaged this space, or within 10 days of registration to rent space to conduct commercial activity as a transient merchant in any case where the registration occurs less than 10 days prior to the use of the rented space, that such activity is scheduled to take place, including the name, local and permanent address of the merchant and the nature of the items to be sold. For purposes of this section, "transient merchant" shall not include an exhibitor at a conference or convention, the primary purpose of which is other than the direct sale of goods, wares or merchandise.

(b) The Tax Collector may seek such court orders as may be necessary to obtain information on rentals to transient merchants required to be disclosed hereby.

(c) The Tax Collector may establish rules and regulations for the administration of the purposes of this section, including the form on which transient merchant information is to be provided to the Tax Collector. Before issuing or amending any rules or regulations, the Tax Collector shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City and County of the intent to issue or amend the rules or regulations.

(d) One year after this ordinance goes into effect the Tax Collector shall report to the Board of Supervisors on the implementation and enforcement of this ordinance, and shall present any recommendations for changes to the ordinance that would be beneficial and appropriate.

SEC. 252. APPLICATION FOR LICENSE.

All persons required to apply for a license under this Article, whether an individual, firm or corporation, shall file a written application, signed by the applicant if an individual, by all partners if a partnership, and by a duly authorized officer if a corporation, with the Tax Collector, showing:
(a) The name or names of the person or persons having the management and supervision of applicant's business during the time that it is proposed that it will be carried on in the City and County; the local address of such person or persons while engaged in such business; the permanent address of such person or persons; the capacity in which such person or persons will act (that is, whether proprietor, agent or otherwise); the name and address of the person, firm or corporation for whose account the business will be carried on, if any; and if a corporation, under the laws of what state the same is incorporated;

(b) The place or places in the City where it is proposed to carry on applicant's business, and the length of time during which it is proposed that said business shall be conducted;

c) A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant in the City, the invoice value and quality of such goods, wares and merchandise, where goods, wares or merchandise are manufactured or produced, and where such goods, wares or merchandise are located at the time the application is filed;

d) Such other information as the Tax Collection requires in order to properly administer and enforce the provisions of this Article.

SEC. 253. LICENSE FEES.

(a) Except as provided in paragraph (b) below, licenses under this Article shall be issued on a quarterly basis and the licensee shall pay a minimum quarterly fee of $500 at the time the license is applied for and before it is issued and thereafter, and in addition thereto, a fee based on gross sales, which shall be at the rate of 10 percent of the gross receipts in excess of $5,000 from sales made during the quarter.

(b) During the suspension period, as defined in paragraph (c) of Section 258 of this Article, the licensee shall pay a flat quarterly fee of $150 at the time the license is applied for and, thereafter, shall not be required to pay the fee based on gross sales described in paragraph (a) above.
SEC. 254. REPORTS AND PAYMENT OF ADDITIONAL LICENSE FEES.

(a) Except as otherwise provided in paragraph (b) below, every person, firm or corporation that is conducting a temporary business as a transient merchant shall file with the Tax Collector a report at the end of the quarterly license period or within three days of the last day of doing business in the City and County as a transient merchant, showing the amount of gross receipts during the quarter for which the license was issued, and shall at the same time pay the additional fees, if any, based on 10 percent of gross receipts in excess of $5,000 from sales during that quarter.

(b) During the suspension period, as defined in paragraph (c) of Section 258 of this Article, no transient merchant shall be required to file with the Tax Collector the report nor pay the additional fees described in paragraph (a) above.

SEC. 255. BOND.

Every transient merchant as defined in Section 251 of this Article that is required to obtain a license under Section 250 of this Article shall file with the Tax Collector a bond in the sum of $5,000 before any license shall be issued, which shall run to the City and County of San Francisco and to any person, firm or corporation who shall sustain any injury or loss covered by the bond. 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 State to transact the business of fidelity and surety insurance, as surety.
The bond shall be conditioned that the applicant shall comply fully with all the provisions of the ordinances of the City and County and laws of the State of California regulating and concerning the sales of goods, wares and merchandise and will pay all judgments rendered against said applicant for any violation of said ordinances or statutes, or any of them, together with all judgments and costs that may be recovered against applicant by any person or persons for damage growing out of any misrepresentation or deception practiced on any person transacting such business with such applicant, whether said misrepresentations or deceptions were made or practiced by the owners or by their agents, servants or employees, either at the time of making the sale or through any advertisement of any character whatsoever printed or circulated with reference to the goods, wares and merchandise sold, or any part thereof.

The City and County may bring an action upon the bond for the recovery of any damage sustained by it, and also any person, firm or corporation who sustains any injury or loss covered by the bond may, in addition to any other remedy that he may have, bring an action in his own name upon the bond for the recovery of any damage sustained by him; provided, however, that no such action may be brought and maintained after the expiration of one year from and after the date the alleged act complained or occurred:

The aggregate liability of the surety for any and all claims which may arise under such bond shall in no event exceed the amount of the penalty of such bond regardless of the length of time it shall remain in force or the number of renewal licenses issued thereunder.

SEC. 256. POSTING OF LICENSE.

The Tax Collector shall issue to each qualified applicant a license to operate as a transient merchant and the license shall be posted conspicuously in the place of business named therein. In the event the applicant desires to do business in more than one place within the City, separate licenses may be issued for each place of business and shall be posted conspicuously in each place of business.
SEC. 257.—PENALTY.

(a)—Except as otherwise provided in paragraph (b) below, any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment.

(b)—During the suspension period, as defined in paragraph (c) of Section 258 of this Article, paragraph (a) above shall not apply to transient merchants.

SEC. 258.—SUSPENSION OF LICENSING AND OTHER REQUIREMENTS.

(a)—Notwithstanding the other provisions of this Article, no transient merchant shall be required to (i) apply for a license under Section 252, (ii) obtain a license under Section 250, or (iii) file a bond under Section 255, during the suspension period provided in subsection (b).

(b)—The suspension period shall be that period commencing on the effective date of this ordinance and ending thirty (30) days after its repeal.

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

By: Scott M. Reiber
Deputy City Attorney
Ordinance amending the Business and Tax Regulations Code to repeal Article 3, which contains a license requirement and tax on transient merchants, both of which have been suspended.

March 11, 2015 Budget and Finance Sub-Committee - RECOMMENDED

March 17, 2015 Board of Supervisors - PASSED ON FIRST READING
Ayes: 10 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang and Yee
Excused: 1 - Wiener

March 24, 2015 Board of Supervisors - FINALLY PASSED
Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 3/24/2015 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date Approved