

1 [Establishing an Alcohol Mitigation Fee]

2
3 **Ordinance amending the San Francisco Administrative Code Chapter 106, by adding**
4 **Sections 106 through 106.28 to impose a fee on alcoholic beverage wholesalers and**
5 **certain other persons who distribute or sell alcoholic beverages in San Francisco to: 1)**
6 **recover a portion of San Francisco's alcohol-attributable unreimbursed health costs,**
7 **and; 2) fund administration costs.**

8 NOTE: Additions are *single-underline italics Times New Roman*;
9 deletions are ~~*strike-through italics Times New Roman*~~.
10 Board amendment additions are double-underlined;
Board amendment deletions are ~~strike-through normal~~.

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

12 Section 1. The San Francisco Administrative Code is hereby amended adding a new
13 Chapter 106, Section 106 through 106.28, to read as follows:

14 **SEC. 106. FINDINGS.**

15 1. Illness, disability and premature death can be directly attributed to alcohol use. The
16 Centers for Disease Control and Prevention (CDC) has called excessive alcohol consumption the third
17 leading preventable cause of death, or modifiable behavioral risk factor, in the United States, after
18 tobacco and the combination of poor diet and physical inactivity.

19 2. In a 2010 study published in The Open Epidemiology Journal, researchers found that
20 alcohol use resulted in approximately 10,600 deaths and 72,000 nonfatal hospitalizations in California
21 during 2006 alone.

22 3. In one study, researchers estimated that the annual economic costs of alcohol use in
23 California for 2005 are between \$35.4 billion and \$42.2 billion, including \$5.4 billion in medical and
24 mental health spending, \$25.3 billion in work losses, and \$7.8 billion in criminal justice spending,
25 property damage, and other public program costs.

1 4. Two-thirds of San Francisco adults are current drinkers, compared with 55% of United
2 States adults. The San Francisco Department of Public Health considers alcohol a major public health
3 problem.

4 5. In San Francisco, alcohol use ranks among the leading causes of premature mortality.
5 Analyzing data from 2004-2007, the Department of Public Health found that alcohol is a leading cause
6 of premature death among men in San Francisco, accounting for approximately 10% of all their years
7 of life lost. The Department of Public Health also found that alcohol use is a notable cause of
8 premature death among women in San Francisco, falling between fifth and fifteenth as the leading
9 cause of premature death for that group, depending on the analytical method used.

10 6. Alcohol also plays a role in a significant number of deaths in San Francisco. In Fiscal
11 Year 2006-2007 – the most recent year for which the San Francisco Medical Examiner published
12 findings – alcohol was the primary cause of death in 7.7% of natural deaths certified by that office.
13 Alcohol also is involved in a significant number of accidental deaths in San Francisco. In FY 2006-
14 2007, 33% percent of all non-vehicular accidental death victims tested by the Medical Examiner had
15 significant levels of alcohol in their blood. In that same year, alcohol was present in 32.7% of all
16 vehicular fatalities in San Francisco. Alcohol also was present in 25% of all suicides tested by the
17 Medical Examiner that year. In addition, 31.8% of all tested homicide victims in San Francisco in FY
18 2006-2007 had positive blood alcohol levels at the time of death.

19 7. The City and County of San Francisco incurs a range of substantial costs that are
20 attributable to alcohol consumption, including but not limited to, the costs of medical care for people
21 with alcohol-related illnesses, treatment and prevention of alcohol misuse, law enforcement for
22 alcohol-related incidents, and emergency response for alcohol-related motor vehicle collisions. In
23 addition, San Francisco incurs costs when individuals experience disability, diminished capacity, and
24 premature death due to alcohol use.

1 8. In 2010, The Lewin Group and Oxford Outcomes, Inc. ("Nexus Study Authors")
2 conducted a nexus study to calculate a portion of the City and County of San Francisco's health costs
3 attributable to Alcoholic Beverages. The report, entitled The Cost of Alcohol to San Francisco:
4 Analyses Supporting an Alcohol Mitigation Fee ("Nexus Study") is on file with the Clerk of the Board of
5 Supervisors in File No. _____ and is incorporated herein by reference.

6 9. This Ordinance establishes the Alcohol Mitigation Fee to reimburse the City and County
7 of San Francisco for portion of its otherwise unreimbursed annual costs attributable to alcohol use as
8 identified in the Nexus Study.

9
10 **SEC. 106.1. TITLE AND PURPOSE.**

11 This Ordinance shall be known as the "Alcohol Mitigation Fee Ordinance" and the Fee imposed
12 herein shall be known as the "Alcohol Mitigation Fee" or "Fee." The purpose of this Fee is to at least
13 partly recover the City's unreimbursed 1) health care costs of alcohol-attributable conditions, 2) costs
14 of emergency transport due to alcohol, 3) alcohol prevention and treatment programs administered by
15 the Department of Public Health, and 4) administration costs, including but not limited to collection,
16 investigation, and enforcement costs (Eligible Costs).

17
18 **SEC. 106.4. DEFINITIONS.**

19 (a) "Account" or "San Francisco Alcohol Mitigation Account" means the account the City
20 maintains to receive monies collected under this Chapter.

21 (b) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever
22 source or by whatever process produced.

23 (c) "Alcoholic Beverage" means Alcohol, Spirits, liquor, Wine, or Beer, and every liquid
24 containing Alcohol, Spirits, Wine, or Beer, which contains one-half of 1 percent or more of Alcohol by

1 volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with
2 other substances.

3 (d) "Beer" means any Alcoholic Beverage obtained by the fermentation of any infusion or
4 decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and
5 includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake,
6 known as Japanese rice wine.

7 (e) "City" means the City and County of San Francisco.

8 (f) "Controller" means the Office of the Controller of the City and County of San
9 Francisco.

10 (g) "Eligible Costs" means the City's unreimbursed 1) health care costs of alcohol-
11 attributable conditions, 2) costs of emergency transport due to alcohol, 3) alcohol prevention and
12 treatment programs administered by the Department of Public Health, and 4) administration costs,
13 including but not limited to collection, investigation, and enforcement costs.

14 (h) "Fee" means the Alcohol Mitigation Fee imposed under this Chapter 106 of the San
15 Francisco Administrative Code.

16 (i) "Fee Payer" means a Person responsible for paying the Fee.

17 (j) "Manufacturer" or "Alcoholic Beverage Manufacturer" means any Person engaged in
18 the manufacture of alcoholic beverages.

19 (k) "Person" means any individual, firm, association, copartnership, cooperative
20 association, joint venture, corporation, personal representative, receiver, trustee, assignee, or any
21 entity, public or private in nature, but not the City or other governmental agencies exempted from local
22 fees under State or Federal law.

23 (l) "Retailer" or "Alcoholic Beverage Retailer" means a Person who engages in the sale of
24 Alcoholic Beverages for consumption and not for resale.

1 (m) "Rule" means any rule, regulation, guideline, instruction or prescribed form that the Tax
2 Collector duly issues, promulgates, or adopts to enforce and administer this Alcohol Mitigation Fee
3 Ordinance.

4 (n) "Sell", "Sale", or "To Sell" means any transaction whereby, for any consideration, title
5 to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic
6 beverages pursuant to an order placed for the purchase of such beverages and soliciting or receiving
7 an order for such beverages, but does not include the return of alcoholic beverages by a licensee to the
8 licensee from whom such beverages were purchased. For purposes of this definition, "licensee" means
9 any person holding a license, a permit, a certification, or any other authorization issued by the
10 California Department of Alcoholic Beverage Control.

11 (o) "Spirits" means an Alcoholic Beverage obtained by the distillation of fermented
12 agricultural products, and includes but is not limited to, alcohol for beverage use, spirits of wine,
13 whiskey, rum, brandy, vodka, and all dilutions and mixtures thereof.

14 (p) "Tax Collector" means the Office of the Treasurer and Tax Collector of the City and
15 County of San Francisco.

16 (q) "Wholesaler" or "Alcoholic Beverage Wholesaler" means every Person other than a
17 Manufacturer, Winegrower or rectifier, who is engaged in business as a jobber or wholesale merchant,
18 selling Alcoholic Beverages to Retailers for resale.

19 (r) "Wine" means the product obtained from normal alcoholic fermentation of the juice of
20 sound ripe grapes or other agricultural products containing natural or added sugar or any such
21 alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled
22 from the particular agricultural product or products of which the wine is made and other rectified wine
23 products and by whatever name and which does not contain more than 15 percent added flavoring,
24 coloring, and blending material and which contains not more than 24 percent of alcohol by volume,
25 and includes vermouth and sake, known as Japanese rice wine.

1 (s) "Winegrower" means any person who has facilities and equipment for the conversion of
2 grapes, berries or other fruit into wine and is engaged in the production of wine.

3
4 **SEC. 106.7. IMPOSITION OF ALCOHOL MITIGATION FEE**

5 (a) The City hereby imposes an Alcohol Mitigation Fee at the rate of \$.076 per ounce of
6 Alcohol sold on (1) Alcoholic Beverage Wholesalers who sell an Alcoholic Beverage to a Retailer for
7 resale within the geographic limits of the City, (2) Alcoholic Beverage Manufacturers, such as brew
8 pubs, breweries, or Winegrowers, that sell within the geographic limits of the City Alcoholic Beverages
9 directly to Persons for consumption and not resale, and (3) Alcoholic Beverage Retailers, or their
10 agents, that purchase outside the geographic boundaries of the City Alcoholic Beverages from Persons
11 for resale within the geographic boundaries of the City. The City may collect the Fee only once for
12 each ounce of alcohol sold within the geographic limits of the City. The Fee shall be subject to
13 adjustment from time to time under Section 106.16.

14 (b) The Fee Payer shall remit the Fee to the Tax Collector each calendar quarter on or
15 before the last day of the month immediately following each respective quarterly period, and in
16 accordance with the Tax Collector's Rules, except that all such amounts shall be due immediately upon
17 the transfer of ownership or cessation of a Fee Payer's business for any reason. The first Fee payment
18 is due January 31, 2011 for Fee Payers doing business during the quarter ending December 31, 2010.

19 (c) The City may expend the proceeds of the Fee only to offset, in whole or in part, the
20 Eligible Costs.

21 (d) The Tax Collector shall deposit all monies collected pursuant to this Alcohol Mitigation
22 Fee Ordinance to the credit of the San Francisco Alcohol Mitigation Fee Account authorized by
23 Section 106.28.

1 **SEC. 106.10. COLLECTION AND ENFORCEMENT.**

2 (a) The Tax Collector shall enforce the provisions of this Alcohol Mitigation Fee
3 Ordinance. The Tax Collector shall collect the Fee, conduct audits, and issue deficiency and jeopardy
4 determinations pursuant to the Business and Tax Regulations Code, Article 6, provided that nothing in
5 this Ordinance or in Article 6 of the Business and Tax Regulations Code shall be construed to mean
6 that the Alcohol Mitigation Fee is a tax rather than a fee. The Tax Collector may issue, and serve,
7 subpoenas to carry out these duties.

8 (b) The Tax Collector shall have the power and duty to promulgate Rules to implement and
9 administer this Ordinance, including but not limited to Rules prescribing methods for Fee collection,
10 payment and verification. A Fee Payer's failure or refusal to comply with any Rule shall be a violation
11 of this Ordinance and may subject the violator to the penalties set forth herein or in Business and Tax
12 Regulations Code, Article 6.

13 (c) Until otherwise specified by Rule, the Tax Collector shall allow any Fee Payer to report
14 Alcoholic Beverage sales based on either its inventory purchase invoices for the reporting period or its
15 Alcoholic Beverage sales records for the reporting period. A Fee Payer shall use the same method for
16 calculating and reporting its Fees each reporting period until otherwise specified by Rule.

17 (d) The Fee is payable, when due, at the office of the Tax Collector, and if not paid the
18 penalties and interest set forth in Business and Tax Regulations Code Sec. 6.17-1 shall apply.

19 (e) The Tax Collector shall have the authority described in Business and Tax Regulations
20 Code Sec. 6.4-1(b) to obtain information pertinent to the collection and enforcement of this Fee.
21 Penalties for noncompliance shall be the same as those authorized under Article 6 of the Business and
22 Tax Regulations Code.

1 **SEC. 106.13. RECORDS FOR ENFORCEMENT ONLY.**

2 (a) Every Fee Payer shall keep and preserve all such records as the Tax Collector may
3 require for the purpose of ascertaining and determining compliance with this Alcohol Mitigation Fee
4 Ordinance, including but not limited to, all local, State and Federal tax returns and all inventory
5 purchase invoices, for a period of four years. The Fee Payer shall submit copies of such records with
6 its periodic Fee returns as the Tax Collector may by Rule require, and shall make its original
7 documents available at its retail location for review, inspection or copying by the Tax Collector upon
8 request during normal business hours.

9 (b) The City shall access and use a Fee Payer's records required to be prepared or provided
10 under this Ordinance and Rules promulgated hereunder, including but not limited to its local, State and
11 Federal tax returns and inventory purchase invoices, solely for the purposes of enforcing this Alcohol
12 Mitigation Fee Ordinance. The City shall adhere to all applicable laws, policies and regulations
13 pertaining to personal information, individual privacy, trade secrets and proprietary information with
14 respect to such records and such records shall not be considered public records.

15
16 **SEC. 106.16. ADJUSTMENT AND REVIEW OF FEES.**

17 (a) **Biannual Review.** Beginning with fiscal year 2012-2013 and biannually thereafter, the
18 City shall review and, if necessary, adjust the Fee as set forth in this subsection. By March 1, the Tax
19 Collector shall report to the Controller the monies generated by the Fee for the prior fiscal year, and
20 each involved City department shall report to the Controller the prior fiscal year's Eligible Costs, and
21 any other information that the Controller determines appropriate to adjusting the Fee. The Controller
22 shall determine whether the current Fee has produced or is projected to produce funds sufficient to
23 support the Eligible Costs but not funds that are more than the costs of providing the services for which
24 the Fee is assessed. The Controller shall, if necessary, adjust the Fee by increasing or decreasing it for
25 the upcoming fiscal year or years as appropriate to ensure that over time the City recovers no more

1 than the costs for which the City assesses the Fee. The adjusted Fee rate shall become operative on
2 July 1. The Controller shall publish the adjusted Fee rate. Failure to publish the Fee rate shall not
3 affect the rights of the City to collect the adjusted Fee.

4 (b) **Five-Year Review.** Commencing five years after the effective date of this ordinance, and
5 every five years thereafter, or more often as the Controller may deem necessary, the Controller shall
6 commission a report updating the Nexus Study. The Controller may also recommend new categories of
7 unreimbursed costs attributable to alcohol to be recovered through the Fee. In making such
8 recommendations, and to the extent that new information is available, the report shall update the
9 information and estimates that were used in the Nexus Study to estimate the Fee, and any other
10 information the Controller deems appropriate. The Controller then shall recommend to the Board
11 whether Fee should be increased, decreased, or remain the same. Nothing in this subsection shall
12 prevent the Controller from adjusting the Fee to ensure that the City recovers no more than the costs
13 for which the City assesses the Fee under Section 106.16(a).

14
15 **SEC. 106.19. PREEMPTION.**

16 Nothing in this Chapter shall be interpreted or applied so as to create any power, duty or
17 obligation in conflict with, or preempted by, any Federal or State law.

18
19 **SEC. 106.22. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
20 **WELFARE.**

21 In undertaking the adoption and enforcement of this Chapter, the City is assuming an
22 undertaking only to promote the general welfare. The City does not intend to impose the type of
23 obligation that would allow a Person to sue for money damages for an injury that the Person claims to
24 suffer as a result of a City officer or employee taking or failing to take an action with respect to any
25 matter covered by this Chapter.

1
2 **SEC. 106.25. SEVERABILITY.**

3 If any of the words, sentences, parts, or provisions of this Chapter or the application thereof to
4 any person or circumstance is held invalid, including any category of costs, the remainder of this
5 Chapter, including the application of such word, sentence, part or provisions to persons or
6 circumstances other than those to which it is held invalid, or the collection of the remaining costs, shall
7 not be affected thereby and shall continue in full force and effect. To this end, the words, sentences,
8 parts, and provisions of this Chapter are severable.

9
10 **SEC. 106.28. SAN FRANCISCO ALCOHOL MITIGATION FEE ACCOUNT.**

11 (a) Establishment of Account. The City shall maintain an San Francisco Alcohol
12 Mitigation Fee Account to receive monies collected under this Chapter.

13 (b) Use of Fee Monies. The Account shall be used solely to recover Eligible Costs.
14 Expenditures and encumbrances from the Account shall be subject to the budget and fiscal provisions
15 of the Charter and the Annual Appropriation Ordinance. The Controller shall allocate funds to
16 Departments based on each Department's share of the combined alcohol-attributable and alcohol fee
17 administration expenditures as determined by the most recent available nexus study and study of
18 administration expenditures.

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

21 By: _____
22 Cecilia T. Mangoba
23 Deputy City Attorney