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**PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED
BY THE MAYOR TO THE VOTERS AT THE *NOVEMBER 2, 2010* ELECTION.**

[Under Charter Sections 3.100(15) and 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no fewer than *45 days prior* to deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

7 [Clarifying Who is Responsible for Collecting and Remitting Third-Party Taxes; Consolidating
8 Definitions and Amending the Definition of "Permanent Resident"]

9 **Ordinance amending the San Francisco Business and Tax Regulations Code by**
10 **amending Section 6.2-13 of Article 6 - Common Administrative Provisions, Section 501**
11 **of Article 7 - Tax on Transient Occupancy of Hotel Rooms, and Section 601 of Article 9 -**
12 **Tax on Occupancy of Parking Space in Parking Stations, to amend and consolidate the**
13 **definition of "Operator" and to clarify who is responsible for collecting and remitting**
14 **third-party taxes, and amending Section 501 of Article 7 - Tax on Transient Occupancy**
15 **of Hotel Rooms, to specify that a "Permanent Resident" is an individual.**

16 NOTE: Additions are *single-underline italics Times New Roman*;
17 deletions are *strike-through italics Times New Roman*.

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

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20 Section 1. **Purpose.** Article 7, Tax on Transient Occupancy of Hotel Rooms, of the
21 San Francisco Municipal Code, Business and Tax Regulations Code, (File No. 7573-2,
22 Ordinance No. 87-61) became effective on July 1, 1961. Article 7 imposes a transient
23 occupancy tax (TOT) on every occupancy of a guest room in a hotel in the City and requires
24 every occupant to pay the tax along with the rent for the room. The entire consideration the
25 occupant pays is subject to the tax and the person receiving or collecting the rent from the

1 occupant must remit the tax to the City. The rate of the tax, plus surcharges added
2 subsequent to the original enactment of the tax, is currently 14 percent of the rent.

3 In 2008, the City and County of San Francisco sought to collect transient occupancy
4 taxes on the full amount of the rent charged to the customer by on-line travel companies when
5 hotel rooms located in San Francisco are booked primarily on-line. The on-line travel
6 companies claimed that they are not required to pay tax to the City. They have initiated a
7 lawsuit to obtain a refund of transient occupancy taxes that they paid under protest. It is the
8 City's position that Article 7 currently requires every person that receives or collects taxable
9 room rent from an occupant, regardless of their relationship to the hotel or occupant, to also
10 collect the transient occupancy tax and remit it to the City. However, the purpose of this
11 ordinance is to clarify who is responsible for collecting and remitting transient occupancy
12 taxes. In addition, this ordinance amends and consolidates definitions of "operator" in
13 Article 7 and Article 9 and into one definition of "operator" in Article 6 of the San Francisco
14 Business and Tax Regulations Code.

15 The ordinance also specifies who may claim the "permanent resident" exemption from
16 the tax. The tax has always included a permanent resident exemption to ensure that low-
17 income persons living in residential hotels would not be required to pay the tax. The tax was
18 intended to be levied on business travelers, convention attendees, and tourists.
19 Nevertheless, under certain circumstances current law authorizes corporations and business
20 entities to claim the exemption. Disputes about the validity of those claims by airlines whose
21 flight crews stay overnight in San Francisco hotels has resulted in costly litigation. Even
22 though the San Francisco Superior Court rejected the airlines' claims of permanent resident
23 status in 2006, the airlines continue to claim they are exempt from the tax and to litigate their
24 claims. The purpose of this ordinance is to remove any basis for corporations and business
25 entities to claim a tax exemption meant to benefit low-income persons living in residential

1 hotels. The ordinance disallows corporations and other artificial entities from claiming the
2 permanent resident exemption under any circumstances, and allows only natural persons
3 (human beings) to claim the permanent resident exemption.

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5 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended
6 by amending Sections 6.2-13, 501, and 601, to read as follows:

7 **SEC. 6.2-13. OPERATOR.**

8 (a) The term "operator" means:

9 (1) Any person who (A) receives any consideration from the occupant; (B) conducts or
10 controls a business subject to the tax on transient occupancy of hotel rooms in the City, including, but
11 not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession,
12 licensee, or any other person otherwise conducting or controlling such business; or (C) is the merchant
13 of record in the transaction;

14 (2) Any person who receives the consideration for the occupancy of parking spaces in
15 parking stations in the City, or who conducts or controls a business subject to the tax on the occupancy
16 of parking spaces in parking stations in the City, including, but not limited to, the owner or proprietor
17 of such premises, lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise
18 conducting or controlling such business;

19 (3) Any person conducting or controlling a business subject to the stadium operator
20 occupancy tax in the City;

21 (4) Any service supplier required to collect the utility users tax under Article 10; or

22 (5) Any service supplier required to collect the access line tax under Article 10B.

23 (b) The receipt of consideration by an employee on behalf of an employer shall not make the
24 employee an operator, but such consideration shall be considered consideration received by the
25 employer.

1 ~~The term "operator" means any person conducting or controlling a business subject to the tax~~
2 ~~on transient occupancy of hotel rooms or the tax on occupancy of parking spaces in parking stations in~~
3 ~~the City, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee,~~
4 ~~mortgagee in possession, licensee or any other person otherwise conducting or controlling such~~
5 ~~business. "Operator" shall also include any person conducting or controlling a business subject to the~~
6 ~~stadium operator occupancy tax in the City, as well as any service supplier required to collect the~~
7 ~~utility users tax under Article 10 or the emergency response fee under Article 10A.~~

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9 **SEC. 501. ADDITIONAL DEFINITIONS.**

10 When used in this Article the following terms shall mean or include:

11 ~~(a) "Operator." Any person operating a hotel in the City and County of San Francisco,~~
12 ~~including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in~~
13 ~~possession, licensee or any other person otherwise operating such hotel.~~

14 ~~(b)(a)~~ "Occupant." A person who, for a consideration, uses, possesses, or has the right
15 to use or possess any room in a hotel under any lease, concession, permit, right of access,
16 license to use or other agreement, or otherwise.

17 ~~(e)(b)~~ "Occupancy." The use or possession, or the right to the use or possession of any
18 room or apartment in a hotel or the right to the use or possession of the furnishings or to the
19 services and accommodations accompanying the use and possession of the room.

20 ~~(d)(c)~~ "Hotel." Any structure, or any portion of a structure, including any
21 ~~lodginghouse~~ lodging house, ~~roominghouse~~ rooming house, dormitory, Turkish bath, bachelor hotel,
22 studio hotel, motel, auto court, inn, public club, or private club, containing guest rooms and
23 which is occupied, or is intended or designated for occupation, by guests, whether rent is paid
24 in money, goods, labor, or otherwise. It does not include any jail, hospital, asylum, sanitarium,

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1 orphanage, prison, detention, or other building in which human beings are housed and
2 detained under legal restraint.

3 ~~(e)~~(d) "Guest Room." A room occupied, or intended, arranged, or designed for
4 occupation, by one or more occupants. Every 100 square feet of superficial floor area in a
5 dormitory is a guest room.

6 ~~(f)~~(e) "Rent." The consideration received for occupancy valued in money, whether
7 received in money or otherwise, including all receipts, cash, credits, and property or services
8 of any kind or nature, and also the amount for which credit is allowed by the operator to the
9 occupant, without any deduction therefrom whatsoever.

10 ~~(g)~~(f) "Permanent Resident." ~~Any occupant~~ An individual who as of a given date ~~who~~ has
11 or shall have occupied, or has or shall have the right of occupancy, of, any guest room in a
12 hotel for at least 30 consecutive days next preceding such date.

14 **SEC. 601. ADDITIONAL DEFINITIONS.**

15 When used in this Article the following terms shall mean or include:

16 ~~(a) "Operator." Any person operating a parking station in the City and County of~~
17 ~~San Francisco, including but not limited to, the owner or proprietor of such premises, lessee, sublessee,~~
18 ~~mortgagee in possession, licensee or any other person otherwise operating such parking station. A~~
19 ~~person who otherwise qualifies as an operator as herein defined shall not, by reason of the fact that he~~
20 ~~was exempt from the tax herein imposed, be exempted from the obligations of an operator hereunder.~~

21 ~~(b)~~(a) "Occupant." A person who, for a consideration, uses, possesses or has the right
22 to use or possess any space for the parking of a motor vehicle in a parking station under any
23 lease, concession, permit, right of access, license to use or other agreement or otherwise.

24 ~~(e)~~(b) "Occupancy." The use or possession or the right to the use or possession of any
25 space for the parking of a motor vehicle in a parking station.

1 ~~(d)~~(c) "Parking Station." The term "parking station" shall include, but is not limited to:

2 (1) Any outdoor space or uncovered plot, place, lot, parcel, yard or enclosure, or
3 any portion thereof, where motor vehicles may be parked, stored, housed or kept, for which
4 any charge is made;

5 (2) Any building or structure, or any portion thereof in which motor vehicles may
6 be parked, stored, housed or kept, for which any charge is made.

7 ~~(e)~~(d) "Motor Vehicle." The term "motor vehicle" includes every self-propelled vehicle
8 operated or suitable for operation on the highway.

9 ~~(f)~~(e) "Rent." The consideration received for occupancy valued in money, whether
10 received in money or otherwise, including all receipts, cash, credits and property or services
11 of any kind or nature, and also the amount for which credit is allowed by the operator to the
12 occupant without any deduction there from whatsoever.

13 ~~(g)~~(f) "Parking Meter." Any device which, when the recording device thereof is set in
14 motion, or immediately following the deposit of any coin, shall register the period of time that
15 any motor vehicle may be parked adjacent thereto.

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1 Section 3. **Severability.** If any of the provisions of this ordinance or the application
2 thereof to any person or circumstance is held invalid, the remainder of those provisions,
3 including the application of such part or provisions to persons or circumstances other than
4 those to which it is held invalid, shall not be affected thereby and shall continue in full force
5 and effect. To this end, the provisions of this ordinance are severable.

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8 SUBMITTED:

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10 _____ Date: _____
11 GAVIN NEWSOM
12 Mayor, City and County of San Francisco
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