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Submittal Form
For Proposed Initiative Measure(s) AK
Prior to Submittal to the Department of Elections

by 4 or more Supervisors or the Mayor

I, hereby submit the following proposed initiative measure(s) for hearing before the Board of Supervisors' Rules Committee prior to the submittal of the proposed initiative measure to the Department of Elections (Proposition C, November 2007).

This matter is for the **{June 5, 2018}** Election.

Sponsor(s): Supervisors Yee, Kim, Fewer, Ronen

Subject: [Initiative Ordinance - Business and Tax Regulations and Administrative Codes - Commercial Rents Tax for Early Child Care and Education]


The text is listed below or attached:

/(See attached.)

Supervisor **{ Norman Yee }**: 

Supervisor **{ Jane Kim }**: 

Supervisor **{ Sandra Lee Fewer }**: 

Supervisor **{ Hillary Ronen }**: 

(Clerk of the Board's Time Stamp)

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PROPOSED INITIATIVE ORDNANCE TO BE SUBMITTED BY FOUR OR MORE SUPERVISORS TO THE VOTERS AT THE JUNE 5, 2018 ELECTION.

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

[Initiative Ordinance - Business and Tax Regulations and Administrative Codes - Commercial Rents Tax for Early Child Care and Education]

Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an additional tax on the gross receipts from the lease of commercial space in the City, in the amount of 1% for warehouses and 3.5% for other commercial uses, to fund the Babies and Families First Fund for quality early care and education for children from birth through five years of age and the General Fund; exempting from the additional tax rents from industrial, artist, non-formula retail, nonprofit, and government uses; and increasing the City's appropriations limit by the amount collected under the new tax for four years from June 5, 2018.

NOTE: **Unchanged Code text and uncodified text** are in plain font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman 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. Pursuant to Article XIII C of the Constitution of the State of California, this ordinance shall be submitted to the qualified electors of the City and County of San Francisco at the June 5, 2018, consolidated statewide direct primary election.

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Section 2. The Business and Tax Regulations Code is hereby amended by adding Article 21, consisting of Sections 2101 through 2116, to read as follows:

ARTICLE 21: EARLY CARE AND EDUCATION COMMERCIAL RENTS TAX ORDINANCE

SEC. 2101. FINDINGS.

(a) For more than a decade, San Francisco has been a national leader in early care and education (ECE) with the introduction of the Preschool For All program in 2004. This revolutionary program expanded access, defined and measured quality programs, and supported educators to deliver high-quality early education. Ninety-two percent of San Francisco children attend preschool or transitional kindergarten before attending public kindergarten.

(b) Preschool enrollment of three- to five-year-olds in San Francisco rose from 57% in 2005 to 71% in 2013. Citywide school readiness assessments in 2007 and 2009 charted a similar increase, from 72% of four-year-olds in 2007 to 83% in 2009. These accomplishments are due to the targeted and committed investments of the State and the City and the work of First 5 San Francisco and the Office of Early Care and Education.

(c) However, the City cannot claim the same success when it comes to infants and toddlers under the age of four. Despite medical professionals, child development specialists, and scientific researchers uniformly agreeing that the most critical time in brain development is from birth to age three, and that the brain is 90% developed before a child reaches age five, San Francisco has more than 2,400 children on the waitlist for subsidized ECE, and more than 1,600 of these children are under the age of three. When two-thirds of the children on the waitlist, and in these large numbers, are infants and toddlers, the critical and urgent need for targeted investment in infants and toddlers, akin to the level of City support prioritized for our four-year-olds, becomes dramatically evident.

(d) Three out of four families in San Francisco with children under the age of six have both parents working outside the home, making childcare a necessity, not a luxury. But, as of 2017, infant

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and toddler early education and childcare can cost a staggering \$20,000 a year in San Francisco; in comparison, tuition at UC Berkeley costs \$13,600 a year. The heavy toll that childcare costs can take on families is undeniable. In a 2016 poll conducted by the Robert Wood Johnson Foundation, Harvard's T.H. Chan School of Public Health, and National Public Radio, 71% of the over 1,100 parents polled stated that the cost of childcare is a serious problem for their families.

(e) Without affordable and accessible childcare, one significant consequence is the loss of women from the workforce, a serious problem not just for those women, but for society at large. One stark consequence of losing women in our workforce is the difficulties they face when attempting to return to work in the technology sector after having children. Recent research indicates that such women are 79% less likely to be hired and half as likely to be promoted as other employees, and are offered an average of \$11,000 less in salary upon trying to re-enter the technology workforce later in life.

(f) Further, as female employees leave the workforce, the lack of gender diversity in fields like technology and venture capital continues apace. A study conducted by the Deloitte University Leadership Center for Inclusion and the National Venture Capital Association, of 2,500 employees at 217 venture capital firms nationwide, found that lack of family assistance and childcare may be hindering women's success in venture capital. The same study found that gender diversity in leadership results in greater returns, innovation, and success. Fortune 500 firms that aggressively promote women realize 34% higher profits than those that do not.

(g) Our San Francisco families want and need quality ECE for their children, and society as a whole benefits when we invest in them and their families. Rigorous long-term studies have found a return on investment averaging seven dollars for every dollar spent on quality early learning programs. In addition, children in these studies who have been followed into adulthood have benefitted from increased earnings.

(h) The most effective guarantee of quality ECE is workforce compensation. A 2014 UC Berkeley study showed that educator wages are one of the most important predictors of the quality of

education children receive. But today, one third of full-time teaching staff in ECE programs use some form of public assistance to make ends meet. In San Francisco, 92% of our early childcare and education workforce are women; 83% are estimated to be women of color.

(i) Children who come to kindergarten without the skills they need often stay behind and struggle in school. Early childhood care and education programs give children a chance to learn, become excited about school, and be better students over their lifetimes. Investing in ECE helps ensure we have highly-trained and skilled educators, gives our babies and children the best possibility to succeed, while providing essential support for struggling working families.

SEC. 2102. SHORT TITLE.

This Article 21 shall be known as the “Early Care and Education Commercial Rents Tax Ordinance,” and the tax it imposes shall be known as the “Early Care and Education Commercial Rents Tax.”

SEC. 2103. DEFINITIONS.

(a) Unless otherwise defined in this Article 21, the terms used in this Article shall have the meanings given to them in Articles 6 and 12-A-1 of the Business and Tax Regulations Code, as amended from time to time. All references to Sections of the Planning Code are to the text of those Sections as of June 5, 2018.

(b) For purposes of this Article 21, the following definitions shall apply:

“Area Median Income” or “AMI” means Area Median Income for the San Francisco area, derived from the U.S. Department of Housing and Urban Development, adjusted solely for household size, as described in Administrative Code Section 10.100-81(c).

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“Base Amount” means the Controller’s calculation of the amount of City appropriations (not including appropriations from the Fund and exclusive of expenditures funded by private funding, development impact fees, or prior period balances, or funded or mandated by state or federal law) for Baseline Programs for the Baseline Year, as adjusted in the manner provided in subsections (g) and (h) of Section 2112.

“Baseline Programs” means all programs serving children of all ages under six that are allocated funding through OECE.

“Baseline Year” means the Fiscal Year July 1, 2017 through June 30, 2018.

“Commercial Space” means any building or structure, or portion of a building or structure, that is not “residential real estate,” as that term is defined in Section 954.1(e) of Article 12-A-1 of the Business and Tax Regulations Code, as amended from time to time. Notwithstanding the preceding sentence, Commercial Space shall not include any building or structure, or portion of a building or structure, that is used for: (a) Industrial Use as defined in Section 102 of the Planning Code; (b) Arts Activities as defined in Section 102 of the Planning Code; or (c) Retail Sales or Service Activities or Retail Sales or Service Establishments, as defined in Section 303.1(c) of the Planning Code, that are not Formula Retail uses as defined in Section 303.1(b) of the Planning Code.

“Eligible Programs” are described in Section 2112(d)(1) of this Article 21.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Fund” means the Babies and Families First Fund described in Section 2111 of this Article 21.

“OECE” means the City’s Office of Early Care and Education, described in Section 2A.310 of the Administrative Code, or its successor.

“State Median Income” or “SMI” means the state median income, adjusted for family size, calculated by the California Department of Finance under California Education Code Section 8263.1.

“Warehouse Space” means Commercial Space that is used for Commercial Storage, for Volatile Materials Storage, for Wholesale Storage, or as a Storage Yard, as each of these capitalized terms is defined in Section 102 of the Planning Code.

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SEC. 2104. IMPOSITION OF TAX.

(a) Except as otherwise provided in this Article 21, for the privilege of engaging in the business of leasing Commercial Space in properties in the City, the City imposes an annual Early Care and Education Commercial Rents Tax on each person engaged in business in the City that receives gross receipts from the lease of Commercial Space in properties in the City. For purposes of this Article 21, the term "lease" includes any "sublease."

(b) The Early Care and Education Commercial Rents Tax shall be calculated by applying the following percentages to the person or combined group's gross receipts from the lease of Commercial Space in properties in the City:

(1) 1% to the person or combined group's gross receipts from the lease of Warehouse Space in properties in the City; and

(2) 3.5% to the person or combined group's gross receipts from the lease of all other Commercial Space in properties in the City.

(c) The Early Care and Education Commercial Rents Tax shall become operative on January 1, 2019.

SEC. 2105. EXEMPTIONS AND EXCLUSIONS.

(a) An organization that is exempt from income taxation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the California 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 21, only so long as those exemptions continue to exist under state or federal law.

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(b) For purposes of this Article 21, gross receipts from the lease of Commercial Space shall not include receipts from the leasing of Commercial Space to (1) organizations described in subsection (a) of this Section 2105; or (2) federal, state, or local governments.

(c) For purposes of this Article 21, gross receipts from the lease of Commercial Space 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) For only so long as and to the extent that the City is prohibited from imposing the Early Care and Education Commercial Rents Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Early Care and Education Commercial Rents Tax shall be exempt from the Early Care and Education Commercial Rents Tax.

SEC. 2106. SMALL BUSINESS EXEMPTION.

Notwithstanding any other provision of this Article 21, a person or combined group exempt from payment of the gross receipts tax under Section 954.1 of Article 12-A-1, as amended from time to time, shall also be exempt from payment of the Early Care and Education Commercial Rents Tax.

SEC. 2107. FILING; COMBINED RETURNS.

(a) Persons subject to the Early Care and Education Commercial Rents Tax shall file returns at the same time and in the same manner as returns filed for the gross receipts tax (Article 12-A-1), including the rules for combined returns under Section 956.3, as amended from time to time.

(b) If a person is subject to the Early Care and Education Commercial Rents Tax but is not required to file a gross receipts tax return, such person or combined group's Early Care and Education Commercial Rents Tax return shall be filed at the same time and in the same manner as if such person or combined group were required to file a gross receipts tax return.

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(c) For purposes of this Article 21, a lessor of residential real estate is treated as a separate person with respect to each individual building in which it leases residential real estate units, notwithstanding Section 6.2-15 of Article 6, as amended from time to time, or subsection (a) of this Section 2107. This subsection (c) applies only to leasing residential real estate units within a building, and not to any business activity related to other space, either within the same building or other buildings, which is not residential real estate. The Tax Collector is authorized to determine what constitutes a separate building and the number of units in a building.

SEC. 2108. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.

The Tax Collector may, in his or her reasonable discretion, independently establish a person or combined group's gross receipts from the lease of Commercial Space in properties in the City and establish or reallocate gross receipts among related entities so as to fairly reflect the gross receipts from the lease of Commercial Space in properties in the City of all persons and combined groups.

SEC. 2109. CONSTRUCTION AND SCOPE OF THE EARLY CARE AND EDUCATION COMMERCIAL RENTS TAX ORDINANCE.

(a) This Article 21 is intended to authorize application of the Early Care and Education Commercial Rents Tax in the broadest manner consistent with its provisions and with the California Constitution, the United States Constitution, and any other applicable provision of federal or state law.

(b) The Early Care and Education Commercial Rents Tax imposed by this Article 21 is in addition to all other City taxes, including the gross receipts tax imposed by Article 12-A-1 of the Business and Tax Regulations Code, as amended from time to time. Accordingly, by way of example and not limitation, persons subject to both the Early Care and Education Commercial Rents Tax and the gross receipts tax shall pay both taxes. Persons exempt from either the gross receipts tax or the Early Care and Education Commercial Rents Tax, but not both, shall pay the tax from which they are not exempt.

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SEC. 2110. ADMINISTRATION OF THE EARLY CARE AND EDUCATION COMMERCIAL RENTS TAX ORDINANCE.

Except as otherwise provided under this Article 21, the Early Care and Education Commercial Rents Tax Ordinance shall be administered pursuant to Article 6 of the Business and Tax Regulations Code, as amended from time to time.

SEC. 2111. DEPOSIT OF PROCEEDS.

All monies collected under the Early Care and Education Commercial Rents Tax Ordinance shall be deposited to the credit of the Babies and Families First Fund, established in Administrative Code Section 10.100-36. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be carried forward and accumulated in the Fund for the purposes described in Section 2112(d) of this Article 21.

SEC. 2112. EXPENDITURE OF PROCEEDS

Monies in the Babies and Families First Fund shall be used exclusively for the purposes specified in this Section 2112. Subject to the budgetary and fiscal provisions of the Charter, monies in the Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following purposes:

(a) Up to 2% of the proceeds of the Early Care and Education Commercial Rents Tax, distributed in any proportion to the Tax Collector and other City departments, for administration of the Early Care and Education Commercial Rents Tax;

(b) Refunds of any overpayments of the Early Care and Education Commercial Rents Tax imposed by this Article 21;

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

(d) All remaining amounts to funding, including administrative costs, Eligible Programs.

(1) "Eligible Programs" means:

(A) Support for quality early care and education for children under the age of six in San Francisco families at 85% or less of State Median Income (SMI);

(B) Support for quality early care and education for children under the age of four in San Francisco families earning up to 200% of the Area Median Income (AMI);

(C) Investment in comprehensive early care and education services that support the physical, emotional, and cognitive development of children under the age of six; and

(D) Increasing compensation (including but not limited to wages, benefits, and training) of care professionals and staff in order to improve the quality and availability of early care and education for children under the age of six.

(2) Monies in the Fund shall be allocated between the purposes set forth in subsections (d)(1)(A), (d)(1)(B), (d)(1)(C), and (d)(1)(D), as provided by the Board of Supervisors or OECE.

(e) Commencing with a report filed with the Board of Supervisors not later than January 1, 2030, and every ten years thereafter, or as directed by the Board of Supervisors, OECE shall file a "needs assessment" containing recommendations for expenditures from the Fund for the following ten years to support quality early care and education for children under the age of six through the Eligible Programs.

(f) The intent of subsection (d) of this Section 2112 is to provide dedicated revenues to increase funding for quality early care and education for San Francisco children under the age of six. It is not intended to supplant existing funding. Therefore, except as otherwise specified in this Section 2112, revenues in the Fund may only be expended for the purposes specified in Section 2112(d) in years when the Controller certifies that appropriations contained in the adopted budget from other funding sources

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exceed those in a given year, as measured and adjusted by the Controller pursuant to subsections (g) and (h) of this Section 2112.

(g) Expenditures After Baseline Year. No monies in the Fund shall be expended pursuant to subsection (d) of this Section 2112 in any Fiscal Year in which the amount appropriated for Baseline Programs (not including appropriations from the Fund and exclusive of expenditures funded by private funding, development impact fees, or prior period balances, or funded or mandated by state or federal law) is below the Base Amount. All funds unexpended in accordance with the preceding sentence shall be held in the Fund and may be expended in any future Fiscal Year in which other expenditures from the Fund may be made. The Controller shall adjust the Base Amount for each Fiscal Year after the Baseline Year based on calculations consistent from Fiscal Year to Fiscal Year by the percentage increase or decrease in aggregate City discretionary revenues. In determining aggregate City discretionary revenues, the Controller shall include only revenues received by the City that are unrestricted and may be used at the option of the Mayor and the Board of Supervisors for any lawful City purpose. The method used by the Controller to determine discretionary revenues shall be consistent with the method used by the Controller to determine the Library and Children's Fund Baseline calculations, as provided in Charter Section 16.108(h). The change in aggregate discretionary revenues shall be adjusted following the end of the Fiscal Year when final revenues are known.

(h) Suspension of Growth in Base Amount. The City may suspend growth in the Base Amount pursuant to subsection (g) of this Section 2112 in Fiscal Year 2018-2019 if the City's projected budget deficit for that year at the time of the Joint Report or Update to the Five Year Financial Plan as prepared jointly by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst under Chapter 3, Section 3.6 of the Administrative Code, exceeds \$200 million. For Fiscal Year 2019-2020 and thereafter, the City may suspend growth in the Base Amount pursuant to subsection (g) of this Section 2112 in any year that the City's projected budget deficit for that year at the time of the Joint Report or Update to the Five Year Financial Plan as prepared jointly by the

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Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst under Chapter 3, Section 3.6 of the Administrative Code exceeds \$200 million adjusted annually by changes in aggregate City discretionary revenues as defined in subsection (g) of this Section 2112.

(i) Annual Reports. Commencing with a report filed no later than February 15, 2020, covering the Fiscal Year ending on June 30, 2019, the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a report containing the amount of monies collected in and expended from the Fund during the prior Fiscal Year, the status of all Eligible Programs, and such other information as the Controller, in the Controller's sole discretion, shall deem relevant to the operation of this Article 21.

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

SEC. 2113. AMENDMENT OF ORDINANCE.

The Board of Supervisors may amend or repeal this Article 21 by ordinance without a vote of the people except as limited by Articles XIII A and XIII C of the California Constitution.

SEC. 2114. EFFECT OF STATE AND FEDERAL AUTHORIZATION.

To the extent that the City's authorization to impose or to collect any tax imposed under this Article 21 is expanded or limited as a result of changes in state or federal statutes, regulations, or other laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with those changes, and the Tax Collector shall collect them to the full extent of the City's authorization up to the full amount and rate of the taxes imposed under this Article.

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SEC. 2115. SEVERABILITY.

(a) Except as provided in Section 2115(b), below, if any section, subsection, sentence, clause, phrase, or word of this Article 21, or the application thereof to any person or circumstance, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article, including the application of such portions to other persons or circumstances. The People of the City and County of San Francisco hereby declare that, except as provided in Section 2115(b), they would have adopted each section, subsection, sentence, clause, phrase, and word of this Article not declared invalid or unconstitutional without regard to whether any other portion of this Article would be subsequently declared invalid or unconstitutional.

(b) If the imposition of the Early Care and Education Commercial Rents Tax in Section 2104 of this Article 21 is held in its entirety to be facially invalid or unconstitutional in a final court determination, the remainder of this Article 21 shall be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax Regulations Code, and likewise cause Section 10.100-36 to be removed from the Administrative Code.

SEC. 2116. SAVINGS CLAUSE.

No section, clause, part, or provision of this Article 21 shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

Section 3. The Administrative Code is hereby amended by adding Section 10.100-36, to read as follows:

SEC. 10.100-36. BABIES AND FAMILIES FIRST FUND.

(a) Establishment of Fund. The Babies and Families First Fund ("Fund") is established as a category four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all taxes, penalties, interest, and fees collected from the Early Care and Education Commercial Rents Tax imposed under Article 21 of the Business and Tax Regulations Code.

(b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the Fund shall be used exclusively for the purposes described in Section 2112 of Article 21 of the Business and Tax Regulations Code.

(c) The Controller shall report to the Board of Supervisors as required by subsection (i) of Section 2112 of the Business and Tax Regulations Code.

Section 4. Appropriations Limit Increase. Pursuant to California Constitution Article XIII B and applicable laws, for four years from June 5, 2018, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the tax imposed under this ordinance.

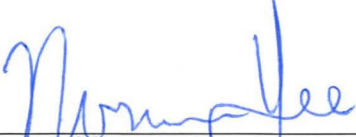
Section 5. Effective and Operative Date. The effective date of this ordinance shall be ten days after the date the official vote count is declared by the Board of Supervisors. This ordinance shall become operative on January 1, 2019.

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SUBMITTED.




Norman Yee
Member, Board of Supervisors

Date: 1-16-18



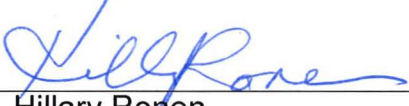
Jane Kim
Member, Board of Supervisors

Date: 1-16-18



Sandra Lee Fewer
Member, Board of Supervisors

Date: 1-16-18



Hillary Ronen
Member, Board of Supervisors

Date: 1-16-18

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