1   [Settlement of Lawsuit and Tolling Agreement - Airbnb, Inc. and HomeAway.com, Inc. - City to Receive $80,000 plus $10,000 Annually]

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3   **Resolution endorsing settlement of the lawsuit filed by Airbnb, Inc. and**

4   **HomeAway.com, Inc. against the City and County of San Francisco and authorizing a**

5   **Tolling Agreement; the lawsuit was filed on June 27, 2016, in the United States District**

6   **Court for the Northern District of California, Case No. 16-cv-03615; entitled Airbnb, Inc.,**

7   **et al. v. City and County of San Francisco; the lawsuit involves a challenge to**

8   **Ordinance Nos. 104-16 and 178-16, which regulate hosting platforms that provide**

9   **booking services for short-term residential rentals; material terms of the settlement**

10   **include a framework for Airbnb and HomeAway to take reasonable care to verify that**

11   **short-term rental listings are lawfully registered before offering booking services,**

12   **Airbnb and HomeAway's agreement to remove unregistered listings on their websites,**

13   **Airbnb and HomeAway's payment of $40,000 each to the City plus $5,000 each annually**

14   **to establish an Application Program Interface, and the City's agreement to toll statutes**

15   **of limitation.**

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17   WHEREAS, The City Administrator has proposed settlement of the action entitled

18   Airbnb, Inc., et al. v. City and County of San Francisco, U.S. District Court for the Northern

19   District of California, Case No. 16-cv-03615, subject to approval by resolution of the Board of

20   Supervisors; and

21   WHEREAS, The material terms of the proposed settlement are set forth in the

22   Settlement Agreement contained in Board of Supervisors File No. _____, including

23   Airbnb and HomeAway's (the "Platforms") agreement to require hosts to enter registration

24   numbers provided by the Office of Short-Term Rentals ("OSTR") to list their units;

25   authorization for the Platforms to establish pass-through registration systems linked to OSTR;

1   the Platforms' agreement to remove unregistered listings from their sites in a timely manner;

2   authorization for the Platforms to develop an Application Program Interface (API) to share

3   listing and registration information with OSTR's API, for which the Platforms will each pay

4    $40,000 upfront and $5,000 annually to the City to cover costs; an authorization for the

5   Platforms to dismiss their complaint without prejudice; and an agreement that the Platforms

6   will meet and confer with the City and a neutral magistrate before withdrawing from the

7   settlement agreement based on a material change to Administrative Code Chapter 41A; and

8   WHEREAS, The proposed settlement further provides that the City will waive any

9   statute of limitations or similar defenses in the event that Airbnb or HomeAway withdraws from

10   the settlement agreement based on a material change to Administrative Code Chapter 41A

11   enacted by the City subsequent to the effective date of the settlement agreement; and

12   WHEREAS, The lawsuit involves a challenge under the Communications Decency Act,

13   the Stored Communications Act, and the United States Constitution to Ordinance Nos. 104-16

14   and 178-16 regulating short-term rental hosting platforms, including the Platforms; and

15   WHEREAS, The above-named action was filed in the United States District Court for

16   the Northern District of California on June 27, 2016, and the following parties were named in

17   the lawsuit: Airbnb, Inc. and HomeAway.com, Inc., Plaintiffs, and City and County of San

18   Francisco, Defendant; and

19   WHEREAS, By its terms, the proposed settlement agreement must be endorsed by

20   resolution of the Board of Supervisors, and will be null and void if the Board of Supervisors

21   and the Mayor do not enact a resolution endorsing the settlement; now, therefore, be it

22   RESOLVED, That the Board of Supervisors hereby endorses the proposed settlement

23   agreement, including the tolling of the statute of limitations, as set forth in this resolution.

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2   APPROVED AS TO FORM AND   RECOMMENDED:
    RECOMMENDED:

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4   DENNIS J. HERRERA
    City Attorney

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    _____   _____
6   YVONNE MERE   NAOMI KELLY
    Chief of Complex and Affirmative Litigation   City Administrator

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