

1 [Business Tax]

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3 **Ordinance amending the Business and Tax Regulations Code to: (1) enact a new**
4 **Article 12-A-1 (Business Tax Ordinance), as specified, to impose a business tax for five**
5 **years on all persons engaging in business in San Francisco measured by the gross**
6 **receipts of the business at the rate of one tenth of one percent (0.1%); (2) amend Article**
7 **12-A (Payroll Expense Tax Ordinance), as specified, to: (i) conform Article 12-A with the**
8 **enactment of the Business Tax Ordinance, (ii) clarify the payroll expense of**
9 **partnerships, Subchapter S corporations, limited liability companies, limited liability**
10 **partnerships and other persons or entities not subject to federal income tax or which**
11 **are allowed a deduction in computing such tax for distributions to the owners or**
12 **beneficiaries of such persons or entities (“pass-through entities”), and (iii) promote**
13 **development of the biotechnology industry by excluding from the payroll expense of**
14 **persons subject to the Payroll Expense Tax compensation paid to employees and**
15 **owners or beneficiaries of a pass-through entity for work performed and services**
16 **rendered in connection with the person’s biotechnology business; and (3) amend**
17 **Article 6 (Common Administrative Provisions), as specified, to add definitions and**
18 **conform common administrative provisions with the enactment of the Business Tax**
19 **Ordinance and amendments to the Payroll Expense Tax Ordinance.**

20 Note: Additions are *single-underline italics Times New Roman*;
21 deletions are ~~*strikethrough italics Times New Roman*~~.
22 Board amendment additions are double underlined.
23 Board amendment deletions are ~~strikethrough normal~~.

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

25

1 Section 1. Pursuant to Article XIII C of the Constitution of the State of California,
2 Sections 2, 3 and 4 of this ordinance shall be submitted to the qualified electors of the City
3 and County of San Francisco, at the November 2, 2004 general municipal election. Sections
4 2, 3 and 4 of this ordinance shall become operative only if approved by the qualified electors
5 at such election. Section 5 of this ordinance shall become operative on the date Sections 2, 3
6 and 4 of this ordinance become operative.

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8 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended
9 by adding Article 12-A-1 (Business Tax Ordinance), to read as follows:

10
11 ARTICLE 12-A-1

12 BUSINESS TAX

13
14 SEC. 951. SHORT TITLE. This Article shall be known as the "Business Tax Ordinance." The
15 tax imposed under this Article shall be known as the "Business Tax."

16
17 SEC. 952. OPERATION OF DEFINITIONS. Except where the context otherwise requires,
18 terms not defined in this Article that are defined in Article 6 shall have the same meaning as given to
19 them in Article 6.

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21 SEC. 952.1. CASH DISCOUNT. "Cash discount" means a deduction from the invoice price of
22 goods or charge for services which is allowed if the bill is paid on or before a specified date.

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24 SEC. 952.2. GROSS RECEIPTS. (a) "Gross receipts" means the total amount of the sale price
25 of all sales, the total amount charged or received for the performance of any act, service or

1 employment of whatever nature it may be, whether such service, act or employment is done as part of
2 or in connection with the sale of goods, wares, merchandise or not, for which a charge is made or
3 credit allowed, including all receipts, cash, credits and property of any kind or nature, any amount for
4 which credit is allowed by the seller to the purchaser without any deduction therefrom on account of
5 the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable,
6 losses or any other expense whatsoever; provided, that cash discounts allowed or taken on sales shall
7 not be included. Gross receipts shall also include the total amount of all lease or rental amounts paid
8 or rendered by, on behalf of, or for the benefit of, all of the tenants of a landlord, valued in money, for
9 the occupancy or use of all premises located within the City, any services that are part of the lease or
10 rental of the premises, whether received in money or otherwise, that are paid to, on behalf of, or for the
11 benefit of, the landlord, and all receipts, cash, credits, property of any kind or character and the fair
12 market value of services so paid or rendered for such occupancy, use and services. Gross receipts
13 shall also include the amount of any federal manufacturers or importers excise tax included in the price
14 of the property sold, even though the manufacturer or importer is also the retailer thereof and whether
15 or not the amount of such tax is stated as a separate charge.

16 (b) "Gross receipts" shall not include the amount of any federal tax imposed on or with
17 respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of
18 whether or not the amount of federal tax is stated to customers as a separate charge, or any state and
19 local sales or use tax required by law to be included in or added to the purchase price and collected
20 from the consumer or purchaser, or such part of the sales price of any property previously sold and
21 returned by the purchaser to the seller which is refunded by the seller by way of cash or credit
22 allowances given or taken as part payment on any property so accepted for resale.

23 (c) "Gross receipts" shall not include any amount received from or charged to any person
24 that is a related entity to the taxpayer. A person is a related entity to a taxpayer if 80% or more of the
25 ownership interests in both value and voting power of such person and the taxpayer are held, directly

1 or indirectly, by the same person or persons. Notwithstanding the foregoing, any amount received from
2 or charged to any person which is a related entity to a taxpayer shall be included in “gross receipts”
3 when said amount is compensation for activities, including, but not limited to, selling, renting and
4 service, performed by the taxpayer for any person which is not a related entity to the taxpayer.

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6 SEC. 952.3. LANDLORD AND LESSOR. (a) “Landlord” and “Lessor” mean a lessor of real
7 estate located in the City, except as provided in Subsection (b), regardless of whether the leased
8 premises is designed, intended, used or occupied for business purposes or residential purposes. The
9 failure of a landlord or tenant, or both, to obtain a business registration certificate under Article 12, or
10 any other license or permit required for engaging in either person’s business or occupation in the City,
11 shall not relieve such landlord or tenant from the tax or other obligations imposed under this Article or
12 Article 6.

13 (b) Notwithstanding Subsection (a), a person receiving rental or lease income in connection
14 with the operation of any of the following shall not, by reason of that fact alone, be deemed to be a
15 landlord or lessor subject to the tax imposed under this Article: (1) a cooperative housing corporation,
16 as defined in Section 216(b) of the Internal Revenue Code of 1986, as amended; (2) one residential
17 structure consisting of fewer than four units; or (3) one residential condominium.

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19 SEC. 952.4. PREMISES. “Premises” means any land and/or building, or any portion thereof,
20 that is located within the City.

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22 SEC. 952.5. RENT. “Rent” means the total amount of all lease or rental amounts paid or
23 rendered by, on behalf of, or for the benefit of, a lessor’s tenant, valued in money, for the occupancy or
24 use of real estate located within the City, and for any services, privileges, furnishings and facilities
25 provided in connection with the use or occupancy thereof, including storage, garage and parking

1 facilities, whether paid in money or otherwise, to, on behalf of, or for the benefit of, the lessor. "Rent"
2 includes all receipts, cash, credits, property of any kind or character and the fair market value of
3 services so paid or rendered for such occupancy, use, services, privileges, furnishings and facilities.

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5 SEC. 952.6. SALE AND SELL. "Sale" and "sell" mean the making of any transfer of title, in
6 any manner or by any means whatsoever, to tangible personal property for a price, and to the serving,
7 supplying or furnishing, for a price, of any tangible personal property fabricated or made at the special
8 order of consumers who do or who do not furnish directly or indirectly the specifications therefor. A
9 transaction whereby the possession of property is transferred but the seller retains the title as security
10 for the payment of the price shall likewise be deemed a sale.

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12 SEC. 952.7. SALES FOR CONVENIENCE. (a) "Sales for convenience" means a sale of new
13 goods, wares, or merchandise by a person engaged in selling such articles to another person engaged
14 in selling like or similar kinds of articles:

15 (1) Where the primary purpose of the particular transaction or sale is to
16 accommodate the purchaser rather than to make a sale in the ordinary course of business;

17 (2) Where, in the particular kind of business involved, a similar manner of dealing is
18 frequent or customary in the circumstances under which the particular sale is made; and

19 (3) Where goods, wares or merchandise of like or similar kind and of substantially
20 equivalent value to that which was sold is received in consideration.

21 (b) The following types of transactions are sales for convenience within the meaning of this
22 Section when the circumstances stated in paragraphs (1), (2) and (3) of Subsection (a) are present:

23 (1) Transactions in which the seller conveys an article which is in short supply, or
24 which, under the circumstances, cannot be obtained by the purchaser through normal sources

1 of supply in sufficient time to permit the purchaser to furnish an equivalent article to a
2 prospective customer;

3 (2) Transactions in which, by reason of the seller's more convenient location relative
4 to a designated point of delivery, the purchaser agrees to reimburse the seller for delivering
5 goods, wares or merchandise at that point to the purchaser's customer in accordance with a
6 contract of sale between the purchaser and the purchaser's customer;

7 (3) Transactions in which, as a matter of business practice, the form of a sale is
8 arranged and entered into by the seller and the purchaser as a substitute for or the equivalent of
9 the transportation of the article or the payment of transportation charges on the article from the
10 point of the delivery to some other point;

11 (4) Transactions different in detail from those described in the three immediately
12 preceding paragraphs of this Section, but which the Tax Collector has found and by rule
13 determined to be of a kind whose primary purpose is to accommodate the purchaser rather than
14 to make a sale in the ordinary course of business; of a kind which, in the particular kind of
15 business involved, is frequent or customary in the circumstances under which a particular sale
16 is made; and of a kind where goods, wares or merchandise of like or similar kind, and of
17 substantially equivalent value to that which was sold is received as consideration.

18 (c) No sale shall be considered a sale for convenience within the meaning of this Subsection
19 unless it is of a kind described in paragraphs (1), (2), (3) or (4) of Subsection (b).

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21 SEC. 952.8. TENANT AND TENANCY. "Tenant" and "Tenancy" include tenants and
22 tenancies of all types, and persons occupying and the occupation of a building or structure, or space in
23 a building or structure, or any other real estate in the City, under any lease, rental agreement, license
24 or concession agreement with a lessor. The right to use or possess such space shall be deemed to be
25 the same as actual occupation.

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2 SEC. 953. IMPOSITION OF BUSINESS TAX; STATEMENT OF PURPOSE AND VOTER

3 INTENT; TAX COLLECTOR REGULATIONS. (a) Except as provided under Sections 954 and 954.1,
4 every person engaging in business within the City shall pay a business tax measured by the person's
5 gross receipts from all taxable business activities attributable to the City. A person's liability for the
6 Business Tax shall be calculated using the rate set forth in Section 953.1.

7 (b) The Business Tax is a privilege tax imposed upon persons engaging in business within
8 the City for the privilege of engaging in a business or occupation in the City. The Business Tax is
9 imposed for general governmental purposes and in order to require commerce and the business
10 community to carry a fair share of the costs of local government in return for the benefits, opportunities
11 and protections afforded by the City. Proceeds from the tax shall be deposited in the City's general
12 fund and may be expended for any purposes of the City.

13 (c) The voters intend by approving this measure to impose the Business Tax upon all
14 persons engaging in business within the City and upon all commerce and business activities occurring
15 within, attributable to or having sufficient nexus with the City to lawfully impose the tax hereunder in
16 the broadest possible manner consistent with the provisions and requirements of California
17 Constitution Article XIIC, the United States Constitution and any other applicable provision of federal
18 and state law.

19 (d) The Tax Collector may promulgate all reasonable regulations and issue all reasonable
20 rules, determinations and interpretations necessary or appropriate to implement and administer the
21 Business Tax upon all commerce and business activities occurring within, attributable to or having
22 sufficient nexus with the City to lawfully impose the tax hereunder, regardless of the form (corporate or
23 otherwise) of the person or other legal entity engaging in business within the City.

24 (e) The Business Tax imposed under this Article is in addition to the Payroll Expense Tax
25 imposed under Article 12-A. Persons not otherwise exempt from the Business Tax or Payroll Expense

1 Tax shall pay both taxes. Persons exempt from either the Business Tax or Payroll Expense Tax, but not
2 both, shall pay the tax from which not exempt.

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4 SEC. 953.1. BUSINESS TAX RATE. The rate of the Business Tax shall be one tenth of one
5 percent (0.1%) of the person's gross receipts attributable to the person's business activities in the City.

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7 SEC. 954. EXEMPTIONS. (a) Except as provided in Subsection (b) of this Section, an
8 organization that is exempt from income taxation by Chapter 4 (commencing with Section 23701) of
9 Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section
10 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended, as qualified by
11 Sections 502, 503, 504 and 508 of the Internal Revenue Code of 1986, as amended, shall be exempt
12 from taxation under this Article.

13 (b) An organization otherwise exempt from income taxation under Subsection (a) that is
14 directly engaged within the City in an unrelated trade or business within the meaning of Section 513(a)
15 of the Internal Revenue Code of 1986, as amended, and has, from its own operations, unrelated
16 business taxable income within the meaning of Section 512(a)(1) of the Internal Revenue Code of 1986,
17 as amended, shall pay the Business Tax on its gross receipts from its unrelated trade or business
18 activities that are attributable to the City. If it is impracticable, unreasonable or improper to allocate
19 such organization's gross receipts as aforesaid either because of the particular nature of the
20 organization's unrelated trade or business or for any other reason, then the amount of gross receipts
21 reasonably attributable to the organization's unrelated trade or business in the City shall be
22 determined on the basis of all relevant facts and circumstances of the particular case, in accordance
23 with any rulings or regulations issued or promulgated by the Tax Collector for the purpose.

24 (c) "Gross receipts" as defined in Section 952.2 shall not include receipts from business
25 activities if, and only so long as and to the extent that, the City is prohibited from taxing such receipts

1 under the Constitution or laws of the United States or under the Constitution or laws of the State of
2 California.

3 (d) Blind persons licensed under the provisions of Chapter 6A of Title 12 of the United
4 States Code ("Vending Stands for Blind in Federal Buildings") or Article 5 of Chapter 6 of Part 2 of
5 Division 10 of the California Welfare and Institutions Code ("Business Enterprises for the Blind") need
6 not include in the computation of gross receipts the first \$15,000 of gross receipts in any one year
7 which is attributable to their licensed operations within the City.

8 (e) Skilled Nursing Facilities licensed under the provisions of Title 22, California
9 Administrative Code, Division 5 ("Licensing and Certification of Health Facilities and Referral
10 Agencies"), Chapter 3 ("Skilled Nursing Facilities"), shall be exempt from taxation under this Article.

11 (f) Receipts derived from contracts for services or sales initiated or consummated at closed
12 conventions shall be excluded from taxable "gross receipts" as defined in Section 952.2. For purposes
13 of this Section, a "closed convention" means an assemblage of delegates to or members of a formally
14 established organization devoted to trade, industrial or commercial purposes, and to which only such
15 delegates or members are admitted, to the exclusion of the general public.

16 (g) Receipts derived from the sale of real property located in the City shall be excluded from
17 taxable "gross receipts" as defined in Section 952.2.

18 (h) For only so long as and to the extent that the City is prohibited from imposing the tax
19 under this Article, the following persons shall be exempt from the Business Tax:

20 (1) Banks and financial corporations exempt from local taxation under Article XIII,
21 Section 27 of the California Constitution and Revenue and Taxation Code Section 23182;

22 (2) Insurance companies exempt from local taxation under Article XIII, Section 28
23 of the California Constitution;

24 (3) Persons engaging in business as a for-hire motor carrier of property under
25 Revenue and Taxation Code Section 7233;

1 (4) Persons engaging in intercity transportation as a household goods carrier under
2 Public Utilities Code Section 5327;

3 (5) Charter-party carriers operating limousines that are neither domiciled nor
4 maintain a business office within the City under Public Utilities Code Section 5371.4.

5 (6) Any person upon whom the City is prohibited under the Constitution or statute of
6 the State of California from imposing the Business Tax.

7 (i) To the extent that any taxpayer has paid a substantially similar tax to any other taxing
8 jurisdiction on any gross receipts taxed under this Article, the tax paid to such taxing jurisdiction shall
9 be credited against the tax due under this Article.

10 (j) Nothing in this Article shall be construed as requiring the payment of any tax for
11 engaging in a business or the doing of an act when such payment would be in violation of the
12 Constitution or a statute of the United States or of the Constitution or a statute of the State of
13 California.

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15 SEC. 954.1. SMALL BUSINESS EXEMPTION. (a) Notwithstanding any other provision of
16 this Article, "small business enterprises," as hereinafter defined, shall be exempt from payment of the
17 Business Tax; provided, that small business enterprises shall pay the annual registration fee pursuant
18 to Section 855 of Article 12 and shall provide all information and records and file all returns with the
19 Tax Collector as required by this Article and Article 6.

20 (b) The term "small business enterprise" shall mean and include any taxpayer:

21 (1) Whose tax liability under this Article, but for the small business exemption in this
22 Section, would not exceed \$500; and

23 (2) Who has filed a tax return by the last day of February for the preceding tax year.
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1 SEC. 955. ALLOCATION; BUSINESS WITHIN AND WITHOUT CITY; BUSINESSES
2 SUBJECT TO BUSINESS TAX AND PAYROLL EXPENSE TAX. (a) Any person deriving gross
3 receipts from business activities engaged in both within and without the City shall allocate such gross
4 receipts to determine the amount thereof derived from or attributable to such activities within the City
5 for purposes of calculating the person's tax liability under this Article. The person shall make such
6 allocation, which shall be set forth on appropriate returns, as follows:

7 (1) Taxpayers shall include 100% of gross receipts derived from or attributable to
8 sales of tangible personal property if: (i) a purchaser takes physical or constructive possession
9 of the property within the City regardless of the f.o.b. point or other conditions of the sale; or
10 (ii) the property is delivered or shipped to a purchaser within the City regardless of the f.o.b.
11 point or other conditions of the sale; or (iii) the property is shipped from an office, store,
12 warehouse, factory, or other place of storage within the City to a location outside the City
13 provided the taxpayer is not subject a tax on the gross receipts derived from such sale in the
14 city, county or analogous local jurisdiction (excluding states and countries) to which the
15 property is shipped.

16 (2) Taxpayers shall include 100% of gross receipts derived from or attributable to
17 the performance of any act, service or employment of whatever nature, and sales other than of
18 tangible personal property, if: (i) the activity producing the gross receipts is performed in the
19 City; or (ii) the activity producing the gross receipts is performed both in and outside the City
20 and a greater proportion of such activity is performed in the City than in any other city, county
21 or analogous local jurisdiction (excluding states and countries) that may lawfully impose a tax
22 on the gross receipts derived from the person's performance of such activity, based on the costs
23 of performance.

24 (3) Taxpayers who are landlords (as defined in Section 952.3) shall include 100% of
25 gross receipts derived from or attributable to the leasing or renting of all of the landlord's

1 premises located within the City; taxpayers shall not include gross receipts that are derived
2 from or attributable to the leasing or renting of real estate located outside of the City.

3 (c) The Tax Collector may promulgate regulations and issue rules, determinations and
4 interpretations regarding the ordinary methods of allocation set forth in this Section so as to fairly
5 allocate the gross receipts of all persons subject to this Article in order to impose the tax generally and
6 in individual cases only upon gross receipts from the business activities that are derived from or
7 attributable to such activities engaged in within the City. The Tax Collector may, in the application to
8 individual cases of such regulations, rules, determinations and interpretations and regulations, depart
9 from or make such modifications thereto as may be necessary to fairly allocate the taxpayer's gross
10 receipts and impose the tax under this Article in a lawful manner.

11 (d) If the Tax Collector reallocates gross receipts upon examination of any return, the Tax
12 Collector shall notify the person in writing of the basis upon which the Tax Collector made the
13 reallocation. The Tax Collector shall provide such notice as soon as practicable following such
14 reallocation, and within 10 days of receipt of a written request therefor from the taxpayer. The time for
15 the doing of any act required by this Article or Article 6, and the commencement of any liability for
16 penalties and interest under such Articles, shall not begin to run until the Tax Collector provides such
17 notice.

18
19 SEC. 956. PAYMENTS, RETURNS, PREPAYMENTS, EXTENSIONS AND REFUNDS.

20 Payments, returns, prepayments, extensions and refunds for person's subject to this Article shall be as
21 prescribed in the common administrative provisions set forth in Article 6.

22
23 SEC. 957. AUTHORITY TO PROMULGATE REGULATIONS. The Tax Collector may
24 promulgate regulations and issue rules, determinations and interpretations consistent with the
25 purposes of this Article and Article 6 as may be necessary and appropriate to apply such Articles in a

1 lawful manner, including the provisions of such Articles for penalties due to fraud, underpayment of
2 fees and taxes, or any evasion of such Articles or the rules and regulations promulgated thereunder.
3 All regulations, rules, determinations and interpretations promulgated or issued by the Tax Collector
4 that are not inconsistent with such Articles, and that were promulgated or issued prior to the effective
5 date of this Article, shall remain in full force and effect.

6
7 Section 3. Operative Date of Article 12-A-1 (Business Tax Ordinance); Sunset Date of
8 Business Tax. Article 12-A-1 of the Business and Tax Regulations Code (Business Tax
9 Ordinance), as enacted by this ordinance, shall be operative commencing January 1, 2005.
10 The authority to levy the Business Tax imposed under Article 12-A-1 shall expire on January
11 1, 2010.

12
13 Section 4. The San Francisco Business and Tax Regulations Code is hereby amended
14 by amending Sections 902.1, 903 and 903.1, and by adding Sections 902.2 and 906.1, of
15 Article 12-A (Payroll Expense Tax Ordinance), as set forth below. The amendments to
16 Sections 902.1, 903 and 903.1 and the addition of Sections 902.2 and 906.1, as enacted by
17 this ordinance, are temporary and shall be operative commencing January 1, 2005 and shall
18 expire on January 1, 2010. Sections 902.1, 903 and 903.1 shall revert to and be as such
19 sections read immediately prior to the amendments enacted by this ordinance on and after
20 January 1, 2010; provided, that Sections 902.1, 902.2, 903, 903.1 and 906.1, as amended
21 and added by this ordinance, shall continue to apply and be operative on and after January 1,
22 2010 for the limited purpose of Payroll Expense Taxes imposed under Article 12-A for tax
23 years commencing on or after January 1, 2005 and ending on or before December 31, 2010,
24 and any interest and penalties attributable thereto. Sections 902.1, 902.2, 903, 903.1 and
25 906.1, as amended and added by this ordinance, shall read as follows:

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SEC. 902.1. PAYROLL EXPENSE. (a) The term "Payroll Expense" means the compensation paid to, on behalf of, or for the benefit of an individual *or pass-through entity*, including salaries, wages, bonuses, commissions, property issued or transferred in exchange for the performance of services (including but not limited to stock options), *compensation to owners of pass-through entities* and any other form of compensation, who *or that*, during any tax year, performs work or renders services, in whole or in part in the City; and if more than one individual *or pass-through entity* during any tax year performs work or renders services in whole or in part in the City, the term "Payroll Expense" means the total compensation paid including salaries, wages, bonuses, commissions, property issued or transferred in exchange for the performance of services (including but not limited to stock options), *compensation to owners of pass-through entities* and any other form of compensation, to all such individuals *and pass-through entities*.

(b) Any person that grants a service provider a right to acquire an ownership interest in such person in exchange for the performance of services shall include in its payroll expense for the tax year in which such right is exercised an amount equal to the excess of (i) the fair market value of such ownership interest on the date such right is exercised over (ii) the price paid for such interest.

(c) Any individual compensated in his or her capacity as a real estate salesperson or mortgage processor shall be deemed an employee of the real estate broker or mortgage broker for or under whom such individual performs services, and any compensation received by such individual, including compensation by way of commissions, shall be included in the payroll expense of such broker. For purposes of this Section, "real estate broker" and "mortgage broker" refer to any individual licensed as such under the laws of the State of California who engages the services of salespersons or a salesperson, or of mortgage

1 processors or a mortgage processor, to perform services in the business which such broker
2 conducts under the authority of his or her license; a “salesperson” is an individual who is
3 engaged by a real estate broker to perform services, which may be continuous in nature, as a
4 real estate salesperson under an agreement with a real estate broker, regardless of whether
5 the individual is licensed as a real estate broker under the laws of the State of California; a
6 “mortgage processor” is an individual who is engaged by a real estate broker or mortgage
7 broker to perform services, which may be continuous in nature, as a mortgage processor
8 under an agreement with such real estate broker or mortgage broker, regardless of whether
9 the mortgage processor is also licensed as a mortgage broker under the laws of the State of
10 California.

11 (d) All compensation, including all pass-through compensation paid to, on behalf of, or for
12 the benefit of owners of a pass-through entity, shall be included in the calculation of such entity’s
13 payroll expense for purposes of determining such entity’s tax liability under this Article. For purposes
14 of this section, the “pass-through compensation” of a pass-through entity shall be the aggregate
15 compensation for personal services rendered by all such owners, and shall not include any return on
16 capital investment. Pass-through entities, at their option, may calculate the amount of “pass-through
17 compensation” for any given tax year using one of the following methods:

18 (1) The amount of such entity’s net earnings from self-employment for federal
19 income tax purposes; or

20 (2) Ninety percent (90%) of all amounts paid to, on behalf of, or for the benefit of all
21 the owners of such entity; or

22 (3) For each such owner, an amount that is one hundred and fifty percent (150%) of
23 the average annual compensation paid to, on behalf of, or for the benefit of all employees of the
24 pass-through entity whose compensation is in the top quartile (i.e., 25%) of the entity’s highest
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1 paid employees who are based in the City; provided, the total number of employees of the entity
2 based in the City is not less than twenty.

3 (e) If a pass-through entity establishes to the satisfaction of the Tax Collector that all of the
4 methods set forth in Subsection (d) are inapplicable and/or overstate the amount of compensation
5 reasonably attributable to work performed or services rendered by such owners because of the
6 particular nature of the services rendered or work performed, or on account of the unusual basis of
7 such compensation, or for any other reason, then the amount of pass-through compensation shall be
8 determined on the basis of all relevant facts and circumstances of the particular case, in accordance
9 with any rulings or regulations issued or promulgated by the Tax Collector for such purpose or with
10 the written approval of the Tax Collector.

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12 SEC. 902.2. PASS-THROUGH ENTITY. The term "pass-through entity" includes a trust,
13 partnership, corporation described in Subchapter S of the Internal Revenue Code of 1986, as amended,
14 limited liability company, limited liability partnership, professional corporation, and any other person
15 or entity which is not subject to the income tax imposed by Subtitle A, Chapter 1 of the Internal
16 Revenue Code of 1986, as amended, or which is allowed a deduction in computing such tax for
17 distributions to the owners or beneficiaries of such person or entity.

18
19 SEC. 903. IMPOSITION OF PAYROLL EXPENSE TAX. (a) A tax for general
20 governmental purposes is hereby imposed upon every person engaging in business within the
21 City as defined in Section 6.2-12 of Article 6; provided, that such tax shall be levied only upon
22 that portion of the person's payroll expense that is attributable to the City as set forth in
23 Section 904.

24 (b) The Payroll Expense Tax is imposed for general governmental purposes and in
25 order to require commerce and the business community to carry a fair share of the costs of

1 local government in return for the benefits, opportunities and protections afforded by the City.
2 Proceeds from the tax shall be deposited in the City's general fund and may be expended for
3 any purposes of the City.

4 (c) The voters intend by approving this measure to authorize application of the Payroll
5 Expense Tax in the broadest possible manner consistent with the provisions of this Article and the
6 requirements of California Constitution Article XIII C, the United States Constitution and any other
7 applicable provision of federal and state law.

8 (d) The Tax Collector may promulgate all reasonable regulations and issue all reasonable
9 rules, determinations and interpretations necessary or appropriate to implement and administer the
10 Payroll Expense Tax upon all commerce and business activities occurring within, attributable to or
11 having sufficient nexus with the City to lawfully impose the tax, regardless of the form (corporate or
12 otherwise) of the person or other legal entity engaging in business in the City.

13 (e) The Payroll Expense Tax imposed hereunder is in addition to the Business Tax imposed
14 under Article 12-A-1. Persons not otherwise exempt from the Payroll Expense Tax or Business Tax
15 shall pay both taxes. Persons exempt from either the Business Tax or Payroll Expense Tax, but not
16 both, shall pay the tax from which not exempt.

17
18 SEC. 903.1. RATE OF PAYROLL EXPENSE TAX. The rate of the payroll expense tax
19 shall be 1-1/2 percent. The amount of a person's liability for the payroll expense tax shall be
20 the product of such person's taxable payroll expense multiplied by 0.015. ~~The amount of such~~
21 ~~tax for Associations shall be 1-1/2 percent of the payroll expense of such Association, plus 1-1/2~~
22 ~~percent of the total distributions made by such Association by way of salary to those having an~~
23 ~~ownership interest in such Association. Amounts paid or credited to those having an ownership~~
24 ~~interest in such Association prior and in addition to the distribution of ownership profit or loss shall be~~
25

1 ~~presumed to be distributions "by way of salary" and for personal services rendered, unless the taxpayer~~
2 ~~proves otherwise by clear and convincing evidence.~~

3
4 SEC. 906.1. BIOTECHNOLOGY EXCLUSION. (a) Any person engaging in business within
5 the City may exclude from the person's payroll expense all compensation paid to, on behalf of, or for
6 the benefit of all individuals and pass-through entities who or that perform substantially all work or
7 render substantially all services in direct support of such person's biotechnology business, subject to
8 the conditions and limitations set forth in this Section. For purposes of this Section, "biotechnology
9 business" means conducting biotechnology research and experimental development, and operating
10 laboratories for biotechnology research and experimental development, using recombinant DNA, cell
11 fusion, and bioprocessing techniques, as well as the application thereof to the development of
12 diagnostic products and/or devices to improve human health, animal health, and agriculture.

13 (b) Unless exempted under Sections 906 of this Article, every person engaging in the
14 biotechnology business in the City shall pay the tax imposed under this Article on the full amount of the
15 person's payroll expense attributable to the City from and after the expiration of this Section.

16 (c) If a person's calculated liability for the Payroll Expense Tax does not exceed \$2,500 for
17 the tax year after applying the biotechnology exclusion under this Section, the person shall be exempt
18 from payment of the Payroll Expense Tax for that tax year as provided in Section 905-A.

19
20 Section 5. The San Francisco Business and Tax Regulations Code is hereby amended
21 by amending Sections 6.1-1, 6.2-12, 6.2-17, 6.6-1, 6.8-1, 6.9-1, 6.9-3, 6.9-5, and 6.21-1, of
22 Article 6 (Common Administrative Provisions), and by adding Sections 6.2-9.4, 6.2-9.5, 6.2-
23 10.5, and 6.5-1.5, as follows:

1 SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS. (a) Except where the
2 specific language of the Business and Tax Regulations Code or context otherwise requires,
3 these common administrative provisions shall apply to Articles 6, 7, 9, 10, 10A, 11, 12, 12-A,
4 12-A-1 and 12-B of such Code.

5 (b) Unless expressly provided otherwise, all statutory references in this Article and
6 the Articles set forth in Subsection (a) shall refer to such statutes as amended from time to
7 time and shall include successor provisions. For purposes of collecting the Emergency
8 Response Fee under Article 10A, any reference to a "tax" in this Article shall include the
9 Emergency Response Fee where appropriate; provided, however that nothing in the operation
10 of this provision shall affect the underlying legal character of the Emergency Response Fee or
11 suggest that the fee is a tax.

12 (c) For purposes of this Article, a domestic partnership established pursuant to
13 Chapter 62 of the San Francisco Administrative Code shall be treated the same as a married
14 couple.

15
16 SEC. 6.2-9.4. BUSINESS TAX ORDINANCE; BUSINESS TAX. "Business Tax Ordinance"
17 means Article 12-A-1 of the Business and Tax Regulations Code; "Business Tax" means the tax
18 imposed thereunder.

19
20 SEC. 6.2-9.5. INDEPENDENT CONTRACTOR. "Independent Contractor" means any entity,
21 other than an individual, that performs services for a principal; and any individual who performs
22 services for a principal for a specified recompense for a specified result, under control of the principal
23 as to the result of the work only and not as to the means by which such result is accomplished. An
24 independent contractor receives income that should be reported to the Internal Revenue Service by the
25 principal on IRS Form 1099, should report the income to the Internal Revenue Service on IRS Form

1 1040, Schedule C and may deduct the cost of the use of a home for business purposes on Schedule C.

2 Factors which indicate status as an independent contractor are if an individual:

3 (1) Is not required to follow instructions on how to perform services;

4 (2) Possesses the skills necessary to perform the task and does not need additional training;

5 (3) Performs services that are not essential to the principal's business or are not
6 incorporated into the product or services sold by the principal;

7 (4) Should be able to subcontract all or a portion of the project;

8 (5) Can hire and supervise his or her own employees, but should not supervise, or be
9 supervised by, the principal's employees;

10 (6) Generally works on one project and moves on, acquiring additional projects when and if
11 he or she is available;

12 (7) Establishes his or her hours of work, working as necessary to accomplish the end result;

13 (8) Usually has the right to work simultaneously for the principal and others, as long as the
14 end result is achieved;

15 (9) Should be able to choose where to perform some, if not all, of the services;

16 (10) Can control the manner and method of performing the services;

17 (11) Is responsible only for the end result, and is not required to submit interim reports;

18 (12) Generally is paid a flat rate for the completion of the project;

19 (13) Is expected to assume the burden of business expenses;

20 (14) Should have the tools and equipment necessary to perform the services independently;

21 (15) Makes as an investment in tools, business equipment, publications and supplies
22 appropriate for his or her business;

23 (16) Accepts both the benefits and risks of a business transaction, in that he or she has the
24 opportunity to profit from the project price and risks a loss if the end result is unacceptable or costs
25 exceed the project price;

1 (17) Can and does work for multiple firms simultaneously;

2 (18) Offers his or her services to the general public;

3 (19) Can be terminated only according to the terms of an agreement, and could recover
4 damages for breach of contract if termination is outside the scope of the agreement; and

5 (20) Has as an obligation to complete the work under contract.

6
7 SEC. 6.2-10.5. INDUSTRY CODE. "Industry Code" means the industrial classification
8 number assigned to an industry in the North American Industry Classification System (NAICS) by the
9 Executive Office of the President, Office of Management and Budget.

10
11 SEC. 6.2-12. NEXUS: "ENGAGING IN BUSINESS WITHIN THE CITY." ~~(a)~~ The taxes
12 imposed by Article 12-A (Payroll Expense Tax Ordinance) and Article 12-A-1 (Business Tax
13 Ordinance), and the registration fee imposed by Article 12 (Business Registration Ordinance),
14 shall apply to any person engaging in business within the City unless exempted therefrom
15 under such Articles. A person is "engaging in business within the City," within the meaning of
16 this Article, if that person meets one or more of the following conditions:

17 (1) The person maintains a fixed place of business within the City; or

18 (2) An employee, representative or agent of the person maintains a fixed place of
19 business within the City for the benefit or partial benefit of the person; or

20 (3) The person or one or more of the person's employees, representatives or
21 agents owns, rents, leases, or hires real or personal property within the City for business
22 purposes for the benefit or partial benefit of the person; or

23 (4) The person or one or more of the person's employees, representatives or
24 agents regularly maintains a stock of tangible personal property within the City, for sale in the
25 ordinary course of the person's business; or

1 (5) The person or one or more of the person's employees, representatives or
2 agents employs or loans capital on property within the City for the benefit or partial benefit of
3 the person; or

4 (6) The person or one or more of the person's employees, representatives or
5 agents solicits business within the City for all or part of any seven days during a tax year; or

6 (7) The person or one or more of the person's employees, representatives or
7 agents performs work or renders services within the City for all or part of any seven days
8 during a tax year; or

9 (8) The person or one or more of the person's employees, representatives or
10 agents utilizes the streets within the City in connection with the operation of motor vehicles for
11 business purposes for all or part of any seven days during a tax year; or

12 (9) The person or one or more of the person's employees, representatives or
13 agents exercises corporate or franchise powers within the City for the benefit or partial benefit
14 of the person; or

15 (10) The person or one or more of the person's employees, representatives or
16 agents liquidates a business when the liquidators thereof hold themselves out to the public as
17 conducting such business.

18
19 SEC. 6.2-17. RETURN. The term "return" means any written statement required to be
20 filed pursuant to Articles 6, 7, 9, 10, 10A, 11, 12, 12-A or 12-A-1.

21
22 SEC. 6.5-1.5. AUTHORITY OF CONTROLLER TO REQUIRE INFORMATION FROM
23 TAXPAYERS; CONFIDENTIALITY THEREOF. (a) In addition to any information or records the Tax
24 Collector may require from any person on any return or statement, or pursuant to a request under
25 Section 6.5-1 or otherwise, the Controller may require any person engaging in business in the City to

1 furnish information and records regarding the particulars of the person's business or businesses. Such
2 particulars may include but are not limited to the person's gross receipts, income, payroll expenses,
3 payments to independent contractors, costs for materials and other business expenses, industry codes,
4 business and industrial classification(s), ownership and management structure of the business,
5 ownership interests in other legal entities, businesses and joint ventures, federal and state tax filing
6 status, and other information the Controller deems necessary or appropriate for purposes of evaluating
7 business activities in the City, tax and economic policies and practices, revenue projections and trends,
8 and other matters.

9 (b) The Controller may require information and records under Subsection (a) as part of
10 annual, quarterly, monthly or per event tax returns or statements filed with Tax Collector pursuant to
11 Article 6, or otherwise. The Tax Collector shall provide all necessary cooperation and assistance to
12 effectuate the collection of information and records as directed by the Controller pursuant to this
13 Section.

14 (c) The Controller and all City officials and employees shall maintain the confidentiality of
15 trade secrets and other confidential taxpayer information and records obtained pursuant to this
16 Section, and may disclose such trade secrets and confidential taxpayer information and records only as
17 permitted or required by Section 6.22-1 of Article 6 or other applicable law.

18
19 SEC. 6.6-1. CERTIFICATE OF AUTHORITY FOR THIRD-PARTY TAXES. (a) These
20 additional provisions shall apply to operators under the transient hotel occupancy tax (Article
21 7), the parking space occupancy tax (Article 9), the utility users tax (Article 10) and the
22 emergency response fee (Article 10A).

23 (b) Every operator engaging in or about to engage in business within the City who is
24 required to collect or remit any third-party tax shall immediately apply to the Tax Collector for
25 a certificate of authority on a form provided by the Tax Collector.

1 (c) The application for a certificate of authority shall set forth the name under which
2 the person transacts or intends to transact business, the location of each of the person's
3 places of business in the City, and such other information as the Tax Collector may require.
4 The application shall be signed by the owner if a sole proprietor, by a member or partner, in
5 the case of an association, or by an executive officer or some person specifically authorized
6 by the corporation to sign the application, in the case of a corporation.

7 (d) Except as provided in Subsections (f), (g) and (h) below, the Tax Collector,
8 within 30 days after the application is complete, shall issue without charge a separate
9 certificate of authority to the operator to collect third party taxes from customers for each
10 location at which the operator is required to collect such taxes. Each certificate shall state the
11 location of the place of business to which it applies and shall be prominently displayed at such
12 location in plain view of all customers. Certificates of authority may not be assigned or
13 transferred. The operator shall immediately surrender to the Tax Collector the certificate for
14 that location upon the operator's cessation of business at that location or upon the sale or
15 transfer of the business.

16 (e) The holder of a certificate of authority to collect parking taxes under Article 9
17 shall remain presumptively liable for the collection of parking taxes at the location named in
18 the certificate, and for the reporting and remittance of such taxes to the Tax Collector, unless
19 and until the holder of the certificate both (i) notifies the Tax Collector in writing that the holder
20 has ceased to conduct a parking business at such location, and (ii) surrenders the certificate
21 for that location to the Tax Collector.

22 (f) The Tax Collector may refuse to issue the certificate where, within the 30-day
23 period referred to in Subsection (d) above, the Tax Collector determines that the operator, or
24 any signatory to the application, or any person holding a 10 percent or greater legal or
25 beneficial interest in said operator ("10% owner") is not in compliance with any provision of

1 Articles 6, 7, 9, 10, 10A, 12, 12-A or 12-A-1. Solely for purposes of determining under this
2 Section whether any such operator, signatory or 10% owner is not in compliance with such
3 Articles, the Tax Collector may disregard any corporation or association owned or controlled,
4 directly or indirectly, by any such operator, signatory or 10% owner and consider such
5 corporation or association's operations and liabilities as conducted by or as owned by any one
6 or more of such corporation or association's officers, directors, partners, members or owners.
7 For purposes of this Section, (i) the term "owned" means ownership of 50 percent or more of
8 the outstanding ownership interests in such corporation or association, and (ii) the term
9 "controlled" includes any kind of control, whether direct or indirect, whether legally
10 enforceable, and however exercisable or exercised over such corporation or association. A
11 presumption of control arises if the operator, signatory or 10% owner is (or was) an officer,
12 director, partner or member of such corporation or association.

13 (g) Further, if any person subject to this Section violates any provision of Articles 6,
14 7, 9, 10, 10A, 12, 12-A or 12-A-1, or a rule or regulation promulgated by the Tax Collector,
15 including but not limited to failing to maintain accurate registration information, failure to sign
16 any return or pay any tax when due, failure to timely respond to any request for information,
17 order for records or subpoena, or for any person subject to Article 9 for failure to comply with
18 the requirements of Article 49 of the Police Code, the Tax Collector may, after serving the
19 person with written notice of his or her determination in the manner provided in Section 6.11-2
20 and an opportunity to be heard pursuant to the notice and review provisions of Sections 6.13-
21 1 et seq., revoke or suspend that person's certificate of authority. The Tax Collector may
22 refuse to issue that person a new certificate of authority or to withdraw the suspension of an
23 existing certificate until the person, signatory to the application for the certificate revoked or
24 suspended, signatory to the application for a new certificate or withdrawal of the suspension,
25

1 and all 10% owners have complied with the provisions of Articles 6, 7, 9, 10, 10A, 12, 12-A or
2 12-A-I and corrected the original violation to the satisfaction of the Tax Collector.

3 (h) Before any certificate of authority shall be issued to any applicant to engage in
4 the business of renting parking space in a parking station in this City, such applicant shall file
5 with the Tax Collector a bond naming the City as exclusive beneficiary, at all times the
6 applicant engages in such business. For any parking station with annual gross receipts less
7 than \$100,000, such bond shall be in the amount of \$5,000. For any parking station with
8 annual gross receipts of \$100,000 or more, such bond shall be in the amount of \$25,000.
9 Such bond shall be executed by the applicant as principal, and by a corporation or association
10 which is licensed by the Insurance Commissioner of this State to transact the business of
11 fidelity and surety insurance, as surety. The applicant shall keep the bond in full force and
12 effect for the duration of the certificate of authority and all renewals thereof issued to such
13 applicant. If the bond provides that the term thereof shall be continuous until cancelled, the
14 applicant shall provide the Tax Collector with certification from the surety of the renewal or
15 continuation of the bond: (i) when applying for renewal of an existing certificate of authority, (ii)
16 when requesting the withdrawal of a suspension of an existing certificate of authority, or (iii)
17 upon written request of the Tax Collector.

18 The bond shall contain conditions that require the applicant to comply fully with all the
19 provisions of Business and Tax Regulations Code concerning the collection of third-party
20 taxes from occupants of parking stations and the remittance of such taxes to the Tax
21 Collector. The bond shall be payable to this City in the amount of all unpaid parking taxes on
22 amounts of taxable rents collected by the applicant, together with all administrative collection
23 costs, interest, penalties, and other costs and charges applicable thereto; provided, however,
24 that the aggregate liability of the surety for any and all claims which may arise under such
25 bond shall in no event exceed the face amount of such bond regardless of the amount due

1 and owing to the City. The City may bring an action upon the bond for the recovery of any
2 unpaid parking taxes, administrative collection costs, interest, penalties and other costs and
3 charges at any time prior to the expiration of the period of limitations applicable to the
4 collection of such unpaid taxes by the Tax Collector.

5
6 SEC. 6.8-1. CITY, PUBLIC ENTITY AND CONSTITUTIONAL EXEMPTIONS. Nothing
7 in Articles 6, 7, 10, 10A, 11, 12, 12-A or 12-A-1 shall be construed as imposing a tax upon:

8 (1) The City;

9 (2) The State of California, or any county, municipal corporation, district or other
10 political sub-division of the State, except where any constitutional or statutory immunity from
11 taxation is waived or is not applicable;

12 (3) The United States of America, or any of its agencies or subdivisions, except
13 where any constitutional or statutory immunity from taxation is waived or is not applicable; or

14 (4) Any person exempted from the particular tax by the Constitution or statutes of
15 the United States or the Constitution or statutes of the State of California.

16
17 SEC. 6.9-1. DETERMINATIONS, RETURNS AND PAYMENTS; DUE DATE OF
18 TAXES. Except for jeopardy determinations under Section 6.12-2, and subject to
19 prepayments required under Section 6.9-2, all amounts of taxes and fees imposed by Articles
20 6, 7, 9, 10, 10A, 11, 12-A and 12-A-1 are due and payable, and shall be delinquent if not paid
21 to the Tax Collector on or before the following dates:

22 (a) For the transient hotel occupancy tax (Article 7) and the parking space
23 occupancy tax (Article 9), for each calendar quarter, on or before the last day of the month
24 following each respective quarterly period;

25

1 (b) For the payroll expense tax (Article 12-A) and Business Tax (Article 12-A-1), on or
2 before the last day of February of each year;

3 (c) For the utility users taxes (Article 10) and the emergency response fee (Article
4 10A), for each monthly period, on or before the last day of the following month; and

5 (d) For the stadium operator admission tax (Article 11), within five days after the
6 event, subject to the provisions of Article 11, Section 804.

7
8 SEC. 6.9-3. DETERMINATIONS, RETURNS AND PAYMENTS; PREPAYMENTS.

9 (a) Prepayments. Notwithstanding the due dates otherwise provided in Section 6.9-
10 1, taxpayers shall make prepayments of taxes and third party taxes (“tax prepayments”) to the
11 Tax Collector as follows:

12 (1) Hotel and Parking Taxes. The Hotel Tax (Article 7) and the Parking Tax (Article
13 9) shall be paid in monthly installments. Such monthly installments shall be due and payable
14 to the Tax Collector on or before the last day of the month immediately following the month for
15 which the prepayment is due. Taxes paid in the first two monthly installments of any quarterly
16 period shall be a credit against the total liability such third party taxes for the quarterly period.
17 Estimated tax prepayments shall be computed based on the estimated tax accrued during the
18 month in question, but in no instance shall a prepayment be equal to a sum less than 30
19 percent of the tax collected in the immediately preceding quarterly period. If the taxpayer can
20 establish by clear and convincing evidence that the amount of any prepayment will exceed the
21 total tax liability for the quarterly period for which the tax prepayment becomes due, the Tax
22 Collector may, in writing, adjust the amount of the tax prepayment. The third monthly
23 installment of any quarterly period shall be in an amount equal to the total tax liability for the
24 quarterly period, less the amount of any tax prepayments actually paid.

1 (2) Payroll Expense Tax and Business Tax. The Payroll Expense Tax (Article 12-A)
2 and Business Tax (Article 12-A-1) shall be paid in biannual or quarterly installments as follows:

3 (A) Small Firm Prepayments. Every person liable for payment of a total Payroll
4 Expense Tax in excess of \$2,500 or a total Business Tax in excess of \$500, but less than a
5 combined total of \$50,000 for both such taxes, for any tax year shall pay such taxes for the
6 following tax year in two installments. The first installment shall be due and payable, and shall
7 be delinquent if not paid on or before, August 1st. The first installment shall be a credit against
8 the person's total liability under the Payroll Expense Tax and Business Tax for the tax year in
9 which the first installment is due. The first installment shall be in an amount equal to one-half
10 (1/2) of the person's estimated total liability under the Payroll Expense Tax and Business Tax for
11 such tax year. The estimated liability for a tax year shall be computed by using ~~52~~102% of the
12 person's total taxable payroll expense (as defined in Section ~~902.2~~ 902.1 of Article 12-A) and
13 taxable gross receipts (as defined in Section 952.2 of Article 12-A-1) for the preceding tax year, and
14 the corresponding rates of tax applicable to the tax year in which the first installment is due.
15 The second installment shall be reported and paid on or before the last day of February of the
16 following year. The second installment shall be in an amount equal to the person's combined
17 total liability under the Payroll Expense Tax and Business Tax for the subject tax year, less the
18 amount of the first installment and other tax prepayments for such tax year, if any, actually
19 paid. The estimated liability for the 2005 tax year shall be computed by using 102% of the person's
20 taxable payroll expense for the 2004 tax year, plus the person's estimated taxable gross receipts for the
21 2005 tax year.

22 (B) Large Firm Prepayments. Every person liable for payment of a combined total
23 Payroll Expense Tax and Business Tax in excess of \$50,000 for any tax year shall pay such tax
24 for the following tax year in four quarterly installments. The first, second and third quarterly
25 installments shall be due and payable, and shall be delinquent if not paid on or before, May

1 1st, August 1st and November 1st, respectively. The first, second and third quarterly
2 installments shall be a credit against the person's total liability under the Payroll Expense Tax
3 and Business Tax for the tax year in which such first, second and third quarterly installments are
4 due. Such quarterly installments each shall be in an amount equal to one-quarter (1/4) of the
5 person's estimated total liability under the Payroll Expense Tax and Business Tax ~~liability~~ for
6 such tax year. The estimated liability for such tax year shall be computed by using ~~104%~~ 102%
7 of the person's total taxable payroll expense (as defined in Section 902.1 of Article 12-A) and
8 taxable gross receipts (as defined in Section 952.2 of Article 12-A-1) for the preceding tax year, and
9 the rate of tax applicable to the tax year in which the first, second and third quarterly
10 installments are due. The fourth installment shall be reported and paid on or before the last
11 day of February of the following year. The fourth quarterly installment shall be in an amount
12 equal to the person's total combined liability under the Payroll Expense Tax and Business Tax
13 ~~liability~~ for the subject tax year, less the amount of the first, second and third quarterly
14 installments and other tax prepayments, if any, actually paid. The estimated liability for the 2005
15 tax year shall be computed by using 102% of the person's taxable payroll expense for the 2004 tax
16 year, plus the person's estimated taxable gross receipts for the 2005 tax year.

17 (b) Tax Prepayment Penalties. Every person who fails to pay any tax prepayment
18 required under this Section before the relevant delinquency date shall pay a penalty in the
19 amount of five percent (5%) of the amount of the delinquent tax prepayment per month, or
20 fraction thereof, up to twenty percent (20%) in the aggregate, and shall also pay interest on
21 the amount of the delinquent tax prepayment from the date of delinquency at the rate of one
22 percent (1%) per month, or fraction thereof, for each month the prepayment is delinquent, until
23 paid.

24 (c) Hotel and Parking Taxes. Upon commencing business, an operator subject to
25 the Hotel Tax (Article 7) or the Parking Tax (Article 9) shall have the option of making

1 prepayments in the amount of the actual tax owed or making an estimate of the prepayment
2 for the month based on the estimated tax accrued during the month in question. Once the
3 operator has selected an option, the operator must continue to follow that procedure unless
4 prior written permission to use the alternative procedure has been obtained from the Tax
5 Collector.

6 In no instance shall an estimated prepayment of hotel or parking taxes be less than 30
7 percent of such tax collected in the immediately preceding quarterly period. If such estimated
8 prepayment is less than 30 percent of the tax collected in such preceding quarterly period, the
9 operator shall be subject to penalties and interest for the deficiency pursuant to Section 6.17-
10 1. If a prepayment based on actual tax owed is less than 90 percent of the actual liability for
11 the month, the operator shall be subject to penalties and interest for the deficiency pursuant to
12 Section 6.17-1.

13 (d) Forms and Adjustments. Tax prepayments required under this Section shall be
14 accompanied by a tax prepayment form prepared by the Tax Collector, but failure of the Tax
15 Collector to furnish the taxpayer with a tax prepayment form shall not relieve the taxpayer
16 from any tax prepayment obligation. The Tax Collector may, in writing, adjust the amount of a
17 tax prepayment if the taxpayer can establish by clear and convincing evidence that the first
18 installment of biannual tax prepayments, or first, second or third monthly installment of a
19 quarterly tax prepayment, will amount to more than one half or one quarter, respectively, of
20 the person's total tax liability for the tax year in which the installment is due.

21
22 SEC. 6.9-5. DETERMINATIONS, RETURNS AND PAYMENTS; CREDITS AND
23 EXEMPTIONS. The credits and exemptions set forth in Articles 7, 9, 10, 10A, 11, 12, 12-A
24 and 12-A-1 are provided on the assumption that the City has the power to offer such credits
25 and exemptions. If a credit or exemption is invalidated by a court of competent jurisdiction, the

1 taxpayer must pay any additional amount that the taxpayer would have owed but for such
2 invalid credit or exemption. Amounts owed as a result of the invalidation of a credit or
3 exemption that are paid within three years after the decision of the court becomes final shall
4 not be subject to interest or penalties.

5
6 SEC. 6.21-1. TRANSFEREE AND SUCCESSOR LIABILITY. (a) The liability at law or
7 in equity of a successor, transferee or alter ego of any taxpayer or other person determined to
8 be liable for any tax, interest, cost or penalty subject to this Article, imposed upon a taxpayer
9 shall be determined, collected and paid in the same manner and subject to the same
10 provisions and limitations as in the case of a deficiency determination pursuant to Sections
11 6.12-1 et seq. and 6.13-1 et seq. Nothing in this subsection shall be construed to limit the
12 rights or procedures available to the Tax Collector to collect from any successor, transferee or
13 alter ego, at law or in equity, as may be provided by statutory or decisional law.

14 (b) No person shall purchase or acquire an interest in a business subject to any tax
15 imposed under Articles 7, 9, 12-A or 12-A-1 without first obtaining either a receipt from the Tax
16 Collector showing that all of the seller's taxes on the business have been paid, or a certificate
17 stating that no amount is due. For purposes of this Section, "purchase" shall include any other
18 voluntary transfer for consideration of a business, except for purchase of stock of a publicly-
19 traded company.

20 (c) The Tax Collector shall issue such a receipt or certificate, or a notice of the
21 amount that must be paid as a condition of issuing the certificate, to the buyer within 30 days
22 after receiving a written request. However, failure of the Tax Collector to timely mail the notice
23 will not release the buyer from his or her obligations under this Section, except to the extent of
24 penalties and interest in the event that the Tax Collector enforces the buyer's obligation in a
25 civil action authorized pursuant to the Business and Tax Regulations Code.

1 (d) If the buyer purchases or acquires an interest in a business owing any taxes,
2 interest or penalties imposed under Articles 7, 9, 12-A or 12-A-1, the buyer shall withhold from
3 the purchase price and pay to the Tax Collector a sufficient amount to satisfy said taxes,
4 interest and penalties.

5 (e) If the buyer purchases or acquires an interest in a business in violation of this
6 Section, the buyer shall become personally liable for the amount of taxes, interest and
7 penalties owed on the business.

8 (f) The buyer's obligations shall accrue at the time the business is purchased or the
9 interest acquired, or at the time the Tax Collector determines the seller's final liability,
10 whichever is later.

11

12

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

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16 By: _____
17 Dorji Roberts
18 Deputy City Attorney

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