

1 [Visitor and Convention Hotel Impact Fee.]

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3 **Ordinance amending the San Francisco Administrative Code by adding a new Chapter**  
4 **39: (i) imposing a Visitor and Convention Hotel Impact Fee of \$6.00 per room night**  
5 **upon hotel guests attending or participating in conventions and other events at the**  
6 **Moscone Center or Bill Graham Civic Auditorium to reduce the operating shortfall for**  
7 **such facilities, (ii) requiring hotels to collect the fee and report upon and remit all fees**  
8 **collected to the City, (iii) requiring the Controller to recommend annual adjustments to**  
9 **the fee, as specified, (iv) exempting guests staying in hotels of fewer than 50 rooms,**  
10 **and (v) providing for penalties.**

11 Note: Additions are *single-underline italics Times New Roman*;  
12 deletions are *strikethrough italics Times New Roman*.  
13 Board amendment additions are double underlined.  
14 Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. The San Francisco Administrative Code is hereby amended by adding a  
16 new Chapter 39, to read as follows:

17 Chapter 39

18 Visitor and Convention Hotel Impact Fee

19 Sec. 39.1. DEFINITIONS.

20 Except where the context otherwise requires, the terms used in this Chapter shall have  
21 the meaning given to them in this section. Definitions used in other chapters of the  
22 Administrative Code and other City codes shall not govern the interpretation of this Chapter.

23 (a) "Board" means the Board of Supervisors of the City and County of San  
24 Francisco.

25 (b) "City" means the City and County of San Francisco.

1 (c) "Convention" includes any trade show, exposition, program, performance,  
2 presentation, meeting or other assemblage of persons for an organized event at a public  
3 convention facility.

4 (d) "Conventioneer" includes any individual who attends or participates in a  
5 convention at a public convention facility on any day that he or she is a hotel guest in any  
6 hotel located in the City, regardless of whether such attendance or participation is as a  
7 delegate, member of the sponsoring organization, exhibitor, speaker, presenter, event  
8 sponsor, employee of an event sponsor or independent contractor hired by the event sponsor,  
9 member of the public attending a convention open to the public, spouse, domestic partner or  
10 guest of another individual who attends or participates in the convention, or otherwise, if the  
11 individual may enter the public convention facility at any some time during the period for which  
12 such facility has been rented or otherwise made available to the event sponsor for a  
13 convention.

14 (e) "Event Sponsor" means any person who uses or possesses, or has the right to  
15 use or possess, a public convention facility for purposes of conducting a convention, under  
16 any agreement, lease, concession, permit, right of access, license to use or other  
17 arrangement. "Event Sponsor" shall not include the City and County of San Francisco or any  
18 federal, state or local governmental agency.

19 (f) "Guest Room" means a room in a hotel occupied, or intended, arranged,  
20 designed, furnished or used, for purposes of sleeping, by one or more occupants. Every 100  
21 square feet of superficial floor area in a dormitory is a guest room.

22 (g) "Hotel" means any structure, or any portion of a structure, including any lodging  
23 house, rooming house, dormitory, bachelor hotel, studio hotel, motel, auto court, inn, public  
24 club, or private club, containing guest rooms and which is occupied, or is intended or  
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1 designated for occupation, for which rent is customarily charged for the use of its guest  
2 rooms.

3 (h) "Hotel Guest" means an individual who uses, possesses, or has the right to use  
4 or possess, any guest room in a hotel under any lease, concession, permit, right of access,  
5 license to use or other agreement, or otherwise, regardless of whether rent is paid or other  
6 consideration is given for the occupancy of the guest room.

7 (i) "Individual" means a human being.

8 (j) "Occupancy" means the use or possession, or the right to the use or  
9 possession, of any guest room in a hotel.

10 (k) "Office of Convention Facilities Management" means the Office of Convention  
11 Facilities Management within the Department of Administrative Services, or any successor  
12 office or department of the City and County of San Francisco having responsibility for the  
13 operations and management of the Moscone Center and Bill Graham Civic Auditorium or, if  
14 the City does not directly operate or manage such public convention facilities, having  
15 responsibility for the on-going administration of the contract(s) with one or more persons for  
16 the day-to-day operations or management thereof.

17 (l) "Operating shortfall" means the total amount of money the City expends in a  
18 fiscal year to pay for all operations, maintenance and management of the Moscone Center  
19 and Bill Graham Civic Auditorium (excluding debt service and related lease obligations), in  
20 excess of the amounts deposited during such fiscal year into the Administrative Services  
21 Convention Facilities Fund established under San Francisco Administrative Code Section  
22 10.100-5 that are derived from the use of such facilities.

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1 (m) "Operator" means any person operating a hotel in the City, including but not  
2 limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in  
3 possession, licensee or any other person otherwise operating such hotel.

4 (n) "Person" means any individual, firm, company, partnership, limited liability  
5 partnership, joint venture, association, proprietorship, social club, fraternal organization, joint  
6 stock company, domestic or foreign corporation, limited liability company, estate, trust,  
7 business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee,  
8 syndicate, or any other group or combination acting as a unit, whether mutual, cooperative,  
9 fraternal, nonprofit or otherwise.

10 (o) "Public Convention Facilities" means the Moscone Center and Bill Graham Civic  
11 Auditorium; "Public Convention Facility" means the Moscone Center or Bill Graham Civic  
12 Auditorium.

13 (p) "Room Nights" refers to the number of nights an individual occupies a guest  
14 room while he or she is participating in or attending a convention at a public convention  
15 facility, regardless of whether the individual shares the room with another individual or  
16 individuals also participating in or attending the convention. If the operator's customary  
17 business practice is to charge hotel guests for the occupancy of guest rooms on a "per day"  
18 basis rather than a "per night" basis, or on the basis of some other period within each 24  
19 hours, "room nights" means the number of days or other such periods the individual  
20 occupies the guest room while participating or attending the convention.

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22 SEC. 39.2. FINDINGS.

23 The Moscone Center is San Francisco's premier meeting and exhibition facility. It is  
24 located in the downtown district and has more than 2 million square feet of building area,

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1 including over 700,000 square feet of exhibit space, up to 106 meeting rooms, and nearly  
2 123,000 square feet of prefunction lobbies. With the completion of Moscone West in 2003,  
3 the Moscone Center is a collection of facilities covering more than 20 acres on three adjacent  
4 blocks. It anchors the 87-acre Yerba Buena Center redevelopment district in a neighborhood  
5 of hotels, theaters, restaurants, museums, galleries, housing, parks and urban recreation  
6 centers. The City and County of San Francisco developed the Moscone Center. The City  
7 leases the facilities at the Moscone Center from the San Francisco Redevelopment Agency,  
8 and the City's lease payments are used to repay bonds issued to finance the development of  
9 the Moscone Center and the recently completed Moscone West expansion.

10 The City owns Bill Graham Civic Auditorium. The auditorium's exterior today is the  
11 original Beaux Arts style façade constructed of native California granite for its debut at the  
12 Panama Pacific Exposition in 1915. It is among a handful of buildings included on the  
13 National Register of Historic Places as part of San Francisco's Civic Center Historic District,  
14 which is considered as one of the finest examples of Beaux Arts architecture in the country. It  
15 has a 7,000-seat auditorium and state-of-the-art theatrical equipment and a concert-quality  
16 sound system. It also has over 40 meeting rooms as well as extensive lobby space for  
17 registration and receptions.

18 The Office of Convention Facilities Management has overall responsibility for the  
19 management of both the Moscone Center and Bill Graham Civic Auditorium, and administers  
20 the City's contract with a professional convention facilities management firm, SMG, to manage  
21 and conduct the day-to-day operations of both facilities. Extensive in-house services are  
22 available to event sponsors for both facilities, including catering, telecommunication/internet  
23 and videoconferencing services, theatrical services, and audiovisual services. The  
24 management company also provides extensive assistance to event sponsors to obtain outside  
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1 services for security, shipping, transportation, travel services, technical services, equipment  
2 rental and a variety of other goods and services that may be required in connection with  
3 conventions, meetings and other events.

4 The Office of Convention Facilities Management also administers the City's contract  
5 with the San Francisco Convention and Visitors Bureau. The Bureau is a private not-for-profit  
6 membership association dedicated to strengthening the San Francisco economy by marketing  
7 the City as a destination for meetings, conventions, tradeshow and leisure visitors. The  
8 Bureau's Convention Division maintains close relationships with more than 8,000 national,  
9 regional and state association and corporate meeting planners who bring new and repeat  
10 convention business to San Francisco. The Moscone Center is the focal point of the Bureau's  
11 efforts to promote the City as an attractive destination for conventions, meetings, tradeshow  
12 and other group events. The Bureau provides assistance to event planners with pre-event  
13 and on-site services, such as marketing and promotional materials to help increase  
14 convention attendance, hotel and off-site venue inspections, and on-site registration, housing  
15 assistance and other services.

16 The City has made significant capital investments to develop the Moscone Center and  
17 modernize the nearly century-old Bill Graham Civic Auditorium while preserving the beauty of  
18 its original Beaux Arts architecture and granite façade. All phases of the Moscone Center's  
19 development were financed by a combination of the proceeds from the sale of revenue bonds  
20 and accumulated hotel tax, plus earnings on bond proceeds. The bonds were issued by the  
21 San Francisco Redevelopment Agency from whom the City leases the facilities at the  
22 Moscone Center. Lease payments drawn from the hotel tax fund are used to pay off the  
23 bonds.

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1           The City incurs significant annual costs to maintain and professionally manage and  
2 operate the Moscone Center and Bill Graham Civic Auditorium, and to fund the San Francisco  
3 Convention and Visitors Bureau, to ensure San Francisco remains one of the premier  
4 convention destinations in the nation. Hotels benefit from the visitors who come to the City to  
5 attend in conventions at City's public convention facilities. Although precise figures vary from  
6 month to month, and vary between hotels based on factors such as the number of rooms,  
7 location, marketing emphasis, and quality of accommodations, among others, visitors who  
8 attend conventions or other group meetings account for approximately 25% of all visitors to  
9 San Francisco who stay in hotels located in the City.

10           Conventioneers and the businesses, associations, trades, professions and industries to  
11 which they belong also benefit from the superior quality convention facilities and ancillary  
12 services made available to them by the City's significant expenditures in investments and  
13 annual operating costs for the Moscone Center and Bill Graham Civic Auditorium.

14           The demand for convention facilities also imposes a burden on the City to manage,  
15 operate and maintain the public convention facilities. The City's annual costs for all  
16 operations, maintenance and management of its public convention facilities, which do not  
17 include debt service and related lease obligations or funding for the Convention and Visitors  
18 Bureau, currently exceed the revenues derived from the operation of the facilities by  
19 approximately \$11 million. Paying for this annual operating shortfall reduces funds available  
20 to the City for other essential services and programs.

21           The City, like other local governments, is facing significant financial problems as a  
22 result of the severe economic downturn over the past several years, the loss of "dot com"  
23 businesses that were located in the City and contributed to the City's tax base, state  
24 takeaways of local funds to address state budget problems, and increased demands for  
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1 essential services from the most vulnerable segments of our society. The City's current  
2 budget problems and the increased demand for services are exacerbated by relatively high  
3 rates of unemployment throughout the Bay Area compared to the late 1990's, and the  
4 reduced ability of private charitable organizations to supplement essential services and  
5 programs provided by the City. As a result, the Board of Supervisors, Mayor and other City  
6 officials and employees must make difficult decisions regarding the elimination of and/or  
7 reductions to City services and programs, reductions in grants for non-profit organizations,  
8 layoffs of City employees, and cancellation or deferment of capital expenditures. It is  
9 therefore necessary and appropriate to impose an impact fee upon conventioners as set  
10 forth in this Chapter to replace all or part of the City's subsidy for the operations of public  
11 convention facilities in order to free up funds for essential City services and programs.  
12 Because the majority of conventioners stay in large hotels, and for reasons of administrative  
13 convenience, it is appropriate to exempt from the fee conventioners who occupy guest  
14 rooms in hotels having fewer than 50 rooms.

15 The Convention and Visitors Bureau projects that conventions held at the Moscone  
16 Center in the current fiscal year (FY2004-2005 ) will result in the use of 900,000 room nights.  
17 The estimated attendance figures from SMG for the prior fiscal year (FY2003-2004) is  
18 947,440, which includes attendees of all classifications (delegates, exhibitors, speakers,  
19 spouses, etc.) badged through the sponsoring organization's registration process. The  
20 estimates of the number of attendees last fiscal year is as accurate and comprehensive as  
21 possible given that management for the Moscone Center is dependent on event sponsors for  
22 attendance information for individual events. Event sponsors treat their attendance figures for  
23 individual events as confidential proprietary information the disclosure of which would put  
24 them at a competitive disadvantage compared to other event planners. They provide such  
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1 trade secret information to the Moscone Center management in confidence and only for the  
2 purpose of developing and disclosing aggregate annual attendance figures and performing  
3 other statistical research that is not attributable to their individual events. The Board  
4 acknowledges that disclosure of attendance figures for individual events could result in  
5 competitive disadvantage to the organizations holding conventions at the public convention  
6 facilities.

7 Similarly, hotel operators generally treat detailed information about their convention-  
8 related business as trade secrets, such as the number of guests who reserve rooms that are  
9 part of a block of rooms set aside for particular conventions, the number of room nights or  
10 other measure of the business booked by the hotel in connection with conventions, discounts  
11 and other incentives the hotel provides to event sponsors and guests attending conventions,  
12 and other matters regarding their marketing efforts, convention-related business development,  
13 performance measures and other information regarding the hotel's convention-related  
14 business. Hotel operators typically take steps to protect such information by only providing it  
15 to consulting firms, governmental entities and industry organizations in confidence, and only  
16 for purposes that limit public disclosure to aggregate statistical information that is not  
17 attributable to specific hotels. The Board acknowledges that the disclosure of such  
18 information for specific hotels could result in competitive disadvantage to operators.

19 Board does not intend that this ordinance compel the public disclosure of any trade  
20 secrets belonging to individual event sponsors or hotel operators that must be provided to the  
21 Tax Collector as required under this ordinance if the operator provides such information in  
22 confidence and clearly indicates on the return or other document submitted to the City that the  
23 document or specified information set forth in the document is confidential and that the  
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1 operator asserts the privilege for trade secrets set forth in the California Evidence Code or  
2 other applicable law.

3 The attendance statistics developed by the Convention and Visitors Bureau and SMG  
4 are not directly comparable because SMG estimates the number of individuals who attended  
5 conventions at the Moscone Center based on data provided by event sponsors, but does not  
6 estimate the average number of days they attend a multiday convention or the percentage  
7 who stay in a hotel in the City. In addition, an increasing number of people who attend  
8 conventions make hotel reservations "outside the block" through internet websites or directly  
9 with hotels rather than as part of the block of rooms arranged by or for the event sponsor.  
10 This industry-wide trend has made it more difficult to obtain data on the number of convention  
11 attendees and where they stay. Accordingly, until the City requires hotel operators to  
12 maintain records and report upon the actual number of days each hotel guest attends a  
13 convention at a public convention facility, and to report such data for a statistically significant  
14 period of time, it is appropriate to set the initial fee based on conservative estimates to ensure  
15 that the fee does not exceed each conventioneer's proportional share of the operating  
16 shortfall.

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### 18 SEC. 39.3. PURPOSES.

19 The purpose of this ordinance is to impose a fee upon conventioners, to be collected  
20 on behalf of the City by hotels whose guests attend conventions at the Moscone Center or Bill  
21 Graham Civic Auditorium, to reduce by approximately \$7 million annually, as adjusted for  
22 inflation, the City's costs to subsidize the operations of its public convention facilities.

23 The ratemaking process established by this ordinance is intended to identify and  
24 measure the proportional burden imposed on the City by individuals who stay at hotels in the  
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1 City and use public convention facilities by: (i) identifying the difference between the revenues  
2 generated from rentals, concessions and ancillary support and service charges for  
3 conventions at such facilities, and the City's total costs to manage, operate and maintain the  
4 facilities (excluding debt service and related lease obligations and excluding the City's funding  
5 of the Convention and Visitors Bureau); and (ii) identifying the share of that shortfall allocable  
6 to such individuals, measured on a per conventioner per room night basis. Once the City  
7 begins to receive data from hotel operators on the actual number of hotel guests who attend  
8 conventions at the City's public convention facilities, and for how many days, the Controller  
9 can more precisely calculate conventioners' proportional share of the operating shortfall  
10 and recommend legislation to the Board. The Board will then consider the Controller's  
11 recommended adjustments at a public meeting, and intends to set the rate annually for fiscal  
12 year 2006-2007 and each fiscal year thereafter so that the fee revenues do not exceed the  
13 lesser of \$7 million, as adjusted for inflation, or 75% of the share of the operating shortfall  
14 allocable to conventioners.

15 To implement the ratemaking process in as accurate a manner possible, this ordinance  
16 requires hotel operators to ascertain from each hotel guest whether he or she is attending a  
17 convention at the Moscone Center or Bill Graham Civic Auditorium and, if so, for how many  
18 days. Hotel operators must also maintain accurate records and report such data to the Tax  
19 Collector on returns covering the same periods, and at the same intervals, as they must report  
20 hotel taxes. It is appropriate to impose these duties on hotel operators in light of the benefits  
21 they receive from the public convention facilities that attract visitors who stay in their hotels  
22 and the burdens that hotel guests place on the city's convention facilities. The information  
23 gathering and reporting requirements imposed on hotel operators are also appropriate  
24 because the data will allow the Controller to recommend annual fee adjustments using data  
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1 on the actual total number of nights conventioners spent in hotels related to attendance at  
2 Moscone Center or Bill Graham Civic Auditorium rather than on reasonable but less precise  
3 estimates of past attendance or reasonable projections of future attendance.

4 The fee and ratemaking process described above are designed to calculate the portion  
5 of the the City's public convention facilities operating shortfall allocable to conventioners and  
6 to require hotels to recover that sum from conventioners so as to reduce the City's operating  
7 shortfall by the lesser of \$7 million annually, adjusted for inflation and using 2005 as the base  
8 year, or 75% of the Controller's estimate of their proportional share of the operating shortfall  
9 for the fiscal year for which the Controller is recommending an adjustment to the fee.

10 This fee will enable the City to avoid reductions in annual funding for other services and  
11 programs by an amount that corresponds to the anticipated revenues from the fee. Should  
12 the total revenue generated from the fee in any given fiscal year exceed either \$7 million, as  
13 adjusted for inflation, or 75% of the total proportional share of the operating shortfall for such  
14 year, the City shall not refund amounts received in excess of the targeted revenue unless the  
15 fee imposed on conventioners exceeds 100% of their proportional share of the City's  
16 operating shortfall.

17 This ordinance establishes the initial fee on conventioners at \$6.00 per room night,  
18 which less than 50% of the \$12.39 per conventioner per room night the Controller estimates  
19 as the proportional share operating shortfall (excluding the operating costs of Bill Graham  
20 Civic Auditorium) for the current fiscal year (FY2004-2005) allocable to conventioners, as set  
21 forth in the Controller's analysis on file with the Clerk of the Board of Supervisors in File  
22 No.\_\_\_\_\_. The Board intends to adjust the initial \$6.00 fee beginning with the 2006-2007  
23 fiscal year based on recommendations from the Controller, as specified in this ordinance. The  
24 purpose of initially establishing the fee at \$6 per conventioner per room night is to allow the  
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1 Controller to recommend adjustments to the fee for the 2006-2007 and later fiscal years on  
2 data reported by hotel operators of the actual number of room nights used by each hotel guest  
3 who attends a convention at a public convention facility, and to ensure that the initial fee does  
4 not exceed the 100% of their proportional share of the City's operating shortfall. The  
5 Controller's initial analysis is based on the following methodology and estimates from PKF  
6 Consulting, the San Francisco Convention and Visitors Bureau, and the Office of Convention  
7 Facilities Management for the current fiscal year (FY2004-2005):

8 The estimated number of room nights for hotel guests who attend conventions at the  
9 Moscone Center is 900,000. The total budgeted costs of the public convention facilities  
10 and Convention and Visitors Bureau for the 2004-2005 fiscal year are \$56,907,027, of  
11 which \$26,999,818 are operating costs (which does not include debt service and  
12 related lease obligations or funding for the Convention and Visitors Bureau). Budgeted  
13 revenues from the operations of the public convention facilities for the current fiscal  
14 year are \$15,852,900, of which \$12,245,730 are from rents and concessions from the  
15 operations of the public convention facilities, and \$3,607,170 are from related service  
16 charges. The budgeted revenues of \$15,852,900 less the \$26,999,818 budgeted for  
17 operating costs leaves an estimated operating shortfall for the current fiscal year of  
18 \$11,146,918. The \$11,146,918 budgeted shortfall divided by the 900,000 estimated  
19 room nights that will be used by hotel guests who attend conventions at the Moscone  
20 Center during this fiscal year equals \$12.39 per room night.

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SEC. 39.4. IMPOSITION OF FEE; INITIAL RATE.

1           Each conventioneer shall pay a fee of \$6 per day for each day or portion thereof that  
2 he or she attends or participates in a convention at a public convention facility. The obligation  
3 to pay the fee shall commence at the beginning of the first fiscal quarter that begins not less  
4 than 30 days after the effective date of this ordinance. Beginning with the 2006-2007 fiscal  
5 year, and for each fiscal year thereafter, the Controller shall propose annual adjustments to  
6 the fee as set forth in Section 39.5.

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8           **SEC. 39.5. ANNUAL FEE ADJUSTMENTS.**

9           (a)    The Controller shall recommend increases or decreases to the fee annually on  
10 the basis of the proportional share of City's total operating shortfall for the most recently  
11 concluded fiscal year attributable to all conventioners during the same period, divided by the  
12 total number of room nights used by such conventioners for the same period as reported by  
13 hotel operators and certified by the Tax Collector. The Controller shall recommend to the  
14 Board such annual adjustments as are necessary to generate revenues from the fee in the  
15 2006-2007 and subsequent fiscal years in an amount that is the lesser of (i) \$7 million,  
16 adjusted for inflation using the 2005 calendar year as the base year and the Consumer Price  
17 Index for all Urban Consumers for the San Francisco-Oakland Metropolitan Area issued by  
18 the United States Department of Labor for the intervening calendar year(s) as the inflation  
19 factor, or (ii) 75% of the proportional share of the operating shortfall allocable to  
20 conventioners as estimated by the Controller for the fiscal year for which the Controller  
21 recommends an adjustment. The Controller shall submit annual recommendations to the  
22 Board for adjustments to the fee as required by this section by February 1<sup>st</sup>, commencing  
23 February 1, 2006.

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1 (b) The Controller shall introduce a resolution to implement his or her recommended  
2 adjustments to the fee, and may introduce other proposed legislation to amend this ordinance  
3 as he or she may consider appropriate to effect the purposes of this ordinance. The  
4 Controller's annual recommended adjustments may be set forth in a separate report or may  
5 be included in the legislation required by this subsection.

6 (c) Notwithstanding the annual recommendations and fee resolution required by this  
7 section, the Controller may, in his or her sole discretion, recommend adjustments to the rate  
8 of the fee and introduce legislation regarding the rate of the fee or the implementation or  
9 administration thereof at any other time consistent with the purpose of this ordinance to collect  
10 the lesser of \$7 million, as adjusted for inflation, or 75% of conventioners' proportional share  
11 of the operating shortfall for the fiscal year in which the adjustment takes effect.

12 (d) State, federal and private operating subsidies for the management, operations  
13 and maintenance of the Moscone Center and Bill Graham Civic Auditorium, if any, shall be  
14 assumed only when and to the extent that receipt of such subsidies is reasonably probable.

15 (e) Where feasible, the Controller shall use data on the actual operating costs for  
16 the public convention facilities (not including debt service and related lease obligations for the  
17 Moscone Center or funding for the Convention and Visitors Bureau), total operating revenues  
18 from both facilities (including amounts received from rents and concessions from operations of  
19 the public convention facilities and related service charges), from the most recent closed fiscal  
20 year. Where estimates must be made, those estimates should be based on such information  
21 as the Controller considers reasonable for the purpose. The Controller may take into account  
22 any anticipated changes in the management, operation or maintenance of the public  
23 convention facilities that are likely to have a material impact on the estimated operating  
24 shortfall or the number of room nights used by conventioners in the fiscal year for which the  
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1 Controller will recommend an adjustment, if such changes are reasonably probable, which  
2 shall be described in the Controller's report to the Board.

3 (f) The Controller shall include in calculating the fee the estimated annual rate of  
4 return on the proceeds of the fee that would be invested prior to their use.

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6 SEC. 39.6. REVIEW OF PROPOSED FEE ADJUSTMENTS; TEMPORARY  
7 SUSPENSION OR REDUCTION OF FEE BY CONTROLLER PENDING BOARD ACTION.

8 (a) The Board of Supervisors shall review any proposed adjustment to the fee  
9 recommended by the Controller under Section 39.5 for the purpose of establishing the rate to  
10 meet the revenue target set forth such section for the corresponding fiscal year. The Board  
11 shall hold a public hearing on any recommended adjustments to the fee and related legislation  
12 no later than 45 days after the Controller submits the legislation. The Clerk of the Board of  
13 Supervisors shall promptly calendar the report recommending any adjustments, and  
14 implementing resolution and other legislation, if any, submitted by the Controller for a public  
15 hearing before the Board committee having primary jurisdiction over the fiscal affairs of the  
16 City.

17 (b) Notwithstanding any other provision of this ordinance, the Controller may  
18 temporarily lower the rate or suspend the fee at any time if he or she reasonably determines  
19 that such action is necessary to prevent the fee proceeds for the fiscal year from exceeding  
20 100% of conventioners' proportionate share of the operating shortfall for that fiscal year. The  
21 Controller shall order such temporary rate reduction or suspension of the fee in writing  
22 addressed the Board, Mayor and Tax Collector. Upon receipt the Controller's order, the Tax  
23 Collector shall promptly notify all hotels of such temporary reduction or suspension, the

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1 operative date thereof, and such other information as the Tax Collector, in consultation with  
2 the Controller, considers advisable.

3 (c) If the Controller temporarily lowers the rate or suspends the fee pursuant to  
4 subsection (b), he or she shall promptly submit legislation to the Board as may be necessary  
5 to set the rate of the fee or to amend this ordinance or other City law, or both, to effect the  
6 purposes of this ordinance. The Controller may lift the temporary rate reduction or  
7 suspension of the fee in writing to the Board, Mayor and Tax Collector Controller at any time  
8 he or she reasonably determines that resumption of fee or its imposition at the prior rate will  
9 not generate revenues for the fiscal year in excess of the targeted revenues for such year set  
10 forth in Section 39.5.

11 (d) The Controller, in consultation with the Tax Collector, Director of Administrative  
12 Services, Office of Convention Facilities Management, and any other person the Controller  
13 deems appropriate, shall submit such reports and information as the Board may consider  
14 necessary or desirable in connection with the Board's review of the fee and any  
15 recommended adjustments thereto.

16 (e) After receiving the Controller's report(s) and recommendation as specified in this  
17 section and Section 39.5, the Board or the committee of the Board to which the matter is  
18 referred shall conduct a public hearing in which it shall consider the report(s), hear testimony  
19 from any interested members of the public and receive such other evidence as it may  
20 consider necessary. At the conclusion of the public hearing the Board shall determine by  
21 resolution whether to approve the adjustment to the fee as proposed by the Controller, to not  
22 adjust the amount of the fee, or to adjust the fee in an amount different from that proposed by  
23 the Controller. The Tax Collector shall provide written notification to all known hotel operators  
24 in the City of any change in the fee and the effective date of such change. If the Board does  
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1 not adopt a resolution to adjust the fee by June 20, the fee shall remain at the rate then in  
2 effect and any adjustment thereto shall take effect no sooner than the beginning of the fiscal  
3 quarter following the quarter in which the Board adopts a resolution to adjust the fee.

4 (g) In the event the City shall impose and collect any other fees to recover the costs  
5 of management, operations and maintenance of the public convention facilities that are  
6 included in the fee imposed under this Chapter, the person who paid the fee shall be entitled  
7 to a refund equal to that portion of the new fees also included in the fee imposed under this  
8 Chapter, plus interest earned by the City on the excess amount of the additional fees from the  
9 time paid to the City until the refund is paid.; provided, the person files a written request for  
10 refund within one year of when the additional fees were paid and otherwise complies with the  
11 provisions of Article VI of Chapter 10 of the San Francisco Administrative Code.

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13 **SEC. 39.7. USE OF PROCEEDS FROM FEE.**

14 All sums derived from the collection of the fee imposed under this Chapter shall be  
15 distributed according to the fiscal and budgetary provisions of the San Francisco Charter  
16 subject only to the following conditions and limitations. The proceeds from the fee, including  
17 earnings from investments thereof, may be used only for (i) the costs of managing, operating,  
18 maintaining the public convention facilities, (ii) the costs incurred by the City to expand,  
19 replace, repair or otherwise improve such facilities, and (iii) the costs construct new  
20 convention facilities owned by the City.

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22 **SEC. 39.8. COLLECTION OF FEE BY HOTEL OPERATORS.**

23 (a) Every operator shall collect the fee from its hotel guests who attend or  
24 participate in a convention at a public convention facility. All fees so collected shall be held in  
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1 trust for the City, and shall not be considered to be part of the gross receipts or revenues of  
2 the hotel operator's business. For purposes of this Section, a person who otherwise qualifies  
3 as an operator under Section 39.1 shall not, by reason of the fact that the person is exempt  
4 from the fee, be exempted from the other obligations of an operator, including without  
5 limitation the obligation to collect and remit to the City all fees collected from non-exempt  
6 conventioners.

7 (b) Operators shall maintain accurate records indicating for each hotel guest  
8 whether he or she attended a convention at the Moscone Center or Bill Graham Civic  
9 Auditorium, whether she or she occupied a guest room that was part of a block of rooms  
10 subject to an agreement to make a specified number guest rooms available for attendees and  
11 participants at such convention, the name and address of the hotel guest, the number of room  
12 nights he or she stayed at the hotel, and the dates of occupancy. There shall be a rebuttable  
13 presumption that all individuals occupying a guest room that is part of a block of rooms made  
14 available in connection with a convention at a public convention facility are conventioners  
15 subject to the fee for the number of room nights corresponding to the duration of the such  
16 convention or his or her stay at the hotel, whichever is less. Operators shall also maintain  
17 records indicating that each hotel guest was asked, at the time of reservation or check in,  
18 whether he or she was attending a convention at the Moscone Center or Bill Graham Civic  
19 Auditorium, and the hotel guest's response. All such records shall be available for inspection  
20 by any official, employee, agent or representative of the City having responsibility to audit the  
21 hotel or otherwise administer the provisions of this Chapter. The submission by operators of  
22 such information on returns and other documents made available or provided to the City as  
23 required by this ordinance, regulations promulgated by the Tax Collector, or other law, shall  
24 not be construed as a waiver of the privilege protecting trade secrets or other applicable  
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1 privilege held by the operator if the return or other document is clearly labeled as confidential,  
2 and the operator asserts the applicable privilege in a timely manner in the event a person  
3 seeks to compel the City to disclose such information.

4 (c) Hotel operators shall collect the fee, insofar as practicable, at the same time as  
5 and along with the collection of any charges made in accordance with the operator's regular  
6 billing practices. If the amount paid by a conventioner is less than the full amount of the fees  
7 owed to the City, the operator shall be liable for the uncollected amount, plus a penalty equal  
8 to three times the amount of any deficiency. The deficiency and penalty shall bear interest at  
9 the rate of one percent per month, or fraction thereof, from the fifteenth day after the close of  
10 the month or other period for which the fee or any portion thereof should have been remitted  
11 to City, until the date of payment.

12 (d) Where a hotel guest receives more than one billing, one or more being for  
13 different periods than another, the duty to collect the fee shall arise separately for each billing  
14 period in which the hotel guest attended or participated in a convention at a public convention  
15 facility. In all cases of transactions upon credit or deferred payment, the payment of fee to the  
16 City may not be deferred, and the operator shall be liable therefor at the time remittance of the  
17 fees is due.

18 (e) The fee imposed upon conventioners shall be deemed a debt owed by the  
19 individual to the City. Any such fee that operators must collect that an operator fails to remit  
20 to the Tax Collector when due shall be deemed a debt owed to the City by the operator and  
21 any other person required by agreement with the operator, this ordinance or other applicable  
22 law to collect and remit such fee to the City.

23 (f) Insofar as practical, the fees shall be remitted to the Tax Collector and reported  
24 on returns in the same manner and at the same intervals as hotel taxes. The Tax Collector, in  
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1 consultation with the Controller, may adopt rules and regulations prescribing methods and  
2 schedules for the collection, reporting and payment of the fees, and other matters relating to  
3 the implementation and administration of this ordinance.

4 (g) The Tax Collector, in consultation with the Controller, may require operators to  
5 maintain separate trust accounts for fees collected from hotel guests who attend conventions  
6 at a public convention facility. The Tax Collector may adopt rules and regulations prescribing,  
7 among other things, when operators shall be required to have such accounts and how  
8 operators shall maintain such accounts.

9 (h) When the fees are not paid when due, or when the Tax Collector issues any  
10 deficiency determination or jeopardy determination against an operator for the fees, the  
11 Bureau of Delinquent Revenue may collect the fees, including interest and penalties accrued  
12 through the date of payment, from any person responsible for performing the acts of  
13 collecting, accounting for, and remitting the fees to the City who failed to do so. For purposes  
14 of this Section, a person shall be considered to be responsible for performing the acts of  
15 collecting, accounting for, and remitting the fees to the City if and to the extent such person  
16 has the power to control the financial decision-making process by which the operator allocates  
17 funds to creditors in preference to the operator's obligation to collect the fees from  
18 conventioners and remit the fees to the City. When the person responsible for the acts of  
19 collecting, accounting for, and remitting the fees to the City cannot otherwise be determined,  
20 there shall be a rebuttable presumption that the President and Chief Financial Officer of a  
21 corporation and any managing partner or member of an partnership or other legal entity is the  
22 person responsible for performing such acts. The liability of such persons shall be joint and  
23 several with each other and with the operator.

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1           SEC. 39.9. REPORTING AND REMITTING FEES.

2           (a)     All amounts of fees under this Chapter are due and payable to the City for each  
3 month on or before the last day of the month immediately following each respective monthly  
4 period, unless the Tax Collector adopts a rule or regulation specifying a different period or day  
5 for the remittance of the fees.

6           (b)     Returns shall show the amount of fees required to be collected for the subject  
7 period, separately, for each location at which the operator operates a hotel. The returns shall  
8 include the information described in Section 38.8 (except for the name and address of hotel  
9 guests, which shall be reported to the Controller in the event of a refund of excess fees is  
10 required under Section 39.10), and such other information as the Tax Collector, in  
11 consultation with the Controller, may require. For each location at which the operator  
12 operates a hotel, the returns shall show the total number of individuals from whom the fee was  
13 required to be collected, the total number of room nights each such individual was a guest of  
14 the hotel, the number of days he or she attended a convention at a public convention facility if  
15 different that the number of room nights he or she occupied a guest room at the hotel, the fee  
16 due from each such individual, and the fee amount collected from or on behalf of such  
17 individual.

18           (c)     The Tax Collector may inspect, examine and copy records or each such location  
19 separately, and may issue deficiency and jeopardy determinations in accordance with the  
20 provisions of Article 6 of the Business and Tax Regulations Code for each such location  
21 separately, or in combination with one or more other locations at which the operator conducts  
22 business. The operator shall file the return, together with remittance of the amount of fee due,  
23 with the Tax Collector, at the Tax Collector's office, on or before the date provided in this  
24 Section. Returns and remittances are due immediately upon cessation of business for any  
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1 reason. Returns and other documents an operator submits to the Tax Collector under this  
2 ordinance, or rules or regulations promulgated by the Tax Collector, shall be considered  
3 confidential taxpayer information subject to the confidentiality provisions of Section 6.22-1 of  
4 the San Francisco Business and Tax Regulations Code.

5 (c) When a return is filed without full remittance of the amount reported to be due,  
6 the amount remaining unpaid, together with any nonpayment penalties, are immediately due  
7 and payable and may be collected by the Tax Collector forthwith.

8 (d) Except as otherwise provided by this ordinance, operators failing to file a return,  
9 failing to remit fees when due, underpaying the fees, or filing delinquent returns shall be  
10 subject to penalties and interest in the same manner as penalties and interest as set forth in  
11 Article 6 of the Business and Tax Regulations Code for third-party taxes. The Tax Collector  
12 may issue deficiency and jeopardy determinations against operators in connection with the  
13 fees imposed under this Chapter in the same manner as set forth such Article for third party  
14 taxes.

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16 SEC. 39.10. If the fees collected in any fiscal year exceed 100% of such proportional  
17 share, the excess shall be deemed a fee erroneously collected and Controller shall refund the  
18 excess amounts received by the City as provided in Article VI of Chapter 10 of the San  
19 Francisco Administrative Code, plus any amount received by the City from the investment of  
20 the excess fee revenue, without the need for a verified claim from each conventioneer entitled  
21 to a refund. Hotel operators shall cooperate with all City officials and employees having  
22 responsibility to effect any such refund, including providing the names and addresses of any  
23 hotel guest entitled to a refund.

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1           SEC. 39.11. RULES AND REGULATIONS.

2           The Tax Collector, in consultation with the Controller, may adopt such rules,  
3 regulations, and procedures he or she deems necessary to implement and administer this  
4 Chapter, including the determination, collection, reporting requirements, and refund of the  
5 proceeds, of the fee.

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7           SEC. 39.12. EXEMPTIONS.

8           (a) Any official or employee of the United States, the State of California or a political  
9 subdivision of either shall be exempt from payment of the fee provided he or she is attending  
10 a convention at a public convention facility as part of his or her official duties.

11           (b) Conventioneers staying in hotels of fewer than 50 rooms and the operators of  
12 such hotels shall be exempt from operation of this ordinance.

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14           SEC. 39.13. SEVERABILITY.

15           The provisions of this ordinance shall not apply to any person, association, corporation  
16 or to any property as to whom or which it is beyond the power of the City and County of San  
17 Francisco to impose the fee herein provided. If any sentence, clause, section or part of this  
18 ordinance, or any fee imposed upon any person or entity is found to be unconstitutional, illegal  
19 or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause,  
20 sentence, section or part of this ordinance, or person or entity; and shall not affect or impair  
21 any of the remaining provisions, sentences, clauses, sections or other parts of this ordinance,  
22 or its effect on other persons or entities. It is hereby declared to be the intention of the Board  
23 of Supervisors of the City and County that this ordinance would have been adopted had such  
24 unconstitutional, illegal or invalid sentence, clause, section or part of this ordinance not been

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1 included herein; or had such person or entity been expressly exempted from the application of  
2 this ordinance. To this end the provisions of this ordinance are severable.

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5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

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By: \_\_\_\_\_  
Dorji Roberts  
Deputy City Attorney

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