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DEPARTMENT OF ELECTIONS

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

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

[Clarifying who is responsible for collecting and remitting third-party taxes; consolidating definitions and amending the definition of "Permanent Resident."]

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

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

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

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

the tax, plus surcharges added subsequent to the original enactment of the tax, is currently 14 percent of the rent.

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

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

permanent resident exemption under any circumstances, and allows only natural persons (human beings) to claim the permanent resident exemption.

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

SEC. 6.2-13. OPERATOR.

(a) The term "Operator" means:

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

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

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

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

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

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

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

SEC. 501. ADDITIONAL DEFINITIONS.

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

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

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

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

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

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

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

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

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

SEC. 601. ADDITIONAL DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

Section 4. It is the intent of the voters of the City and County of San Francisco that the rate of tax plus all surcharges referred to in this Article 7 shall remain 14 percent. In the event that another measure or measures on the November 2, 2010 ballot seeks to affect the overall rate of the Transient Occupancy Tax, any provisions of the other measure or measures increasing the rate of tax or adding an additional surcharge shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of the other measure or measures increasing the rate of tax or adding an additional surcharge shall be null and void, and the rate of tax plus all surcharges shall remain 14 percent.

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SUBMITTED:



GAVIN NEWSOM
Mayor, City and County of San Francisco

Date: June 15, 2010