

[Hotel Tax Loophole Closure and Temporary Visitor Surcharge]

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Ordinance amending Part III, Article 7 (Tax on Transient Occupancy of Hotel Rooms), of the San Francisco Business and Tax Regulations Code by amending Section 501 (g) to define "Permanent Resident" as an individual; adding Section 502.6-3, to impose a temporary additional surcharge on the hotel room tax for General Fund purposes measured as two percent of the room rent, to sunset in 2014; and adding Section 507, to clarify that the hotel room tax is imposed on the entire amount paid to rent the room and that the person or persons receiving the rent, regardless of their relationship to the hotel or the occupant, must collect and remit the tax to the City.

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. The San Francisco Business and Tax Regulations Code is hereby amended by amending Section 501 and adding Sections 502.6-3 and 507, to read as follows:

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

(c) "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.

(d) "Hotel." Any structure, or any portion of a structure, including any lodginghouse, roominghouse, 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) "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) "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 to the occupant, without any deduction therefrom whatsoever.

(g) "Permanent Resident." Any occupant as of a given date who *is an individual and 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. 502.6-3. IMPOSITION OF TWO PERCENT HOTEL TAX SURCHARGE.

(a) Effective January 1, 2011, there shall be a hotel tax surcharge of two percent, in addition to the eight percent tax imposed in Section 502, and the six percent surcharge imposed in Sections

502.6-1 and 502.6-2, on the rent for every occupancy of a guest room in a hotel in the City and County of San Francisco. The surcharge so collected shall be deposited in the General Fund and subject to appropriation pursuant to the budgetary and fiscal provisions of the Charter. The City may expend the proceeds for any lawful purpose.

(b) Prorata Allocation of Surcharge. When rent is paid, charged, billed or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to a surcharge of six percent to the extent that it covers any portion of the period prior to January 1, 2011, and an eight percent surcharge to the extent that it covers any portion of the period on or after January 1, 2011, and such payment, charge, bill or rent due shall be apportioned on the basis of the ratio of the number of days falling within said periods to the total number of days covered by such payment. Where any surcharge has been paid hereunder upon any rent without any right of occupancy therefor, the Tax Collector may by regulation provide for credit or refund of the amount of such tax upon application therefor as provided in this Code.

(c) Authority of the Board of Supervisors to Amend this Section. The Board of Supervisors may repeal or amend this Section 502.6-3 without a vote of the People except as follows: under Article XIII C of the California Constitution, only the voters may adopt any amendment that increases the rate or extends the scope of the tax beyond the levels or scope this Ordinance authorizes. The Board of Supervisors may alter the rate of tax that this Section 502.6-3 imposes by setting it at any rate that does not exceed the amount or rate the voters approved.

(d) Term of Surcharge. The surcharge that this Section 502.6-3 imposes shall not extend beyond January 1, 2014.

SEC. 507. INTERPRETATION OF THE TRANSIENT OCCUPANCY TAX.

Article 7, Tax on Transient Occupancy of Hotel Rooms (TOT) of the San Francisco Municipal Code, Business and Tax Regulations Code, (File No. 7573-2, Ord. 87-61) became effective on July 1, 1961. Article 7 imposes a transient occupancy tax on every occupancy of a

guest room in a hotel in the City and requires every occupant to pay the tax along with the rent for the room. The rate of the tax, plus surcharges added subsequent to the original enactment of the tax, is currently 14 percent of the rent.

In enacting the Transient Occupancy Tax, the Board of Supervisors intended that the entire consideration the occupant pays for the room rental be subject to the tax and that the person or persons receiving or collecting the taxable rent from the occupant, regardless of their relationship to the hotel or the occupant, remit the tax to the City. The voters of the City and County of San Francisco hereby ratify and affirm the Board's original intent in enacting this Article 7.