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DEPARTMENT OF ELECTIONS

1  
2 **UNIVERSAL CHILDCARE FOR SAN FRANCISCO FAMILIES INITIATIVE**

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

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6 **Section 1. Title**

7 This Initiative shall be known and may be cited as the “Universal Childcare For San Francisco  
8 Families Initiative” (hereinafter the “Initiative”).

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10 **Section 2.** The Business and Tax Regulations Code is hereby amended by adding Article 21,  
11 consisting of Sections 2101 through 2116, to read as follows:

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13 **ARTICLE 21: EARLY CARE AND EDUCATION COMMERCIAL RENTS TAX**  
14 **ORDINANCE**

15  
16 **SEC. 2101. FINDINGS.**

17 (a) For more than a decade, San Francisco has been a national leader in early care and  
18 education (ECE) with the introduction of the Preschool For All program in 2004. This revolutionary  
19 program expanded access, defined and measured quality programs, and supported educators to deliver  
20 high-quality early education. Ninety-two percent of San Francisco children attend preschool or  
21 transitional kindergarten before attending public kindergarten.

22 (b) Preschool enrollment of three- to five-year-olds in San Francisco rose from 57% in 2005 to  
23 71% in 2013. Citywide school readiness assessments in 2007 and 2009 charted a similar increase, from  
24 72% of four-year-olds in 2007 to 83% in 2009. These accomplishments are due to the targeted and  
25

1 committed investments of the State and the City and the work of First 5 San Francisco and the Office of  
2 Early Care and Education.

3 (c) However, the City cannot claim the same success when it comes to infants and toddlers  
4 under the age of four. Despite medical professionals, child development specialists, and scientific  
5 researchers uniformly agreeing that the most critical time in brain development is from birth to age  
6 three, and that the brain is 90% developed before a child reaches age five, San Francisco has more than  
7 2,400 children on the waitlist for subsidized ECE, and more than 1,600 of these children are under the  
8 age of three. When two-thirds of the children on the waitlist, and in these large numbers, are infants  
9 and toddlers, the critical and urgent need for targeted investment in infants and toddlers, akin to the  
10 level of City support prioritized for our four-year-olds, becomes dramatically evident.

11 (d) Three out of four families in San Francisco with children under the age of six have both  
12 parents working outside the home, making childcare a necessity, not a luxury. But, as of 2017, infant  
13 and toddler early education and childcare can cost a staggering \$20,000 a year in San Francisco; in  
14 comparison, tuition at UC Berkeley costs \$13,600 a year. The heavy toll that childcare costs can take  
15 on families is undeniable. In a 2016 poll conducted by the Robert Wood Johnson Foundation,  
16 Harvard's T.H. Chan School of Public Health, and National Public Radio, 71% of the over 1,100  
17 parents polled stated that the cost of childcare is a serious problem for their families.

18 (e) Without affordable and accessible childcare, one significant consequence is the loss of  
19 women from the workforce, a serious problem not just for those women, but for society at large. One  
20 stark consequence of losing women in our workforce is the difficulties they face when attempting to  
21 return to work in the technology sector after having children. Recent research indicates that such  
22 women are 79% less likely to be hired and half as likely to be promoted as other employees, and are  
23 offered an average of \$11,000 less in salary upon trying to re-enter the technology workforce later in  
24 life.

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1 (f) Further, as female employees leave the workforce, the lack of gender diversity in fields like  
2 technology and venture capital continues apace. A study conducted by the Deloitte University  
3 Leadership Center for Inclusion and the National Venture Capital Association, of 2,500 employees at  
4 217 venture capital firms nationwide, found that lack of family assistance and childcare may be  
5 hindering women's success in venture capital. The same study found that gender diversity in leadership  
6 results in greater returns, innovation, and success. Fortune 500 firms that aggressively promote women  
7 realize 34% higher profits than those that do not.

8 (g) Our San Francisco families want and need quality ECE for their children, and society as a  
9 whole benefits when we invest in them and their families. Rigorous long-term studies have found a  
10 return on investment averaging seven dollars for every dollar spent on quality early learning programs.  
11 In addition, children in these studies who have been followed into adulthood have benefitted from  
12 increased earnings.

13 (h) The most effective guarantee of quality ECE is workforce compensation. A 2014 UC  
14 Berkeley study showed that educator wages are one of the most important predictors of the quality of  
15 education children receive. But today, one third of full-time teaching staff in ECE programs use some  
16 form of public assistance to make ends meet. In San Francisco, 92% of our early childcare and  
17 education workforce are women; 83% are estimated to be women of color.

18 (i) Children who come to kindergarten without the skills they need often stay behind and  
19 struggle in school. Early childhood care and education programs give children a chance to learn,  
20 become excited about school, and be better students over their lifetimes. Investing in ECE helps ensure  
21 we have highly-trained and skilled educators, gives our babies and children the best possibility to  
22 succeed, while providing essential support for struggling working families.

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1     **SEC. 2102. SHORT TITLE.**

2             This Article 21 shall be known as the “Early Care and Education Commercial Rents Tax  
3     Ordinance,” and the tax it imposes shall be known as the “Early Care and Education Commercial Rents  
4     Tax.”

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6     **SEC. 2103. DEFINITIONS.**

7             (a) Unless otherwise defined in this Article 21, the terms used in this Article shall have the  
8     meanings given to them in Articles 6 and 12-A-1 of the Business and Tax Regulations Code, as  
9     amended from time to time. All references to Sections of the Planning Code are to the text of those  
10    Sections as of June 5, 2018.

11            (b) For purposes of this Article 21, the following definitions shall apply:

12            “Area Median Income” or “AMI” means Area Median Income for the San Francisco area,  
13    derived from the U.S. Department of Housing and Urban Development, adjusted solely for household  
14    size, as described in Administrative Code Section 10.100-81(c).

15            “Base Amount” means the Controller’s calculation of the amount of City appropriations (not  
16    including appropriations from the Fund and exclusive of expenditures funded by private funding,  
17    development impact fees, or prior period balances, or funded or mandated by state or federal law) for  
18    Baseline Programs for the Baseline Year, as adjusted in the manner provided in subsections (g) and (h)  
19    of Section 2112.

20            “Baseline Programs” means all programs serving children of all ages under six that are allocated  
21    funding through OECE.

22            “Baseline Year” means the Fiscal Year July 1, 2017 through June 30, 2018.

23            “Commercial Space” means any building or structure, or portion of a building or structure, that  
24    is not “residential real estate,” as that term is defined in Section 954.1(e) of Article 12-A-1 of the  
25    Business and Tax Regulations Code, as amended from time to time. Notwithstanding the preceding

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1 sentence, Commercial Space shall not include any building or structure, or portion of a building or  
2 structure, that is used for: (a) Industrial Use as defined in Section 102 of the Planning Code; (b) Arts  
3 Activities as defined in Section 102 of the Planning Code; or (c) Retail Sales or Service Activities or  
4 Retail Sales or Service Establishments, as defined in Section 303.1(c) of the Planning Code, that are not  
5 Formula Retail uses as defined in Section 303.1(b) of the Planning Code.

6 “Eligible Programs” are described in Section 2112(d)(1) of this Article 21.

7 “Fiscal Year” means the period starting July 1 and ending on the following June 30.

8 “Fund” means the Babies and Families First Fund described in Section 2111 of this Article 21.

9 “OECE” means the City’s Office of Early Care and Education, described in Section 2A.310 of  
10 the Administrative Code, or its successor.

11 “State Median Income” or “SMI” means the state median income, adjusted for family size,  
12 calculated by the California Department of Finance under California Education Code Section 8263.1.

13 “Warehouse Space” means Commercial Space that is used for Commercial Storage, for Volatile  
14 Materials Storage, for Wholesale Storage, or as a Storage Yard, as each of these capitalized terms is  
15 defined in Section 102 of the Planning Code.

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17 **SEC. 2104. IMPOSITION OF TAX.**

18 (a) Except as otherwise provided in this Article 21, for the privilege of engaging in the business  
19 of leasing Commercial Space in properties in the City, the City imposes an annual Early Care and  
20 Education Commercial Rents Tax on each person engaged in business in the City that receives gross  
21 receipts from the lease of Commercial Space in properties in the City. For purposes of this Article 21,  
22 the term “lease” includes any “sublease.”

23 (b) The Early Care and Education Commercial Rents Tax shall be calculated by applying the  
24 following percentages to the person or combined group’s gross receipts from the lease of Commercial  
25 Space in properties in the City:

1                   (1) 1% to the person or combined group's gross receipts from the lease of Warehouse  
2 Space in properties in the City; and

3                   (2) 3.5% to the person or combined group's gross receipts from the lease of all other  
4 Commercial Space in properties in the City.

5                   (c) The Early Care and Education Commercial Rents Tax shall become operative on January 1,  
6 2019.

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8 **SEC. 2105. EXEMPTIONS AND EXCLUSIONS.**

9                   (a) An organization that is exempt from income taxation by Chapter 4 (commencing with  
10 Section 23701) of Part 11 of Division 2 of the California Revenue and Taxation Code or Subchapter F  
11 (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as  
12 amended, as qualified by Sections 502, 503, 504, and 508 of the Internal Revenue Code of 1986, as  
13 amended, shall be exempt from taxation under this Article 21, only so long as those exemptions  
14 continue to exist under state or federal law.

15                   (b) For purposes of this Article 21, gross receipts from the lease of Commercial Space shall not  
16 include receipts from the leasing of Commercial Space to (1) organizations described in subsection (a)  
17 of this Section 2105; or (2) federal, state, or local governments.

18                   (c) For purposes of this Article 21, gross receipts from the lease of Commercial Space shall not  
19 include receipts from business activities if, and only so long as and to the extent that, the City is  
20 prohibited from taxing such receipts under the Constitution or laws of the United States or under the  
21 Constitution or laws of the State of California.

22                   (d) For only so long as and to the extent that the City is prohibited from imposing the Early  
23 Care and Education Commercial Rents Tax, any person upon whom the City is prohibited under the  
24 Constitution or laws of the State of California or the Constitution or laws of the United States from  
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1 imposing the Early Care and Education Commercial Rents Tax shall be exempt from the Early Care  
2 and Education Commercial Rents Tax.

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4 **SEC. 2106. SMALL BUSINESS EXEMPTION.**

5 Notwithstanding any other provision of this Article 21, a person or combined group exempt  
6 from payment of the gross receipts tax under Section 954.1 of Article 12-A-1, as amended from time to  
7 time, shall also be exempt from payment of the Early Care and Education Commercial Rents Tax.

8  
9 **SEC. 2107. FILING; COMBINED RETURNS.**

10 (a) Persons subject to the Early Care and Education Commercial Rents Tax shall file returns at  
11 the same time and in the same manner as returns filed for the gross receipts tax (Article 12-A-1),  
12 including the rules for combined returns under Section 956.3, as amended from time to time.

13 (b) If a person is subject to the Early Care and Education Commercial Rents Tax but is not  
14 required to file a gross receipts tax return, such person or combined group's Early Care and Education  
15 Commercial Rents Tax return shall be filed at the same time and in the same manner as if such person  
16 or combined group were required to file a gross receipts tax return.

17 (c) For purposes of this Article 21, a lessor of residential real estate is treated as a separate  
18 person with respect to each individual building in which it leases residential real estate units,  
19 notwithstanding Section 6.2-15 of Article 6, as amended from time to time, or subsection (a) of this  
20 Section 2107. This subsection (c) applies only to leasing residential real estate units within a building,  
21 and not to any business activity related to other space, either within the same building or other  
22 buildings, which is not residential real estate. The Tax Collector is authorized to determine what  
23 constitutes a separate building and the number of units in a building.

24  
25 **SEC. 2108. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.**

1           The Tax Collector may, in his or her reasonable discretion, independently establish a person or  
2 combined group's gross receipts from the lease of Commercial Space in properties in the City and  
3 establish or reallocate gross receipts among related entities so as to fairly reflect the gross receipts from  
4 the lease of Commercial Space in properties in the City of all persons and combined groups.

5  
6           **SEC. 2109. CONSTRUCTION AND SCOPE OF THE EARLY CARE AND EDUCATION**  
7           **COMMERCIAL RENTS TAX ORDINANCE.**

8           (a) This Article 21 is intended to authorize application of the Early Care and Education  
9 Commercial Rents Tax in the broadest manner consistent with its provisions and with the California  
10 Constitution, the United States Constitution, and any other applicable provision of federal or state law.

11           (b) The Early Care and Education Commercial Rents Tax imposed by this Article 21 is in  
12 addition to all other City taxes, including the gross receipts tax imposed by Article 12-A-1 of the  
13 Business and Tax Regulations Code, as amended from time to time. Accordingly, by way of example  
14 and not limitation, persons subject to both the Early Care and Education Commercial Rents Tax and the  
15 gross receipts tax shall pay both taxes. Persons exempt from either the gross receipts tax or the Early  
16 Care and Education Commercial Rents Tax, but not both, shall pay the tax from which they are not  
17 exempt.

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19           **SEC. 2110. ADMINISTRATION OF THE EARLY CARE AND EDUCATION COMMERCIAL**  
20           **RENTS TAX ORDINANCE.**

21           Except as otherwise provided under this Article 21, the Early Care and Education Commercial  
22 Rents Tax Ordinance shall be administered pursuant to Article 6 of the Business and Tax Regulations  
23 Code, as amended from time to time.

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1 **SEC. 2111. DEPOSIT OF PROCEEDS.**

2 All monies collected under the Early Care and Education Commercial Rents Tax Ordinance  
3 shall be deposited to the credit of the Babies and Families First Fund, established in Administrative  
4 Code Section 10.100-36. The Fund shall be maintained separate and apart from all other City funds  
5 and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year  
6 shall be deemed to have been provided for a special purpose within the meaning of Charter Section  
7 9.113(a) and shall be carried forward and accumulated in the Fund for the purposes described in  
8 Section 2112(d) of this Article 21.

9  
10 **SEC. 2112. EXPENDITURE OF PROCEEDS**

11 Monies in the Babies and Families First Fund shall be used exclusively for the purposes  
12 specified in this Section 2112. Subject to the budgetary and fiscal provisions of the Charter, monies in  
13 the Fund shall be appropriated on an annual or supplemental basis and used exclusively for the  
14 following purposes:

15 (a) Up to 2% of the proceeds of the Early Care and Education Commercial Rents Tax,  
16 distributed in any proportion to the Tax Collector and other City departments, for administration of the  
17 Early Care and Education Commercial Rents Tax;

18 (b) Refunds of any overpayments of the Early Care and Education Commercial Rents Tax  
19 imposed by this Article 21;

20 (c) Fifteen percent of all amounts remaining after application of subsections (a) and (b) to the  
21 General Fund, to be expended for any purposes of the City; and

22 (d) All remaining amounts to funding, including administrative costs, Eligible Programs.

23 (1) "Eligible Programs" means:

24 (A) Support for quality early care and education for children under the age of six  
25 in San Francisco families at 85% or less of State Median Income (SMI);

1 (B) Support for quality early care and education for children under the age of  
2 four in San Francisco families earning up to 200% of the Area Median Income (AMI);

3 (C) Investment in comprehensive early care and education services that support  
4 the physical, emotional, and cognitive development of children under the age of six; and

5 (D) Increasing compensation (including but not limited to wages, benefits, and  
6 training) of care professionals and staff in order to improve the quality and availability of early care and  
7 education for children under the age of six.

8 (2) Monies in the Fund shall be allocated between the purposes set forth in subsections  
9 (d)(1)(A), (d)(1)(B), (d)(1)(C), and (d)(1)(D), as provided by the Board of Supervisors or OECE.

10 (e) Commencing with a report filed with the Board of Supervisors not later than January 1,  
11 2030, and every ten years thereafter, or as directed by the Board of Supervisors, OECE shall file a  
12 “needs assessment” containing recommendations for expenditures from the Fund for the following ten  
13 years to support quality early care and education for children under the age of six through the Eligible  
14 Programs.

15 (f) The intent of subsection (d) of this Section 2112 is to provide dedicated revenues to increase  
16 funding for quality early care and education for San Francisco children under the age of six. It is not  
17 intended to supplant existing funding. Therefore, except as otherwise specified in this Section 2112,  
18 revenues in the Fund may only be expended for the purposes specified in Section 2112(d) in years  
19 when the Controller certifies that appropriations contained in the adopted budget from other funding  
20 sources exceed those in a given year, as measured and adjusted by the Controller pursuant to  
21 subsections (g) and (h) of this Section 2112.

22 (g) Expenditures After Baseline Year. No monies in the Fund shall be expended pursuant to  
23 subsection (d) of this Section 2112 in any Fiscal Year in which the amount appropriated for Baseline  
24 Programs (not including appropriations from the Fund and exclusive of expenditures funded by private  
25 funding, development impact fees, or prior period balances, or funded or mandated by state or federal

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1 law) is below the Base Amount. All funds unexpended in accordance with the preceding sentence shall  
2 be held in the Fund and may be expended in any future Fiscal Year in which other expenditures from  
3 the Fund may be made. The Controller shall adjust the Base Amount for each Fiscal Year after the  
4 Baseline Year based on calculations consistent from Fiscal Year to Fiscal Year by the percentage  
5 increase or decrease in aggregate City discretionary revenues. In determining aggregate City  
6 discretionary revenues, the Controller shall include only revenues received by the City that are  
7 unrestricted and may be used at the option of the Mayor and the Board of Supervisors for any lawful  
8 City purpose. The method used by the Controller to determine discretionary revenues shall be  
9 consistent with the method used by the Controller to determine the Library and Children's Fund  
10 Baseline calculations, as provided in Charter Section 16.108(h). The change in aggregate discretionary  
11 revenues shall be adjusted following the end of the Fiscal Year when final revenues are known.

12 (h) Suspension of Growth in Base Amount. The City may suspend growth in the Base Amount  
13 pursuant to subsection (g) of this Section 2112 in Fiscal Year 2018-2019 if the City's projected budget  
14 deficit for that year at the time of the Joint Report or Update to the Five Year Financial Plan as  
15 prepared jointly by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget  
16 Analyst under Chapter 3, Section 3.6 of the Administrative Code, exceeds \$200 million. For Fiscal  
17 Year 2019-2020 and thereafter, the City may suspend growth in the Base Amount pursuant to  
18 subsection (g) of this Section 2112 in any year that the City's projected budget deficit for that year at  
19 the time of the Joint Report or Update to the Five Year Financial Plan as prepared jointly by the  
20 Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst under  
21 Chapter 3, Section 3.6 of the Administrative Code exceeds \$200 million adjusted annually by changes  
22 in aggregate City discretionary revenues as defined in subsection (g) of this Section 2112.

23 (i) Annual Reports. Commencing with a report filed no later than February 15, 2020, covering  
24 the Fiscal Year ending on June 30, 2019, the Controller shall file annually with the Board of  
25 Supervisors, by February 15 of each year, a report containing the amount of monies collected in and

1 expended from the Fund during the prior Fiscal Year, the status of all Eligible Programs, and such other  
2 information as the Controller, in the Controller's sole discretion, shall deem relevant to the operation of  
3 this Article 21.

4 (j) Administration of Fund. The Fund shall be maintained by the Controller's Office, which  
5 shall record all receipts and expenditures.

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7 **SEC. 2113. AMENDMENT OF ORDINANCE.**

8 The Board of Supervisors may amend or repeal this Article 21 by ordinance without a vote of  
9 the people except as limited by Articles XIII A and XIII C of the California Constitution.

10  
11 **SEC. 2114. EFFECT OF STATE AND FEDERAL AUTHORIZATION.**

12 To the extent that the City's authorization to impose or to collect any tax imposed under this  
13 Article 21 is expanded or limited as a result of changes in state or federal statutes, regulations, or other  
14 laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be  
15 required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with  
16 those changes, and the Tax Collector shall collect them to the full extent of the City's authorization up  
17 to the full amount and rate of the taxes imposed under this Article.

18  
19 **SEC. 2115. SEVERABILITY.**

20 (a) Except as provided in Section 2115(b), below, if any section, subsection, sentence, clause,  
21 phrase, or word of this Article 21, or the application thereof to any person or circumstance, is for any  
22 reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such  
23 decision shall not affect the validity of the remaining portions of this Article, including the application  
24 of such portions to other persons or circumstances. The People of the City and County of San  
25 Francisco hereby declare that, except as provided in Section 2115(b), they would have adopted each

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1 section, subsection, sentence, clause, phrase, and word of this Article not declared invalid or  
2 unconstitutional without regard to whether any other portion of this Article would be subsequently  
3 declared invalid or unconstitutional.

4 (b) If the imposition of the Early Care and Education Commercial Rents Tax in Section 2104 of  
5 this Article 21 is held in its entirety to be facially invalid or unconstitutional in a final court  
6 determination, the remainder of this Article 21 shall be void and of no force and effect, and the City  
7 Attorney shall cause it to be removed from the Business and Tax Regulations Code, and likewise cause  
8 Section 10.100-36 to be removed from the Administrative Code.

9  
10 **SEC. 2116. SAVINGS CLAUSE.**

11 No section, clause, part, or provision of this Article 21 shall be construed as requiring the  
12 payment of any tax that would be in violation of the Constitution or laws of the United States or of the  
13 Constitution or laws of the State of California.

14  
15 Section 3. The Administrative Code is hereby amended by adding Section 10.100-36, to read as  
16 follows:

17  
18 **SEC. 10.100-36. BABIES AND FAMILIES FIRST FUND.**

19 (a) Establishment of Fund. The Babies and Families First Fund (“Fund”) is established as a  
20 category four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all  
21 taxes, penalties, interest, and fees collected from the Early Care and Education Commercial Rents Tax  
22 imposed under Article 21 of the Business and Tax Regulations Code.

23 (b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the  
24 Fund shall be used exclusively for the purposes described in Section 2112 of Article 21 of the Business  
25 and Tax Regulations Code.

1 (c) The Controller shall report to the Board of Supervisors as required by subsection (i) of  
2 Section 2112 of the Business and Tax Regulations Code.

3  
4 Section 4. Appropriations Limit Increase. Pursuant to California Constitution Article XIII B  
5 and applicable laws, for four years from June 5, 2018, the appropriations limit for the City shall be  
6 increased by the aggregate sum collected by the levy of the tax imposed under this ordinance.

7  
8 Section 5. Effective and Operative Date. The effective date of this Initiative shall be ten days  
9 after the date the official vote count is declared by the Board of Supervisors. This Initiative shall  
10 become operative on January 1, 2019.

11  
12 Section 6. Conflicting Measures. In the event that another measure or measures on the same  
13 ballot seeks to affect the same subject matter as this Initiative, any provisions of the other measure or  
14 measures shall be deemed to be in conflict with this Initiative. In the event that this Initiative receives a  
15 greater number of affirmative votes, only this Initiative shall take effect and the provisions of the other  
16 measure or measures shall be null and void.

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