

**TOWN OF SAN ANSELMO MEASURE F**

**FULL TEXT OF MEASURE F  
EXHIBIT A**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE TOWN OF  
SAN ANSELMO ESTABLISHING A  
HOTEL USERS TAX**

<b>F</b> MEASURE F: Shall an ordinance be adopted establishing a uniform hotel users tax of 10% on hotel rooms in San Anselmo to be paid by hotel guests with the revenue to be used for Town general purposes, which if approved, shall be effective July 1, 2010?	<b>YES</b>
	<b>NO</b>

The Town Council of the Town of San Anselmo does hereby ordain as follows:

Chapter 7, Title 8, of the San Anselmo Municipal Code is hereby established as follows:

**§ 8-7.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**HOTEL.** Any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by hotel users for dwelling, lodging or sleeping purposes and includes any hotel, inn, bed and breakfast inn, tourist home or house, motel, mobile home or other lodging. HOTEL shall not include any structure, or any portion of any structure, exempted by the provisions of California Government Code Sections 7280 and 7281.

**HOTEL USER.** HOTEL USER means any person who exercises occupancy, or is entitled to occupancy, by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. Any such persons occupying space in a hotel shall be deemed to be a hotel user until the period of 30 days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a hotel user, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.

**OCCUPANCY.** The use or possession, or the right to the use or possession, of any room or rooms, or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

**OPERATOR.** The person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

**PERSON.** Any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other entity.

**RENT.** The consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and proper-

**TOWN ATTORNEY'S IMPARTIAL ANALYSIS  
OF MEASURE F**

If this measure is approved by the voters, beginning on July 1, 2010, a uniform hotel users tax of ten percent (10%) will be imposed on hotel rooms in San Anselmo to be paid by hotel users, with the revenue generated by the tax to be deposited into the Town general fund and to be used for the Town's general purposes.

The measure would establish a new ordinance at Chapter 7, Title 8 of the San Anselmo Municipal Code. The ordinance would define "hotel" as any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by hotel users for dwelling, lodging or sleeping purposes and would include any hotel, inn, bed and breakfast inn, tourist home or house, motel, mobile home or other lodging.

The ordinance would further define "hotel user" as any person who exercises occupancy in a "hotel," or is entitled to such occupancy, by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The ordinance would require that hotel users pay the 10 percent (10%) tax to the hotel operators, based on the rent charged for the hotel rooms. The operator would be required to collect the tax and to state the tax separately from the amount of rent charged.

Hotel operators would be required to file regular reports with the Town concerning the total rents charged and the total tax collected. The ordinance would include penalty provisions to be applied against any hotel operator who fails to collect, report, and remit the hotel users tax. Such hotel operator would be entitled to request a hearing before the Town Manager to contest the Town's proposed imposition of any tax or penalty.

A YES vote approves the measure.

A NO vote rejects the measure.

s/ROBERT F. EPSTEIN  
San Anselmo Town Attorney

ty and services of any kind or nature, without any deduction therefrom whatsoever.

#### **§ 8-7.02 TAX IMPOSED.**

(A) For the privilege of occupancy in any hotel, each hotel user is subject to, and shall pay, a tax equal to the following percentage of the rent charged by the operator: ten percent.

(B) (1) The tax constitutes a debt owed by the hotel user to the Town which is extinguished only by payment to the operator or to the Town. The hotel user shall pay the tax to the operator of the hotel at the time the rent is paid.

(2) If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the hotel user's ceasing to occupy space in the hotel.

(3) If, for any reason, the tax due is not paid to the operator of the hotel, the Town Manager may require that such tax shall be paid directly to the Town Manager.

#### **§ 8-7.03 EXEMPTIONS.**

In addition to the exemptions provided for in California Government Code Sections 7280 and 7281, no tax shall be imposed upon any person as to whom, or any occupancy as to which, it is beyond the power of the Town to impose the tax.

#### **§ 8-7.04 OPERATOR'S DUTIES.**

Each operator shall collect the tax imposed by this chapter to the same extent, and at the same time, as the rent is collected from every hotel user. The amount of tax shall be separately stated from the amount of the rent charged and each hotel user shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax, or any part thereof, will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded, except in the manner provided in this chapter.

#### **§ 8-7.05 REGISTRATION.**

(A) Within 30 days after the effective date of the ordinance codified in this chapter, or within 30 days after commencing business, whichever is later, the operator of any hotel renting occupancy to hotel users shall register the hotel with the Town and obtain from the Town a hotel users registration certificate to be at all times posted in a conspicuous place on the premises.

(B) The certificate shall, among other things, contain the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued; and

(4) The following statement: "This Hotel User's Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of Chapter 7, Title 8 of the San Anselmo Municipal Code by registering with the Town Manager for the purpose of collecting from hotel users the hotel users tax and remitting that tax to the Town Manager. This Certificate does not authorize any person to conduct any unlawful business or to conduct any

lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all applicable laws, including, but not limited to those requiring a permit from any board, commission, department or office of the Town of San Anselmo."

#### **§ 8-7.04 REPORTING AND REMITTING.**

(A) Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Town Manager, make a return to the Town Manager on forms provided by the Town of the total rents charged and received and the amount of tax collected for hotel user occupancies. The Town Manager may establish shorter reporting periods for any certificate holder, if necessary, in order to insure collection of the tax and the Town Manager may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason.

(B) All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the Town until payment thereof is made to the Town Manager.

#### **§ 8-7.05 GENERAL TAX.**

The tax imposed by this chapter shall be a general tax and not a special tax. The proceeds of the tax shall be deposited in the town's general fund and shall be available for all municipal purposes.

#### **§ 8-7.06 PENALTIES AND INTEREST.**

(A) Any operator who fails to remit any tax imposed by this chapter within the required time shall pay an initial penalty of ten percent of the amount of the tax in addition to the amount of the tax. Any operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and ten percent penalty first imposed.

(B) If the Town Manager determines that the non-payment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the foregoing penalties. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of 0.5 percent per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Every penalty imposed and the interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

#### **§ 8-7.07 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX.**

(A) If any operator fails or refuses to collect the tax and to make, within the time required, any report and remittance of the tax or any portion thereof, the Town Manager shall proceed in a manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Town Manager shall procure the facts and information as he or she is able to obtain upon which to base the assessment of any tax

imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make the report and remittance, the Town Manager shall proceed to determine and assess against the operator the tax, interest and penalties provided for in this chapter.

(B) In case of the determination, the Town Manager shall give notice of the amount so assessed by serving it personally or by depositing it in the U.S. mail, postage prepaid, addressed to the operator so assessed at his or her last known place of business.

(C) The operator may, within ten days after the serving or mailing of the notice, make application, in writing, to the Town Manager for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Town Manager shall become final and conclusive and shall be immediately due and payable. If such application is made, the Town Manager shall give not less than five days written notice, in the manner prescribed herein, to the operator to show cause, at a time; and place fixed in the notice, why the amount specified therein shall not be fixed for the tax, interest and penalties.

(D) At the hearing, the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed. After the hearing, the Town Manager shall determine the proper tax to be remitted and shall, thereafter, give written notice to the operator, in the manner prescribed in this section, of the determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable after 15 days.

**§ 8-7.08 RECORDS.**

It shall be the duty of every operator to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of the tax as the operator may have been liable for the collection of and payment to the town, which records the Town Manager shall have the right to inspect at all reasonable times.

**§ 8-7.09 REFUNDS.**

(A) Whenever the amount of any tax, interest or penalty has been overpaid, or paid more than once, or has been erroneously or illegally collected or received by the Town Manager under this chapter, it may be refunded as hereinafter set forth provided a claim therefor, in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Town Manager within 90 days of the date of payment. The claim shall be on forms furnished by the Town Manager.

(B) An operator may claim a refund, or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received, when it is established in a manner prescribed by the Town Manager that the person from whom the tax has been collected was not a hotel user. Neither a refund, nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the hotel user or credited to rent subsequently payable by the hotel user to the operator.

(C) A hotel user may obtain a refund of taxes over-

paid, or paid more than once, or erroneously or illegally collected or received by the town, by filing a claim in the manner hereinabove set forth, but only when the tax was paid by the hotel user directly to the Town Manager or when the hotel user, having paid the tax to the operator, establishes to the satisfaction of the Town Manager that the hotel user has been unable to obtain a refund from the operator who collected the tax.

(D) No refund shall be paid under the provisions of this section unless the claimant establishes the right thereto by written records showing entitlement thereto.

**§ 8-7.10 ACTIONS TO COLLECT.**

Any tax required to be paid under the provisions of this chapter shall be deemed a debt owed by the hotel user to the Town. Any such tax collected by an operator which has not been paid to the Town shall be deemed a debt owed by the operator to the Town. Any person owing money to the Town under the provisions of this chapter shall be liable to an action brought in the name of the Town for the recovery thereof.

The foregoing ordinance was introduced at a regular meeting of the San Anselmo Town council on the \_\_\_ day of \_\_\_\_\_, 2009, and was adopted at a regular meeting on the \_\_ of \_\_\_\_\_, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

s/PETER BREEN  
Mayor

ATTEST:

s/BARBARA CHAMBERS  
Town Clerk

## **ARGUMENT IN FAVOR OF MEASURE F**

Each year the Town loses over \$50,000 in uncollected hotel user's taxes. If San Anselmo had a hotel user tax, which would also include licensed bed and breakfast facilities, all of our residents would benefit. Like nearly every other city and town in the United States, San Anselmo would be better able to maintain and improve our library, our parks, our public safety, and our business improvement services if it had a broader range of revenue sources. This tax is NOT paid by the hotel. It is paid by the traveling guest. San Anselmo residents will greatly benefit in joining other Marin cities, towns, and the County in implementing a hotel user's tax. The tax would take effect in July of 2010. Vote YES on Measure F.

s/IAN ROTH

Former Town Council member

s/DOUGLAS T. KELLY

Vice Chair, San Anselmo Parks and Recreation  
Commission

s/MICHAEL REX

Architect

s/CAREY A. LANDO

Capital Programs Monitoring Committee member

s/ANN MURPHY

Communications Director

## **REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE F**

San Anselmo Town records show that there is only one licensed B&B facility in the town and that is the San Anselmo Inn. This small business is being singled out for a new tax. The tax is not in the interests of the residents and it is not in the interests of the town businesses. Few of the Inn guests are tourist travelers, but tourists will be driven towards cheaper accommodation elsewhere, which is not good for local stores and restaurants. Regular guests who are visiting with their local relatives, or doing business in town, will also be tempted to seek alternatives. It makes good economic sense to maintain the current costs of staying at the Inn.

Please vote NO on Measure F.

s/JULIE K. McNAIR

s/KAY COLEMAN

s/BETTINA ANNE KROOT

## ARGUMENT AGAINST MEASURE F

### Argument Against the Measure to Impose a Transient Occupancy Tax on the San Anselmo Inn

There is only one Hotel/Inn in San Anselmo: The San Anselmo Inn.

The town Council of San Anselmo is proposing a 10% tax on room revenue at the Inn and who will pay? All of us, including YOU. Our guests are your wedding guests, your proud new grandparents, your relatives and the friends who visit you. They will have the tax added to the cost of their rooms. We do not take in any significant number of travelers from the Hwy 101.

We will pay, because an additional 10% per night will reduce the number of our guests. Some people will not be able to afford the extra cost and will go to cheaper motels in San Rafael.

The businesses of San Anselmo will pay, because there will be fewer customers. Our guests eat at the local restaurants and they shop in the local stores, but the numbers of guests are likely to decrease. Ultimately the town will pay, because there will be a decrease in sales tax.

We are a small struggling business and as the only Inn in the town we feel singled out by this ill-conceived tax.

Over the years we have been a friend of the Town of San Anselmo. On many occasions, we have let the Town use our facilities free of charge. The Town Centennial, two years ago, was planned in our dining room over dozens of meetings, nothing was expected in return.

We will remain a good neighbor to the town, but we ask you to oppose the Town Council on this measure.

Vote **NO** on the TOT.

s/JULIE McNAIR

s/BETTINA ANNE KROOT

s/KAY COLEMAN

s/PAUL CHIGNELL

## REBUTTAL TO ARGUMENT AGAINST MEASURE F

Unfortunately, the authors of the argument against Measure F have not read the ballot measure. The measure is a "hotel user's tax" and the tax would apply to all licensed hotels, inns, and bed and breakfast facilities. This is a tax to be collected by each of these establishments, and will amount to an estimated \$50,000 each year.

No matter where you, your wedding guests, or your family travels outside San Anselmo, you pay a room tax. It is simply not fair to exempt out of town guests, forcing our hard pressed tax payers to make up for the lost revenue and the cost of town services (fire, medical, police, library and parks) used by these travelers. Non-collection of this tax also hurts every other small business in town as they have to make up the shortfall of the \$50,000 each year. That's not fair!

San Anselmo will retain 100 percent of every dollar of the tax collected . . . forever. Currently, San Anselmo gets to keep only one (1) penny of each dollar of the general sales tax of 9%. In order for these out of town guests to generate the \$50,000 collected from the hotel user's tax they would have to spend an incredible \$5,000,000 in taxable sales in our small shops and restaurants every year!

Join with us as we work to bring all our financial resources up to date. Vote **YES** on Measure F.

s/IAN ROTH

Former Town Councilmember

s/DOUGLAS T. KELLY

Vice-Chair San Anselmo Parks & Recreation  
Commission

s/MICHAEL REX

Architect & Resident

s/CAREY A. LANDO

Capital Programs Monitoring Committee member

s/ANN MURPHY

Communications Director