

ORDINANCE NO. 572

AN ORDINANCE OF THE CITY OF FOSTER CITY AMENDING TITLE 5, BUSINESS LICENSES AND REGULATIONS, OF THE FOSTER CITY MUNICIPAL CODE TO UPDATE THE CITY'S BUSINESS LICENSE TAX

CITY OF FOSTER CITY

(November 5, 2013 Ballot Measure)

IT IS SO ORDAINED by the City Council of the City of Foster City as follows:

**Section 1. Code Amendment.** Chapters 5.04, 5.08, 5.12, 5.16, 5.20, 5.24, 5.28, 5.32, 5.36, 5.40 of the Foster City Municipal Code are hereby amended to read as set forth in Exhibit A to this Ordinance.

**Section 2. General Tax.** The taxes imposed pursuant to Section 1 of this Ordinance are general taxes imposed for revenue purposes, shall be deposited in the City's general fund and may be expended for any lawful purpose of the City.

**Section 3. Further Amendments.** The provisions of this Ordinance may be repealed or amended by the City Council without a vote of the people except as follows: as required by Article XIII C of the State Constitution, any action that increases the rate or amount of a tax imposed by this Ordinance above the levels authorized by this Ordinance may not take effect unless approved by a vote of the people.

**Section 4. Authorization for City Clerk to Delete Obsolete Provisions.** The City Clerk is hereby authorized to conduct an annual review of Article 1 of Title 5 of the Foster City Municipal Code and delete provisions that have become inapplicable due to the passage of time.

**Section 5. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

**Section 6. Construction.** To the extent the provisions of Article 1 of Title 5 of the Foster City Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Article read prior to the adoption of this Ordinance, they shall be construed as continuations of the earlier provisions and not as new enactments.

**Section 7. Approval General Municipal Election; Effective Date.** The effective date for the purposes of updating the City's Business License Tax shall take effect on January 1, 2014.

**Section 8. Execution.** The Mayor is hereby authorized to subscribe this ordinance where indicated below to evidence its adoption by the voters of the City and upon that subscription, the City Clerk shall certify to the passage and adoption of this ordinance, enter it into the book of original ordinances, and shall cause the same within fifteen (15) days after its adoption, to be posted in three (3) public places designated by the City Council according to law.

This Ordinance was introduced and read on the 17<sup>th</sup> day of June, 2013, and passed and adopted on the 15<sup>th</sup> day of July, 2013, by the following vote:

AYES: Councilmembers Bronitsky, Kiesel, Okamoto, Perez and Mayor Frisella

NOES: None

ABSENT: None

ABSTAIN: None

  
PAM FRISELLA, MAYOR

ATTEST:

  
DORIS L. PALMER, CITY CLERK

HISTORY: This ordinance was approved by the voters of the City of Foster City at the General Municipal Election of November 5, 2013 by the following vote:

AYES: 3,077

NOES: 1,126

This ordinance became effective on December 12, 2013 (10 days after certification of the election results) pursuant to City Resolution No. 2013-101.

## I. BUSINESS LICENSES GENERALLY

### Chapter 5.04 GENERAL PROVISIONS

#### Sections:

<u>5.04.010</u>	Revenue measure.
<u>5.04.020</u>	Article not exclusive.
<u>5.04.030</u>	License—Requirement—Tax generally.
<u>5.04.040</u>	License—Separate for branch establishments.
<u>5.04.050</u>	Evidence of doing business.
<u>5.04.060</u>	Constitutional apportionment.
<u>5.04.070</u>	Exemptions.
<u>5.04.080</u>	Effect of article on past actions and unexpired licenses.

#### **5.04.010 Revenue measure.**

This article is enacted solely to raise revenue for municipal purposes and is not intended for regulation. (Ord. 45 § 1 (part), 1972: prior code § 4-102)

#### **5.04.020 Article not exclusive.**

Persons required to pay a license tax for transacting and carrying on any business under this article shall not be relieved from the payment of any license tax for the privilege of doing such business required under any other ordinance or provision of this code, and shall remain subject to the regulatory provisions of other ordinances and code provisions. (Ord. 45 § 1 (part), 1972: prior code § 4-103)

#### **5.04.030 License and tax requirements.**

A. There are imposed upon the businesses, trades, professions, callings and occupations specified in this article license taxes in the amounts hereinafter prescribed. It is unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the city without first procuring a license from the city so to do and paying the tax hereinafter prescribed or without complying with any and all applicable provisions of this article.

B. This section shall not be construed to require any person to obtain a license prior to doing business within the city if such requirement conflicts with applicable statutes of the United States or of the State of California. Persons not so required to obtain a license prior to doing business within the city nevertheless shall be liable for payment of the tax imposed by this article. (Ord. 45 § 1 (part), 1972: prior code § 4-104)

#### **5.04.040 License—Separate for branch establishments or multiple legal entities.**

A separate license must be obtained for each legal entity, branch establishment or location of the business transacted and carried on and for each separate type of business at the same location. Each license shall authorize the

licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in such license. Warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this article shall not be deemed separate places of business or branch establishments. Any person conducting multiple businesses, but for which those businesses use a single set or integrated set of books and records, shall pay only one tax calculated on all gross receipts of the businesses. The number of separate legal entities conducting business in the same location but using separate sets for books and records for which business license taxes must be paid is limited as specified in Section 5.24.020. (Ord. 45 § 1 (part), 1972: prior code § 4-105)

**5.04.050 Evidence of doing business.**

When any person, by use of signs, circulars, cards, telephone books or newspapers, advertises, holds out or represents that he is conducting business in the city, or when any person holds an active license or permit issued by a governmental agency indicating that he is conducting business in the city, and such person fails to deny by a sworn statement given to the collector that he is not conducting a business in the city, after being requested to do so by the collector, then these facts shall be considered prima facie evidence that he is conducting a business in the city. (Ord. 45 § 1 (part), 1972: prior code § 4-106)

**5.04.060 Constitutional apportionment.**

A. **No Undue Burden** - None of the license taxes provided for by this article shall be so applied as to occasion an undue burden upon interstate commerce or to violate the equal protection and due process clauses of the Constitutions of the United States and the State of California.

B. **Apportionment Appeal Rights** - In any case where a license tax is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce or to violate constitutional nexus requirements or other applicable law, the licensee or applicant may apply to the collector for an adjustment of the tax. Such application may be made before, at or within six months after payment of the prescribed license tax. The applicant shall, by sworn statement and supporting testimony, show the method of business and the gross volume or estimated gross volume of business and such other information as the collector may deem necessary to determine the extent, if any, of such undue burden or violation. The collector shall then conduct an investigation, and, upon the written approval of the city attorney, shall fix as the license tax for the applicant in an amount that is reasonable and nondiscriminatory, or, if the license tax has already been paid, shall order a refund of the amount over and above the license tax so fixed. In fixing the license tax to be charged, the collector shall have the power to base the license tax upon a percentage of gross receipts or any other measure which will ensure that the license tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the license tax as prescribed by this article. Should the collector determine the gross receipts measure of license tax to be the proper basis, he may require the applicant to submit, either at the time of termination of

applicant's business in the city or at the end of each three-month period, a sworn statement of the gross receipts and pay the amount of license tax therefor, provided that no additional license tax during any one calendar year shall be required after the licensee has paid an amount equal to the annual license tax as prescribed in this article. (Ord. 45 § 1 (part), 1972: prior code § 4-107)

#### **5.04.070 Exemptions.**

A. **Exemptions as Matter of Law** - Nothing in this article shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or of the State of California from the payment of such taxes as are prescribed in this article.

B. **Charitable (Non-Profit) Organizations** - No business license tax imposed under this article shall be deemed or construed to apply to any person transacting and carrying on any business, which business is conducted, managed or carried on wholly as an organization exempt from federal income taxes as defined under Section 501© of the Unites States Internal Revenue Code.

C. **Farmers Markets** – Nothing in this article shall be deemed or construed to apply to any person transacting and carrying on any business, which businesses in conducted, managed or carried on exclusively in participation with a Farmers Market approved by the City, whether held on public or private property.

D. **Claiming an Exemption** - Any person claiming an exemption pursuant to this section shall file a sworn statement with the collector stating the facts upon which exemption is claimed, and in the absence of such statement substantiating the claim, such person shall be liable for the payment of the taxes imposed by this article. Businesses claiming an exemption under Subpart B of this section shall be required to provide a copy of the Internal Revenue Service determination letter or similar document that certifies the exempt status granted under Section 501(c) of the Internal Revenue Code.

E. **Non-Fee License Issuance** - The collector shall, upon a proper showing contained in the sworn statement, issue a license to such person claiming exemption under this section without payment to the city of the business license tax required by this article.

F. **Revocation of Exemption** - The collector, after giving notice and a reasonable opportunity for hearing to a licensee, may revoke any license granted pursuant to the provisions of this section upon information that the licensee is not entitled to the exemption as provided in this section. (Ord. 45 § 1 (part), 1972: prior code § 4-108)

#### **5.04.080 Effect of article on past actions and unexpired licenses.**

A. Neither the adoption of the ordinance codified in this article nor its superseding of any portion of any other ordinance of the city shall in any manner be construed to affect prosecution for violation of any other ordinance committed prior to the effective date of the ordinance codified herein, nor be construed to waive any tax or license requirement or any penal provision applicable to any

such violation, nor be construed to affect the validity of any bond or cash deposit required by any ordinance to be posted, filed or deposited, and all rights and obligations pertaining there to shall continue in full force and effect.

B. Where a license for revenue purposes has been issued to any person by the city and the tax paid for the business for which the license has been issued under the provisions of any ordinance heretofore enacted and the term of such license has not expired, then the license tax prescribed for the business by this article shall not be payable until the expiration of the term of such unexpired license. (Ord. 45 § 1 (part), 1972: prior code § 4-131)

## **Chapter 5.08 DEFINITIONS**

### Sections:

<u>5.08.010</u>	Business.
<u>5.08.020</u>	City.
<u>5.08.030</u>	Collector.
<u>5.08.040</u>	General contractor.
<u>5.08.050</u>	Gross receipts.
<u>5.08.060</u>	Person.
<u>5.08.070</u>	Sale.
<u>5.08.075</u>	Same location.
<u>5.08.080</u>	Solicitor.
<u>5.08.090</u>	Specialty contractor.
<u>5.08.100</u>	Sworn statement.

#### **5.08.010 Business.**

As used in this article, "business" includes professions, trades and occupations and all and every kind of calling whether or not carried on for profit. (Ord. 45 § 1 (part), 1972: prior code § 4-101(c))

#### **5.08.020 City.**

As used in this article, "city" means the city of Foster City, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form. (Ord. 45 § 1 (part), 1972: prior code § 4-101(b))

#### **5.08.030 Collector.**

As used in this article, "collector" means the city officer charged with administration of this article. (Ord. 45 § 1 (part), 1972: prior code § 4-101(g))

#### **5.08.040 General contractor.**

As used in this article, "general contractor" means (A) a general engineering contractor, or (B) a general building contractor, as those terms are defined in Sections 7056 and 7057, respectively, of the Business and Professions Code of the state as they now exist or may hereafter be amended. (Ord. 45 § 1 (part), 1972: prior code § 4-101(h))

**5.08.050 Gross receipts.**

As used in this article, "gross receipts" includes the total actually received or receivable from sales of goods, materials, wares or merchandise, and the total actually received or receivable for the performance of any act or service, of whatever nature, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise. Included in "gross receipts" shall be all receipts, cash, credits, investment income, rental income, and proceeds from the sale of property of any kind or nature, without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. The following are excluded from "gross receipts":

- A. Cash discounts allowed and taken on sales;
- B. Credit allowed on property accepted as part of a purchase price and which property may later be sold;
- C. Any tax required by law to be and is included in or added to the purchase price and collected from the consumer or purchaser;
- D. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;
- E. Amounts collected for others as an agent or trustee to the extent such amounts are paid to those for whom collected, provided the agent or trustee has furnished the collector with the names and addresses of the others and the amounts paid to them;
- F. That portion of the receipts of a business related to sales of goods or services to the City of Foster City;
- G. That portion of the receipts of a general contractor which represents payments to subcontractors, provided that such subcontractors are licensed under this article and provided the general contractor furnishes the collector with the names and addresses of the subcontractors and the amounts paid each;
- H. Receipts of refundable deposits, except that refundable deposits forfeited and taken into income shall not be excluded;
- I. As to a real estate agent or broker, the sales price of real estate sold for the account of others except that portion which represents commission or other income to the agent or broker;

**5.08.060 Person.**

As used in this article, "person" includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts, business or common law trusts, societies and individuals transacting and carrying on any business in the city, other than as an employee. (Ord. 45 § 1 (part), 1972: prior code § 4-101(a))

**5.08.070 Sale.**

As used in this article, "sale" includes the transfer, in any manner or by any means, of title to property for consideration; the serving, supplying or furnishing for consideration of any property; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment

of the price. The foregoing definitions shall not exclude any transaction which is or which, in effect, results in a sale within the contemplation of law. (Ord. 45 § 1 (part), 1972: prior code § 4-101(e))

**5.08.075 Same location.**

As used in this article, "same location" means the same physical address as recognized by the United States Postal Office, property parcel as recognized by the San Mateo County Assessor's Office, or development area as evidenced by a development agreement with the city then currently in effect.

**5.08.080 Solicitor.**

As used in this article, "solicitor" means one who engages in the business of going from house to house, place to place or in or along the streets within the city, selling or taking orders for, or offering to sell or take orders for, goods, wares, merchandise or other things of value for future delivery, or for services to be performed in the future. (Ord. 45 § 1 (part), 1972: prior code § 4-101(j))

**5.08.090 Specialty contractor.**

As used in this article, a "specialty contractor" is as defined in Section 7058 of the Business and Professions Code of the state as it now exists or may hereafter be amended. (Ord. 45 § 1 (part), 1972: prior code § 4-101(i))

**5.08.100 Sworn statement.**

As used in this article, "sworn statement" means an affidavit sworn before a person authorized to take oaths, or a declaration or certification made under penalty of perjury. (Ord. 45 § 1 (part), 1972: prior code § 4-101(f))

**Chapter 5.12  
LICENSES**

Sections:

<u>5.12.010</u>	Application—Issuance—Contents.
<u>5.12.030</u>	Application—First license—Contents.
<u>5.12.040</u>	Gross receipts estimate.
<u>5.12.050</u>	Sworn statement and tax payment prerequisite to issuance.
<u>5.12.060</u>	Renewal license.
<u>5.12.070</u>	License transferability.
<u>5.12.080</u>	Duplicate license.
<u>5.12.090</u>	Posting and keeping licenses.

**5.12.010 Application—Issuance—Contents.**

Every person required to have a license under the provisions of this article shall apply to the collector for a license as prescribed below. Upon payment of the prescribed license tax, the collector shall issue that person a license which shall contain the following information:

- A. The name of the person to whom the license is issued;
- B. The business licensed;

- C. The place where such business is to be carried on;
- D. The expiration date of such license; and
- E. Such other information as may be necessary for the enforcement of this article. (Ord. 45 § 1 (part), 1972: prior code § 4-109.010)

**5.12.030 Application—First license—Contents.**

Upon application for the first license under this article or for a newly established business, the applicant shall furnish a sworn statement, upon a form provided by the collector, setting forth the following information:

- A. The exact nature or kind of business for which a license is requested;
- B. The place where such business is to be carried on, and if the same is not to be carried on at any permanent place of business, the places of residences of the owners of same;
- C. If application is made for a license to a person doing business under a fictitious name, the application shall set forth the names and places of residences of those owning the business;
- D. In the event an application is for issuance of a license to a corporation or a partnership, the application shall set forth the names and places of residences of the officers or partners thereof;
- E. If the amount of license tax to be paid is measured by gross receipts, the application shall set forth such information the collector determines necessary to determine the amount of the license tax to be paid;
- F. Any further information which the collector may require to enforce this article. (Ord. 45 § 1 (part), 1972: prior code § 4-110.010)

**5.12.040 Gross receipts estimate.**

If the amount of the license tax to be paid by a person applying for the first license under this article or for a newly established business is measured by gross receipts, the applicant shall estimate the gross receipts for the period to be covered by the license. Such estimate, if the collector accepts it as reasonable, shall be used in determining the amount of license tax to be paid; provided, however, the amount so determined shall be tentative only and such person shall, within thirty days after the expiration of the period for which such license was issued, furnish the collector with a sworn statement, upon a form furnished by the collector, showing the gross receipts during the period of such license, and the license tax for such period shall be finally ascertained and paid as provided by this article for the ascertaining and paying of renewal license taxes for other businesses, after deducting from the payment due the amount paid when the first license was issued. (Ord. 45 § 1 (part), 1972: prior code § 4-110.020)

**5.12.050 Sworn statement and tax payment prerequisite to renewal.**

The collector shall not renew a license to any person or issue him or her another license for the same or any other business until such person has furnished the sworn statement and paid the license tax required by this article. (Ord. 45 § 1 (part), 1972: prior code § 4-110.030)

**5.12.060 Renewal license.**

An applicant for renewal of a license shall submit to the collector, for guidance in ascertaining the license tax to be paid, a sworn statement, upon a form to be provided by the collector, setting forth such information concerning the applicant's business during the preceding year as may be required by the collector to ascertain the license tax to be paid pursuant to this article. (Ord. 45 § 1 (part), 1972: prior code § 4-111)

**5.12.070 License transferability.**

No license issued pursuant to this article shall be transferable; provided, that where a license is issued authorizing a person to transact and carry on a business at a particular place, such licensee may, upon application therefor and payment of the fee established under the City's master fees and charges schedule in effect at the time of filing, have the license amended to authorize the transacting and carrying on of such business under the license at some other location; provided further that transfer, whether by sale or otherwise, to another person under such circumstances that the real or ultimate ownership after the transfer is substantially similar to the ownership existing before the transfer shall not be prohibited by this section. For the purpose of this section, stockholders, bondholders, partnerships or other persons holding an interest in a legal entity are regarded as having the real or ultimate ownership of such entity. (Ord. 45 § 1 (part), 1972: prior code § 4-117)

**5.12.080 Duplicate license.**

The collector may issue a duplicate license to replace any license that has been lost or destroyed upon the licensee filing a statement of such fact and paying a duplicate license fee established under the City's master fees and charges schedule in effect at the time of filing. (Ord. 45 § 1 (part), 1972: prior code § 4-118)

**5.12.090 Posting and keeping licenses.**

A. Any licensee transacting and carrying on business at a fixed place of business in the city shall keep the license posted in a conspicuous place upon the premises where such business is carried on.

B. Any licensee transacting and carrying on business but not operating at a fixed place of business in the city shall keep the license upon his or her person when transacting and carrying on the business for which it is issued.

**Chapter 5.16  
STATEMENTS AND RECORDS**

Sections:

- 5.16.010 Statement—Limitations—Verification.
- 5.16.020 Records—Requirements.
- 5.16.030 Information confidential.
- 5.16.040 Failure to file statement or corrected statement.
- 5.16.050 Additional power of collector.

**5.16.010 Statement—Limitations— Verification.**

No statements shall be conclusive as to the matters set forth therein, nor shall its filing preclude the city from collecting by appropriate action such sum as is actually due and payable under this article. Such statement shall be subject to audit and verification by the collector, his or her deputies, authorized employees or agents of the city, who are authorized to examine, audit and inspect such books and records of any licensee or applicant for license, as may be necessary in their judgment to verify or ascertain the license fee due. (Ord. 45 § 1 (part), 1972: prior code § 4-112.010)

**5.16.020 Records—Requirements.**

All persons subject to this article shall keep complete records of business transactions, including sales, receipts, purchases and other expenditures, and shall retain all such records for examination by the collector for at least three years. Alternatively, persons may maintain copies of their annual federal income tax returns in lieu of maintaining the aforementioned records No such person shall refuse to allow authorized representatives of the collector to examine the records at reasonable times and places. (Ord. 45 § 1 (part), 1972: prior code § 4-112.020)

**5.16.030 Information confidential.**

It is unlawful for the collector or any employee or agent of the city person to make known in any manner whatsoever the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a license or to pay a license tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof, to be seen or examined by any person; provided that nothing in this section shall be construed to prevent:

A. The disclosure to, or the examination of records and equipment by, another city official, employee or agent for collection of taxes for the sole purpose of administering or enforcing this article or collecting taxes imposed under it;

B. The disclosure of information to, or the examination of records by, federal or state officials, or the tax officials of another public agency, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;

C. The disclosure of information and results of examination of records of particular taxpayers, or relating to particular taxpayers, to a court of law in a proceeding brought to determine the existence or amount of any license tax liability to the city of those taxpayers;

D. The disclosure, after the filing of a written request to that effect, to the taxpayer, or to the taxpayer's successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the city attorney approves each such disclosure and that the collector may

refuse to make any disclosure referred to in this subsection when in his or her opinion the public interest would suffer thereby;

E. The disclosure of the names and business addresses of persons to whom licenses have been issued, and the general type or nature of their business;

F. The disclosure by way of public meeting or otherwise of such information as may be necessary to permit the decision maker to be fully advised as to the facts when a taxpayer files a claim for refund of license taxes, or submits an offer of compromise with regard to a claim asserted against him by the city for license taxes, or when acting upon any other matter;

G. The disclosure of general statistics regarding taxes collected or business done in the city.

H. Any other disclosure required by applicable law. (Ord. 45 § 1 (part), 1972: prior code § 4-113)

#### **5.16.040 Failure to file statement or corrected statement.**

A. If any person fails to timely file any required statement, or if after demand therefor made by the collector any person fails to timely file a corrected statement, or if any person subject to the tax imposed by this article fails to apply for a license, the collector may determine the amount of license tax due using such information as is available to the collector.

B. If the collector is not satisfied with information supplied in statements or applications filed, he or she may determine any license tax due using such information as is available to the collector.

C. If the collector makes such a determination, he or she shall give a notice of the amount assessed by serving it personally or by depositing it with the United States Postal Service or any other carrier or delivery service offering prompt delivery, addressed to the person so assessed at his or her last-known address. Such person may, within fifteen days after the mailing or serving of such notice, apply in writing to the collector for a hearing. If such application is made, the collector shall set the matter for hearing within fifteen days. The collector shall give at least ten days' notice to such person of the time and place of hearing in the manner prescribed above for serving notices of assessment. The city manager or a hearing officer designated by the city manager shall consider all evidence produced and shall make findings thereon, which shall be final as to the city, but subject to judicial review pursuant to Code of Civil Procedure section 1094.5. Notice of such findings shall be served upon the applicant in the manner prescribed above for serving notices of assessment. (Ord. 45 § 1 (part), 1972: prior code § 4-114)

#### **5.16.050 Additional power of collector.**

In addition to all other power conferred upon him, the collector shall have the power, for good cause shown, to extend the time for filing any required sworn statement or application for up to thirty days, and in such case to waive any penalty that would otherwise have accrued, except that six percent (6%) simple interest shall be added to any tax determined to be payable. (Ord. 45 § 1 (part), 1972: prior code § 4-116)

**Chapter 5.20**  
**LICENSE TAX PAYMENT—PENALTIES— REFUNDS**

Sections:

- 5.20.010 How and when payable.
- 5.20.020 Delinquency—Penalty.
- 5.20.030 Delinquency—Issuance prohibited.
- 5.20.040 Delinquency—Installment payment agreement.
- 5.20.050 Refunds of overpayments.

**5.20.010 How and when payable.**

A. Unless otherwise specifically provided in this article, all annual license taxes shall be due and payable in advance on the first day of January of each year based on gross receipts during the prior calendar year ending December 31; provided that license taxes covering new operations commenced thereafter may be prorated for the balance of the license period based upon an estimate of the anticipated gross receipts for that year.

B. Except as otherwise herein provided, license taxes, other than annual, required under this article shall be due and payable as follows: Flat-rate license taxes are payable in advance of the first day of business and thereafter on the first day of any applicable period.

**5.20.020 Delinquency—Penalty.**

For failure to pay a license tax when due, the collector shall add a penalty of ten percent (10%) of the license tax at 5:00 p.m. on the sixtieth (60<sup>th</sup>) day after the due date thereof, and an additional ten percent (10%) at 5:00 p.m. on the last day of each month thereafter. The amount of such cumulative penalty to be added shall in no event exceed one hundred percent (100%) of the license tax due. (Ord. 45 § 1 (part), 1972: prior code § 4-121.010)

**5.20.030 Delinquency issuance prohibited.**

No license or shall be issued, nor one which has been suspended or revoked shall be reinstated or reissued, to any person who, at the time of applying therefor, is indebted to the city for any delinquent license taxes, unless such person, with the consent of the collector, enters into a written agreement with the city, through the collector, to pay such delinquent taxes, plus ten percent (10%) annual interest upon the unpaid balance, in monthly installments, or more often, extending over a period of up to a year. (Ord. 45 § 1 (part), 1974: prior code § 4-121.020)

**5.20.040 Delinquency—Installment payment agreement.**

In any agreement entered into under Section 5.20.030, the licensee shall acknowledge the obligation owed to the city and agree that, in the event of failure to timely pay any installment, the whole amount unpaid shall become immediately due and payable and that the current license shall be revocable by the collector upon thirty days' notice. In the event legal action is brought by the city to collect any amount included in the agreement, such person shall pay all

costs of suit incurred by the city or its assignee, including a reasonable attorney's fee. The execution of such an agreement shall not prevent the prior accrual of penalties on unpaid balances at the rate provided in this article, but no penalties shall accrue on account of taxes included in the agreement after the execution of the agreement and the payment of the first installment and during such time as such person is not in breach of the agreement. (Ord. 45 § 1 (part), 1972: prior code § 4-121.030)

**5.20.050 Refunds of overpayments.**

No refund of an overpayment of taxes imposed by this article shall be allowed in whole or in part unless a claim for refund is filed with the collector within a period of one year from the last day of the calendar month following the period for which the overpayment was made, and all such claims for refund of the amount of the overpayment must be filed with the collector on forms furnished by him or her and in the manner prescribed by him or her. Upon the filing of such a claim and a determination that an overpayment has been made, the collector may refund the amount overpaid. (Ord. 45 § 1 (part), 1972: prior code § 4-122)

**Chapter 5.24  
GROSS RECEIPTS TAX**

Sections:

5.24.010 Rates.

5.24.020 Tax limit on number of multiple corporate entities.

**5.24.010 Rates.**

Every person who engages in business at a fixed place of business within the city shall pay a license tax of seventy-five cents per one thousand dollars (or 0.075%) of gross receipts or part thereof subject to the following:

A. **Minimum Tax** – the minimum tax shall be as follows:

Effective Date	General Contractor	Specialty Contractor	Solicitor	All Other Businesses
January 1, 2014	\$100	\$50	\$50	\$50
January 1, 2015	\$150	\$75	\$75	\$75
January 1, 2016 and thereafter	\$200	\$100	\$100	\$100

B. **Gross Receipts Limit** – the limit upon which the license tax shall be computed will be as follows:

1. Effective January 1, 2014, taxable gross receipts shall be limited to ten million dollars (\$10,000,000)
2. Effective January 1, 2015, taxable gross receipts shall be limited to twenty million dollars (\$20,000,000)
3. Effective January 1, 2016, taxable gross receipts shall be limited to thirty million dollars (\$30,000,000)
4. Effective January 1, 2017, and every January 1 thereafter, the taxable gross receipts limit shall be adjusted by the percentage

change in the Consumer Price Index (All Urban Consumers) issued by the Bureau of Labor Statistics of the United States Department of Labor for the San Francisco-Oakland-San Jose, California area (or any successor to that index) for the month of October immediately preceding, rounded to the nearest ten thousand dollars (\$10,000).

**5.24.020 Tax limit on number of multiple corporate entities.**

Subject to the provisions of section 5.04.040, the gross receipts of separate legal entities conducting business at the same location that use separate books and records, other than those entities which are considered investment funds or trusts established for the sole purpose of providing investment instruments to investors, shall be reported on a form required by the collector, and the computation of the license taxes payable under section 5.24.010 shall be computed based on the three legal entities with the largest reported gross receipts.

**Chapter 5.32  
DELIVERY AND OUTSIDE BUSINESS**

Sections:

- |                 |                      |
|-----------------|----------------------|
| <u>5.32.010</u> | Delivery by vehicle. |
| <u>5.32.020</u> | Outside businesses.  |

**5.32.010 Delivery by vehicle.**

Every person not having a fixed place of business within the city, and not being otherwise licensed or classified in this article, who delivers goods, wares or merchandise of any kind by vehicle, or who provides any service by the use of vehicles in the city, shall pay a license tax equivalent to the minimum tax specified in section 5.24.010.

**5.32.020 Outside businesses.**

Every person not having a fixed place of business within the city who engages in business within the city and is not subject to the provisions of section 5.32.010 shall pay a license tax at the rate prescribed in this article for persons engaged in the same type of business and having a fixed place of business within the city. (Ord. 45 § 1 (part), 1972: prior code § 4-126)

**Chapter 5.36  
APPEAL**

Sections:

- |                 |         |
|-----------------|---------|
| <u>5.36.010</u> | Appeal. |
|-----------------|---------|

**5.36.010 Appeal.**

Any person aggrieved by any final decision of the collector with respect to the issuance or refusal to issue a business license, the classification of a business,

or any other matter under this article may appeal by submitting a letter and the basis upon which an appeal should be granted with the city clerk. The city manager or a hearing officer designated by the city manager shall thereupon fix a time and place for hearing such appeal. The city clerk shall give notice to such person of the time and place of hearing in the manner specified in section 5.16.040(C) of this article. The city manager or hearing officer shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this article or other applicable law. The written decision of the city manager or hearing officer shall be final as to the City and subject to judicial review pursuant to Code of Civil Procedure section 1094.5. (Ord. 45 § 1 (part), 1972: prior code § 4-115)

### **Chapter 5.40 ENFORCEMENT**

**Sections:**

<u>5.40.010</u>	Rules and regulations.
<u>5.40.020</u>	Enforcement officials.
<u>5.40.030</u>	Business premises—Inspection authorization.
<u>5.40.040</u>	Business premises—Inspection entry right.
<u>5.40.050</u>	License tax a debt.
<u>5.40.060</u>	Remedies cumulative.

**5.40.010 Rules and regulations.**

The collector may make rules and regulations not inconsistent with the provisions of this article as may be necessary or desirable to aid in the enforcement of the provisions of this article. He or she shall give notice of those rules in the manner required by law for publication of ordinances. (Ord. 45 § 1 (part), 1972: prior code § 4-127)

**5.40.020 Enforcement officials.**

The collector shall enforce this article, and the chief of police shall render such assistance in the enforcement of this article as may be required by the collector or the city manager or a hearing officer. (Ord. 45 § 1 (part), 1972: prior code § 4-128.010)

**5.40.030 Business premises—Inspection authorization.**

The collector, in the exercise of the duties imposed upon him or her under this article and acting through his deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the city to ensure compliance with this article. (Ord. 45 § 1 (part), 1972: prior code § 4-128.020)

**5.40.040 Business premises—Inspection entry right.**

The collector and his assistants and any police or code enforcement officer of the city shall have the power and authority (upon obtaining an inspection warrant therefor if required by law) to enter, free of charge and at any reasonable time, any place of business required to be licensed under this article, and demand an

exhibition of the license. Any licensee who willfully fails to exhibit the same on demand is guilty of a misdemeanor punishable pursuant to chapter 1.08 of this code and subject to the penalties provided by this article. (Ord. 45 § 1 (part), 1972: prior code § 4-128.030)

**5.40.050 License tax a debt.**

The amount of any license tax and penalty imposed by the provisions of this article shall be deemed a debt to the city. An action may be commenced in the name of the city, in any court of competent jurisdiction, for the amount of any delinquent license tax and penalties. (Ord. 45 § 1 (part), 1972: prior code § 4-129)

**5.40.060 Remedies cumulative.**

All remedies prescribed under this article shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy to enforce this article. (Ord. 45 § 1 (part), 1972: prior code § 4-130)