



City Clerk

## CITY OF SAN JOSÉ, CALIFORNIA

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STATE OF CALIFORNIA)  
COUNTY OF SANTA CLARA)  
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 2016.2 – Tax Modernization Ordinance**", a true and correct copy of which is attached hereto, was proposed by initiative petition, and approved on the **13<sup>th</sup> day of December, 2016** by a majority vote of the electorate.

The San José City Council unanimously adopted **Resolution No. 78011** declaring the results of the Special Municipal Election held in the City of San José on **Tuesday, November 8, 2016. Pursuant to the Ordinance, the effective date shall be July 1, 2017**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **6<sup>th</sup> day of January, 2017.**

(SEAL)

TONI J. TABER, CMC  
CITY CLERK & EX-OFFICIO  
CLERK OF THE CITY COUNCIL

/rmk

**ORDINANCE NO. 2016.2**  
**Business Tax Modernization**

**NOW THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE CITY OF SAN JOSE:**

Chapter 4.76 of Title 4 of the San José Municipal Code is hereby amended and restated in its entirety to be numbered, entitled, and to read as follows:

**CHAPTER 4.76**  
**BUSINESS TAX**

**Part 1**

**PURPOSE AND DEFINITIONS**

**4.76.010 Purpose**

This Chapter is enacted solely to raise revenue for municipal purposes and is not intended for regulation.

**4.76.020 Definitions Generally**

For the purpose of this Chapter, certain words and phrases are defined and certain provisions shall be construed as set forth in this Part 1, unless it shall be apparent from their context that a different meaning is intended.

**4.76.030 Average Number of Employees - Defined - Computation**

- A. "Average number of employees" means the average number of employees employed in the City in applicant's business in the one (1) year immediately

preceding the commencement of the year for which the business tax certificate is being issued, and shall be determined as follows:

1. By ascertaining the total number of hours of service performed in the City by all employees in the applicant's business during the preceding year and dividing the total number of hours of service thus obtained by the number of hours of service constituting a day's work according to the laws, custom or usage governing or pertaining to such employment, and the number thus obtained shall then be divided by the number of business days in the preceding year; or
2. At the option of the applicant, if the applicant files with the State Department of Employment the forms and reports hereinafter mentioned, and if the applicant reports therein all applicant's employees as defined in this Chapter, the applicant may calculate the average number of employees by taking the number of employees employed in applicant's business in the City in each month of the preceding year as shown and reported on all DE3 forms, and by dividing the sum thus obtained by twelve (12). The DE3 and other forms hereinabove referred to are those certain forms entitled "DE3 Contribution Return and Report of Wages Under the Unemployment Insurance Code," which employers are required to file with the State Department of Employment, under the Unemployment Insurance Code of the state for the purpose of reporting contributions due under such Code, and any other form or forms now or hereafter required by the State for such purposes.

B. In computing the average number of employees, fractions of numbers of one-half (1/2) and greater shall be rounded up to the next whole number.

**4.76.040 Average Number of Employees - For New Business - Defined - Computation**

- A. The provisions of Section 4.76.030 to the contrary notwithstanding, in the case of a new business, "average number of employees," as used in this Chapter, means the average number of employees employed in the City in the applicant's business in the period of time for which the business tax certificate is being issued, and shall be determined as follows: The applicant, if all or part of the tax imposed on the business is based on the average number of employees in such business, shall file with the Director, with the application for a business tax certificate under the provisions of this Chapter, a written statement, on forms furnished by the Director, setting forth the estimate of the average number of employees which the applicant intends or expects will be employed in the City in applicant's business in the period of time for which the business tax certificate is to be issued. Any tax imposed hereunder on such business, based upon the average number of employees in such business, shall thereupon be calculated upon the basis of the estimate, and applicant shall thereupon pay such tax based upon such estimate.
- B. At the end of the period for which the business tax certificate has been issued, the applicant shall file with the Director a written statement showing the actual average number of employees employed in the City in applicant's business during such period, computed in accordance with Section 4.76.030 above. If the tax based on the actual average number of persons employed in such period exceeds the tax based on the number estimated at the time the business tax certificate was issued, the applicant shall thereupon pay the difference to the Director.

If the tax based on the actual average number of persons employed in such period is less than the tax based on the number estimated at the time the

business tax certificate was issued, the applicant shall be credited by the City a sum equal to the difference.

**4.76.050 Business**

The term "business" shall include all activities engaged in or caused to be engaged in within this City including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood including rental or lease of residential or nonresidential real estate and mobilehome parks, or independent contractors, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his employer.

**4.76.052 Business Tax Certificate**

"Business tax certificate" or "certificate" means the certificate issued by the City to the taxpayer upon completion of the business tax application and payment of the tax prescribed by this Chapter, or the certificate issued by the Director pursuant to Section 4.76.610 upon a determination by the Director that an applicant for an exemption from payment of the business tax under the provisions of this Chapter is exempt.

**4.76.055 Calendar Quarter**

"Calendar quarter" means any of the four (4) three (3)-month periods of the calendar year commencing on January 1st, April 1st, July 1st, and October 1st.

**4.76.056 CPI Index**

"CPI Index" means the Consumer Price Index – All Urban Consumers for All Items (with a base period of 1982-1984=100) for the San Francisco-Oakland-San José Area published by the United States Department of Labor, Bureau of Labor Statistics.

**4.76.057 Day**

"Day" means calendar day unless otherwise specified.

**4.76.058 Director**

"Director" means the Director of the Finance Department of the City.

**4.76.060 Employee**

"Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission or room and board.

**4.76.070 Engaged in Business**

"Engaged in business" means the commencing, conducting, operating, managing or carrying on of a business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, servant or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities.

**4.76.075 Evidence of Doing Business**

Whenever any person by use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, represents that such person is engaged in business in the City, then these facts may be used as evidence that such person is doing business in the City.

**4.76.095 Business Tax**

"Business tax," or "tax" means the tax due for engaging in business in San José.

**4.76.098 NAICS Code**

"NAICS Code" means the numerical classification for business activities established in the North American Industry Classification System.

**4.76.100 New Business**

"New business" means a business in existence and operation for ninety (90) days or less.

**4.76.105 Online Filing System**

"Online Filing System" means an internet based system as an optional method for the filing of an application for a business tax certificate and making payment of the business tax, including any interest and penalties, required to be paid pursuant to this Chapter.

**4.76.110 Person**

"Person" means any domestic or foreign corporation, firm, association, syndicate, joint-stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society, individual, estate, business trust, receiver, retirement plan, trustee, or any other group or combination acting as a unit.

**4.76.115 Small Business**

"Small business" means a business owned and operated by a single natural person or owned and operated jointly by married spouses or domestic partners, without other principals or employees. For purposes of this Chapter, "domestic partners" means two (2) individuals who have a current declaration of domestic partnership on file with the California Secretary of State pursuant to the Domestic Partner Registration Act, California Family Code Section 297, et. seq., as may be amended, identifying themselves as each other's domestic partner. A "small business" does not include a corporation, partnership, or association unless the single business operator or married spouses or domestic partners are the only employees of the corporation, partnership, or association.

**4.76.120 Small Business Owner**

"Small business owner" means a single natural person who owns and operates a small business or owns and operates a small business with his or her spouse or domestic partner, as applicable.

## Part 2

## GENERAL TAX PROVISIONS

**4.76.160 Other Licenses, Permits, Taxes, Fees or Charges Authorized When**

Nothing contained in this Chapter 4.76 shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit required by, under or by virtue of any provision of any other Title or Chapter of this Code or any other ordinance or resolution of the City or of its Council, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other Title or Chapter of this Code or any other ordinance or resolution of the City or of its Council.



**4.76.170 Business Tax Certificate – Required**

- A. There are hereby imposed upon all persons engaged in business in the City business taxes in the amounts hereinafter in this Chapter prescribed. It shall be unlawful for any person to commence, transact or carry on any business in the City not excluded by this Chapter without first having procured a business tax certificate from the City to do so, or without complying with any and all provisions contained in this Chapter. The carrying on of any business without complying with any and all provisions of this Chapter shall constitute a separate violation of this Chapter for each and every day that such business is so carried on.
  
- B. The business tax certificate required to be obtained and the business tax required to be paid are declared to be required pursuant to the taxing power of the City solely for the purpose of obtaining revenue and are not regulatory permit fees.

**4.76.180 Payment of Tax Does Not Authorize Unlawful Business**

- A. The payment of a business tax required by this Chapter, and its acceptance by the City, and the issuance of a certificate to any person evidencing payment of the business tax shall not entitle any person to carry on any business unless the person has complied with all of the requirements of this Code and all other applicable laws, nor to carry on any business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such business is in violation of any law.
  
- B. No business tax certificate issued under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any ordinance of the City.

**4.76.190 Application - Form and Contents**

Every person required to have a business tax certificate under the provisions of this Chapter shall make application for the same, or for renewal of the same, to the Director. Such application shall be a written statement upon a form or forms provided by the Director and shall be signed by the applicant under penalty of perjury. The application shall set forth such information as may be therein required and as may be reasonably necessary to properly determine the amount of the tax to be paid by the applicant, together with such other information as is required by the Director to enable the Director to administer the provisions of this Chapter.

**4.76.200 Application - Information Not Conclusive - Confidentiality**

- A. No application shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the City from collecting by appropriate action such tax as is actually due and payable under this Chapter. Each application, and all statements and information therein contained, shall be subject to review, audit and verification by the Director, his or her deputies, or other authorized employees of the City. All persons engaged in business in the City are hereby required to permit examination of their books, records and papers for the purposes set forth in this Chapter.
- B. The information or data obtained from such examination or audit, or from any application required hereunder, shall be deemed to be confidential, subject to the exceptions set forth in this Section. The foregoing information is referred to as business tax records.
- C. Publicly available information that is required to be included in the business tax application or is specified in the business tax application, including without limitation, the name, address, business tax account number, NAICS Code and any other business classifications as the Director deems appropriate for the

identification and tracking of the business, and the administration of this Chapter, are subject to disclosure.

- D. The provisions of this Section shall not be construed to prevent the disclosure of business tax records by a City official, employee or agent for the purpose of administering or enforcing any provisions of this Chapter.
- E. The provisions of this Section shall not be construed to prevent the disclosure of business tax records to, or the examination of business tax records by, federal or state tax officials, or the tax officials of another city or county or city and county if a reciprocal arrangement exists for the exchange of tax information in order to assist the City with the enforcement of this Chapter.
- F. The provisions of this Section shall not be construed to prevent the disclosure of business tax records in response to a subpoena or a court order.

**4.76.220 Business Tax Certificate - For Multiple Businesses at One Location**

If a person engages in two (2) or more separate businesses at the same establishment or location, there shall be a separate business tax certificate issued for each business. Separate business operations are further defined as involving two (2) or more separate and distinct business entities or names wherein separate sets of accounting records, bank accounts, and the like are maintained.

**4.76.225 Business Tax Certificate - For the Same Business at Multiple Locations**

Notwithstanding any language in this Chapter to the contrary, each branch establishment or location at or from which a person carries on the same business shall not be deemed a separate business, but all such branches and locations shall be treated as one (1) business.

**4.76.230 Business Tax Certificate for Concession-Basis Businesses**

Every person operating any business, whether upon a cost, rental or commission basis as a concession or upon rented floor space in or upon the premises of any other person engaged in business under any provision of this Chapter, shall be required to pay the tax and obtain a separate and independent business tax certificate pursuant to the appropriate provisions hereof, and shall be subject to all the provisions of this Chapter.

**4.76.240 Annual Certificate - Term**

- A. Any certificate evidencing payment of the business tax which is payable on an annual basis shall become valid on the date on which the City receives payment in full of the tax and, if applicable, interest and penalties. Regardless of the date of payment of the business tax, the certificate evidencing payment of the business tax by a new business shall be dated as of the date on which the business commenced and the certificate evidencing the annual payment of the business tax shall be dated as of the due date for payment of the business tax.
- B. The certificate issued on an annual basis shall remain valid until the due date for the annual payment of the business tax as specified in Section 4.76.270.

**4.76.270 Payment - Time Limits**

All business taxes imposed by this Chapter shall be due and payable as follows:

- A. Business taxes paid on an annual basis shall be paid in advance. Business taxes shall become due and payable on the following dates:
  - 1. Subject to the provisions of Section 4.76.290, the first business tax payment is due and payable on the first date on which the person engaged in business in the City; and

2. Each business tax payment thereafter is due and payable annually on the fifteenth (15th) day of the calendar month during which the person first engaged in business in the City.
- B. Notwithstanding Subsection A.2., for those business tax accounts that were assigned to make the annual payment of the business tax during a calendar quarter that was not the calendar quarter in which the business tax was first due to the City, the business taxpayers shall make their annual payment of the business tax on the fifteenth (15th) day of the first month of the calendar quarter in which they have been making payment of the business tax, as determined by the Director.
  - C. The due date for business taxes that are paid on a monthly basis shall be the last day of the month immediately following the month for which the tax is payable.
  - D. In the case of a business that is discontinued, dissolved or otherwise terminated before the expiration of a business tax period, the due date for any taxes accrued and owing to the City under the provisions of this Chapter, including any business taxes that would not otherwise be paid until the close of the business tax period during which termination occurs or would not otherwise be paid until the time of paying the tax for the next succeeding business tax period, shall be the date of termination of the business.

**4.76.270.5 Extension of Payment Date - City Office Closure**

- A. In any year that the City offices are closed, by action of the City Council, during the period of December 24 through January 1, the taxes imposed under this Chapter shall be due as follows:

1. Business taxes which are paid on an annual basis, pursuant to Section 4.76.270.A., which would be due on the first day of the year, shall be deemed timely if payment is made on or before seven (7) days after the due date.
2. Business taxes which are paid on a monthly basis, pursuant to Section 4.76.270.C., which would be due on December 31, shall be deemed timely if payment is made on or before seven (7) days after the due date.

**4.76.275 Payments and Communications Made by Mail - Proof of Timely Submittal**

- A. Whenever any payment, statement, report, request or other communication received by the Director is received after the time prescribed by this Chapter for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed prior to the time prescribed in this Chapter for the receipt thereof, or whenever the Director is furnished substantial proof that the payment, statement, report, request or other communication was in fact deposited in the United States mail prior to the time prescribed for receipt thereof, the Director may regard such payment, statement, report, request or other communication as having been timely received.
- B. If the due day falls on Saturday, Sunday or a holiday, the due day shall be the next regular business day on which the City Hall is open to the public.

**4.76.280 Payment - When Taxes Deemed Delinquent**

Unless otherwise specifically provided under other provisions of this Chapter, all business taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not paid on or before the due date specified in Section 4.76.270.

**4.76.281 Notice Not Required by City**

The Director is not required to send a renewal, delinquency or other notice or bill to any person subject to the provisions of this Chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

**4.76.282 Statement for Renewal of Business Tax**

Every person subject to a business tax shall, before the business tax becomes delinquent, file with the Director such information as required by the Director to enable the Director to administer the provisions of this Chapter and shall pay at such time the amount of the tax computed thereon.

**4.76.290 Payment - Penalty for Delinquency; and 90-day Grace Period for New Businesses**

- A. Any person who fails or refuses to pay any business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:
1. A penalty equal to twenty-five percent (25%) of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the City Council; and
  2. An additional penalty equal to twenty-five percent (25%) of the amount of the tax if the tax remains unpaid for a period exceeding thirty (30) days beyond the due date, plus interest on the unpaid tax and interest on the unpaid penalties calculated at the rate established by resolution of the City Council.

- B. Notwithstanding Subsection A., if the first time the business tax is due the taxpayer pays the tax in full within ninety (90) days of the due date, the City shall waive all penalties and interest accruing to the date of payment. This waiver only applies to the first time that the business tax is due for a new business.
- C. Any person engaged in the business of operating a solid waste disposal facility who fails to pay any business tax required to be paid under Section 4.76.490 on or before the due date shall pay penalties and interest equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, if payment is received by the Director within one (1) business day of the due date. Thereafter, penalties and interest shall accrue at the rates provided in Subsection A., above.
- D. Whenever a check is submitted in payment of a business tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this Section plus any amount allowed under state law.
- E. Except for new businesses that qualify under Subsection B., if any person has failed to apply for and secure a valid business tax certificate, the business tax due shall be that amount due and payable from the first date on which the person was engaged in business in the City, together with applicable penalties and interest calculated in accordance with Subsection A., above.

**4.76.295 Waiver of Penalties**

The Director may waive the first and second penalties of twenty-five percent (25%) each imposed upon any person if:



- A. The person provides evidence satisfactory to the Director that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the City prior to applying to the Director for a waiver.
- B. The waiver provisions specified in this Subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four (24) month period.

**4.76.300 Business Tax Certificate Not Transferable - Amended Business Tax Certificate for Changed Location - Change of Business Name**

- A. Business tax certificates issued pursuant to this Chapter are not transferable or assignable to any other person, nor shall any tax paid by any person under the provisions of this Chapter be applied in whole or in part to the payment of any tax due or to become due from any other person.
- B. Every person issued a business tax certificate shall apply to the Director for the issuance of an amended business tax certificate prior to changing the location of the principal place of business, business name, or business mailing address specified in the business tax certificate. Issuance of an amended business tax certificate shall be subject to the payment of the application fee specified in the schedule of fees and charges established by resolution of the City Council.
- C. It shall be unlawful for any person to sell, give or otherwise transfer to another person, or allow any other person to use or display, damage or remove, or to possess, except as authorized by this Chapter, any business tax certificate issued to another person.

- D. The transfer of the stock or assets of any business which results in a change in the control of the business shall constitute a change of ownership.

**4.76.310 Business Tax Certificate - Posting or Carrying Required**

Every person issued a business tax certificate under the provisions of this Chapter for engaging in business at a fixed place of business shall keep such business tax certificate posted for exhibition, while in force, in some conspicuous place and in plain public view in the place of business. Every person having such a business tax certificate and not having a fixed place of business shall carry such business tax certificate at all times while carrying on the business for which the same was issued. Every person having a business tax certificate shall produce and exhibit the same whenever requested to do so by any police officer or any person authorized to issue or inspect business tax certificates or collect business taxes under the provisions of this Chapter.

**4.76.320 Vehicle Identification Stickers**

- A. The Director may require any person who uses vehicles in the conduct of business to display prominently within such vehicle a sticker, device, sign or business tax certificate or facsimile which shall have printed thereon the words "San José, California," or any abbreviation thereof, together with the current term of the business tax certificate, and shall be in such form and color and contain such other information as the Director shall determine.
- B. No person to whom a vehicle identification tag has been issued shall give away, sell or transfer any such identification tag or permit its use by any other person.

**4.76.330 Duplicate Certificates**

Duplicate certificates may be issued by the Director to replace any business tax certificate previously issued which has been lost or destroyed upon the filing of an affidavit attesting to such fact, and at the time of filing such affidavit paying to the Director a fee as set forth in the schedule of fees and charges established by resolution of the City Council.

**4.76.335 Refunds - Credits**

- A. No refund shall be made of any tax collected pursuant to this Chapter except as provided in Section 4.76.340.
- B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution or other termination of a business.
- C. Any person entitled to a refund of taxes paid pursuant to this Chapter may elect in writing to have such refund applied as a credit against such person's business taxes for the next succeeding calendar year.

**4.76.340 Refunds and Procedures**

- A. Whenever the amount of any business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Director, and the provisions of Chapter 4.82 are satisfied.
- B. The Director or the Director's authorized agent shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund

shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the Director to do so.

- C. In the event that the business tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain the amount set forth in the schedule of fees and charges established by resolution of the City Council from the amount to be refunded to cover processing expenses.
  
- D. The Director shall initiate a refund of any business tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a City audit of business tax receipts. In the event that the business tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain the amount set forth in Subsection C., above from the amount to be refunded to cover processing expenses.
  
- E. Under any of the following circumstances, no refund shall be made pursuant to this Section unless and until the claimant surrenders to the Director the business tax certificate evidencing payment of the tax for which refund is sought:
  - 1. Where the tax was paid for a new business but the new business did not become operational within sixty (60) days of the payment of the tax.
  
  - 2. Where the tax was paid to renew a business tax certificate for a business not in existence at the time the tax was paid.
  
  - 3. Where a business tax certificate was issued for a business for which another business tax certificate had been issued for the same time period.

**4.76.345 Financial Hardship Exemption for Low Revenue Generating Small Businesses**

- A. A small business owner shall be exempt from the payment of any business tax imposed under the provisions of this Chapter where the gross receipts of the small business do not exceed the poverty level for the calendar year in which the business tax is due, and the small business owner satisfies each of the requirements set forth in Subsection C., below.
- B. For the purposes of this Section:
1. The term "poverty level" means the income amount established by the U.S. Department of Health and Human Services as the poverty guideline for a single person multiplied by two (2) for the calendar year in which the business tax is due. In the event the U.S. Department of Health and Human Services discontinues publication of poverty guidelines, the Director shall use as a reference poverty population statistics published by either the State or a federal department or agency that the Director determines to be comparable in assessing the eligibility for the exemption under this Section.
  2. The term "gross receipts" means gross receipts as defined by the Internal Revenue Code of the United States and the regulations established therewith.
- C. A small business owner is eligible for an exemption in accordance with the provisions of Subsection A., provided that:
1. The exemption request is filed with the Director on or before the date the business tax is due; and

2. The exemption request is made upon a form provided therefor by the Director, stating under penalty of perjury that it is anticipated that the gross receipts of the small business will be at or below the poverty level for the calendar year in which the business tax is due.
- D. The Director shall have the right to examine and audit all the books and records of the small business owner, including state and federal income tax returns or other documentation of gross receipts of the small business deemed adequate by the Director, in order to determine the eligibility of the small business owner for the exemption. If the Director determines that the small business owner was not entitled to an exemption previously issued, then the business tax for such calendar year shall be due within thirty (30) days of notification by the City. If the business tax is not paid on or before the thirtieth day, penalties and interest shall accrue pursuant to Section 4.76.290.
  - E. No exemption shall be allowed if the small business owner refuses to allow examination of his or her books and records, including either state or federal income tax returns or other documentation of gross receipts of the small business deemed adequate by the Director, after requested by the Director to do so.
  - F. Any decision of the Director made under this Section shall be final.

**4.76.345.5 Financial Hardship Exemption for Small Business Owners with Limited Household Incomes**

- A. A small business owner shall be exempt from the payment of any business tax imposed under the provisions of this Chapter where the adjusted gross income of the small business owner and the small business owner's spouse or domestic partner, as applicable, added together do not exceed the poverty level for the

calendar year in which the business tax is due, and the small business owner satisfies each of the requirements set forth in Subsection C., below.

B. For the purposes of this Section:

1. The term "poverty level" means the income amount established by the U.S. Department of Health and Human Services as the poverty guideline for a single person multiplied by four (4) for the calendar year in which the business tax is due. In the event the U.S. Department of Health and Human Services discontinues publication of poverty guidelines, the Director shall use as a reference poverty population statistics published by either the State or a federal department or agency that the Director determines to be comparable in assessing the eligibility for the exemption under this Section.
2. The term "adjusted gross income" means adjusted gross income as defined by the Internal Revenue Code of the United States and the regulations established therewith.

C. A small business owner is eligible for an exemption in accordance with the provisions of Subsection A., provided that:

1. The exemption request is filed with the Director on or before the date the business tax is due; and
2. The exemption request is made upon a form provided therefor by the Director, stating under penalty of perjury that it is anticipated that the adjusted gross income of the small business owner and his or her spouse or domestic partner, as applicable, added together will be at or below the poverty level for the calendar year in which the business tax is due.

- D. The Director shall have the right to examine and audit all the books and records of the small business owner, including state and federal income tax returns or other documentation of adjusted gross income deemed adequate by the Director, in order to determine the eligibility of the small business owner for the exemption. If the Director determines that the small business owner was not entitled to an exemption previously issued, then the business tax for such calendar year shall be due within thirty (30) days of notification by the City. If the business tax is not paid on or before the thirtieth day, penalties and interest shall accrue pursuant to Section 4.76.290.
  
- E. No exemption shall be allowed if the small business owner refuses to allow examination of his or her books and records, including either state or federal income tax returns or other documentation of adjusted gross income deemed adequate by the Director, after requested by the Director to do so.
  
- F. Any decision of the Director made under this Section shall be final.

Part 3

TAXES ON AVERAGE NUMBER OF EMPLOYEES BASIS

**4.76.350 Businesses Taxed**

Every person engaged in business in the City shall pay a business tax as calculated in this Part based on the average number of employees, unless the basis of the tax is otherwise prescribed in Section 4.76.355 or in Part 4 of this Chapter or the business is exempted from the tax as prescribed in Part 5 of this Chapter.

**4.76.355 Suspension of the Business Tax for Certain Real Estate Agents**

- A. For the purposes of this Section, the following terms have these meanings:



1. "Real estate agent" or "agent" means a salesperson or broker-associate who places his or her real estate license issued by the State Department of Real Estate with a real estate broker.
  2. "Real estate broker" or "broker" means the holder of a real estate broker's license issued by the State Department of Real Estate who owns or legally controls a real estate brokerage business and who does not place his or her broker's license with another person or entity as a prerequisite to brokering the purchase or sale of real estate.
- B. The collection of the business tax imposed under Section 4.76.170 shall be suspended with respect to the business of any real estate agent who meets all of the following requirements:
1. Is engaged in any business activity in the City for which a real estate license issued by the State Department of Real Estate is required by law, including, but not limited to, brokering the purchase, sale or lease of real estate, engaging in property management, and originating real estate loans;
  2. Is identified by name as an employee of a real estate broker for the broker's business tax assessment which first becomes due concurrently with, or within 364 days after, the agent's business tax first becomes due, on an agent listing form submitted to the Director; and
  3. Is counted as an employee in the calculation of the amount of business tax owing by that real estate broker for that business tax assessment.
- C. A real estate broker wishing to count real estate agents as employees for the purpose of assessing and calculating the business tax shall submit such information as the Director finds reasonably necessary to determine whether a

suspension of the business tax under this Section is warranted, including but not limited to the name of the real estate agents, on an agent listing form provided by the Director, together with the broker's application for business tax certificate or renewal.

- D. Notwithstanding Sections 4.76.030 and 4.76.040, each agent listed on the agent listing form submitted by a broker shall be deemed to be an employee of that broker for the broker's business tax assessment in question for the purpose of calculating the amount of business tax owing by the broker under Section 4.76.360, regardless of the number of days or hours actually worked by the listed agent.
- E. The amount of business tax payable by a broker who submits an agent listing form shall be calculated by adding the number of real estate agents identified by name on the agent listing form to the average number of employees of the broker who are not real estate agents. The sum shall be the basis for calculating the broker's business tax.
- F. No broker is required to submit an agent listing form; however, every real estate agent shall be liable for payment of the agent's own business tax unless the agent is, in fact, an employee and not in business as an individual or has been listed on an agent listing form by a broker who has paid a business tax which included the listed agent.
- G. Nothing herein shall be construed as creating an exemption from or suspension of collection of the business tax for real estate brokers.
- H. Nothing herein shall be construed as preventing a real estate agent who is not listed on an agent listing form from providing the Director with evidence that the agent is, in fact, an employee of the broker and, therefore, is not liable for payment of the business tax.

- I. The designation of a real estate agent as an employee for the purposes of this Section shall not be determinative of employment status for other purposes under this Code or any other law.
- J. The decision of the Director as to whether a business tax shall be suspended under this Section shall be final.

**4.76.360 Businesses Taxed - Amount - Effective Dates**

From and after July 1, 2017, every person engaged in business in the City, whether or not at a fixed place of business in the City, shall annually pay to the Director the following prescribed tax:

- A. A minimum business tax of one hundred ninety-five dollars (\$195.00) per year, plus an additional per employee tax per year in the amounts set forth below in Subsection B., based on the average number of employees over two (2), not to exceed a maximum of one hundred fifty thousand dollars (\$150,000.00) per year, subject to annual adjustments set forth in Section 4.76.365.
- B. The per employee tax shall be as follows:

Average Number of Employees	Tax per employee
1-2	\$ 0
3-35	\$30
36-100	\$40
101-500	\$50
501+	\$60

**4.76.365 CPI Adjustments**

The minimum business tax of one hundred ninety-five dollars (\$195.00), the additional tax based on the number of employees over two (2), and the cap referenced in Section 4.76.360 above, shall each be adjusted annually, commencing July 1, 2018, and every year thereafter, if the cost of living in the City has increased over the preceding base period as shown by the CPI Index, but in no event shall the adjustment exceed three percent (3%) per year on the tax based on the number of employees, three percent (3%) per year on the cap, and one and one-half percent (1.5%) per year on the minimum business tax. For purposes of this Section, the base period for the first adjustment period commencing on July 1, 2018 shall be the CPI Index reported for February 2017 to February 2018. The base period for each subsequent adjustment period thereafter shall be February to February. In the event the CPI Index is no longer published, the Director shall use as a reference another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City.

**Part 4****TAXES ON BASIS OTHER THAN AVERAGE NUMBER OF EMPLOYEES****4.76.400 Rental or Lease of Residential and Nonresidential Real Estate and Mobilehome Parks**

Every person in the City engaged in the business of renting or leasing any residential or nonresidential real estate or mobilehome parks shall pay a business tax based on the number of rental units, square footage of space, or lots held for rental as described in this Part; provided, however, that if such person is engaged in a single business operation involving a single business entity or name wherein a single set of accounting records, bank accounts, and the like are maintained, owes a business tax calculated

pursuant to both Part 3 and Part 4, the amount of the business tax paid to the City shall be the greater of the two calculations.

**4.76.410 Rental or Lease of Residential Real Estate - Defined**

- A. As used in this Chapter, residential real estate shall be defined as rooms, apartments, single-family houses, units of any duplex, triplex or other multifamily dwellings, or other accommodations such as, but not limited to, hotels, motels, roominghouses, boardinghouses, lodginghouses, house courts or bungalow courts used primarily for the purpose of human dwelling, sleeping or lodging.
- B. As used in this Chapter, the business of rental or lease of residential real estate shall be defined as every person engaged in the business of renting or leasing residential real estate as a lessor or sublessor in the City.
- C. As used in this Chapter, "rental unit" means a room, or two (2) or more rooms, designed or used as a separate housing accommodation for dwelling, sleeping or lodging purposes for one (1) person or for two (2) or more persons living together.

**4.76.420 Rental or Lease of Nonresidential Real Estate - Defined**

- A. As used in this Chapter, nonresidential real estate shall be defined as any commercial or industrial real estate, buildings or structures including, but not limited to, real estate used for warehousing, storage, or parking lots.
- B. As used in this Chapter, the business of rental or lease of nonresidential real estate shall be defined as every person engaged in the business of renting or leasing nonresidential real estate as a lessor or sublessor in the City.

- C. As used in this Chapter, "square foot" or "square feet" shall be defined as the area measured in square feet of all nonresidential buildings and structures including each and every floor, mezzanine, basement, cellar or subterranean levels and all land used for parking to the extent that charges are levied for such parking.

**4.76.430 Rental or Lease of Mobilehome Parks - Defined**

- A. As used in this Chapter, a mobilehome park shall be defined as any mobilehome park, trailer park, travel trailer park, trailer court, recreational trailer park, incidental camping areas and tent camps or any combination thereof.
- B. As used in this Chapter, the business of rental or lease of mobilehome parks shall be defined as every person engaged in the business of renting or leasing a mobilehome park as a lessor or sublessor in the City.
- C. As used in this Chapter, "lot" shall mean the area designated for placement of a mobilehome, trailer, recreational vehicle or tent.

**4.76.440 Business Taxes - Amount - Effective Dates**

- A. Beginning on July 1, 2017, every person engaged in the business of renting or leasing residential real estate, nonresidential real estate, or mobile home parks within the City shall annually pay to the Director the following prescribed tax:
  - 1. Businesses in categories classified in Section 4.76.410 (Rental or Lease of Residential Real Estate): a minimum business tax of one hundred ninety-five dollars (\$195.00) per year plus an additional per rental unit tax per year in the amounts set forth below over two (2) rental units, not to exceed a maximum of one hundred fifty thousand dollars (\$150,000.00) per year, subject to annual adjustments set forth in Section 4.76.450.

Number of Rental Units (Residential)	Tax per Rental Unit
1-2	\$ 0
3-35	\$10
36-100	\$15
101-500	\$20
501+	\$25

2. Businesses in categories classified in Section 4.76.420 (Rental or Lease of Nonresidential Real Estate): a minimum business tax of one hundred ninety-five dollars (\$195.00) per year plus an additional per rental unit tax per year in the amount of 2.5 cents (\$0.025) per square foot, not to exceed one hundred fifty thousand dollars (\$150,000.00) per year, subject to annual adjustments set forth in Section 4.76.450.
  
3. Businesses in categories classified in Section 4.76.430 (Rental or Lease of Mobilehome Parks): a minimum business tax of one hundred ninety-five dollars (\$195.00) per year plus an additional per rental lot tax per year in the amount of ten dollars (\$10.00) per rental lot over two (2) lots, not to exceed a maximum of one hundred fifty thousand dollars (\$150,000.00) per year, subject to annual adjustments set forth in Section 4.76.450.

Number of Lots (Mobilehome Parks)	Tax per Lot
1-2	\$ 0
3 or more	\$10

**4.76.450 CPI Adjustments**

The minimum business tax, the additional tax based on the number of rental units, lots, square feet, and the cap referenced in Section 4.76.440 above, shall each be adjusted annually, commencing July 1, 2018, and every year thereafter, if the cost of living in the

City has increased over the preceding base period as shown by the CPI Index, but in no event shall the adjustment exceed three percent (3%) per year on the tax based on the number of rental units, lots, and square feet, and three percent (3%) per year on the cap, and one and one-half percent (1.5%) per year on the minimum business tax. For purposes of this Section, the base period for the first adjustment period commencing on July 1, 2018 shall be the CPI Index reported for February 2017 to February 2018. The base period for each subsequent adjustment period thereafter shall be February to February. In the event the CPI Index is no longer published, the Director shall use as a reference another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City.

#### **4.76.460 Rental or Lease of Real Property to Exempt Organizations, Businesses or Entities**

The rental or lease of real property to governmental entities or any other businesses or organizations listed in Part 5 of this Chapter shall be considered a business for purposes of this Chapter.

#### **4.76.470 Real Property - Description Requirements**

Each person who is liable for a business tax pursuant to this Chapter shall file with the business tax application a separate list of real estate owned, leased or rented in the City by street address and by County Assessor parcel number for each lot or space held for rental or lease and a complete list of lessees or sublessees for each property.

#### **4.76.480 Water Companies**

Every person engaged in the business of a public water utility in the City shall pay a minimum business tax of one hundred ninety-five dollars (\$195.00) per year plus an additional tax based upon the number of active metered connections within the City, at



the rate of one dollar (\$1.00) per connection per year, not to exceed a maximum of one hundred fifty thousand dollars (\$150,000.00) per year, subject to annual adjustments set forth in Section 4.76.485.

#### **4.76.485 CPI Adjustments**

The minimum business tax, the per connection tax, and the cap referenced in Section 4.76.480 above, shall each be adjusted annually, commencing July 1, 2018, and every year thereafter, if the cost of living in the City has increased over the preceding base period as shown by the CPI Index, but in no event shall the adjustment exceed three percent (3%) per year on the tax based on the number of active metered connections, and three percent (3%) per year on the cap, and one and one-half percent (1.5%) per year on the minimum business tax. For purposes of this Section, the base period for the first adjustment period commencing on July 1, 2018 shall be the CPI Index reported for February 2017 to February 2018. The base period for each subsequent adjustment period thereafter shall be February to February. In the event the CPI Index is no longer published, the Director shall use as a reference another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City.

#### **4.76.490 Solid Waste Disposal Facilities**

- A. For the purposes of this Section, "solid waste disposal facility" means any facility or location where disposal of solid waste occurs. "Solid waste disposal facility" does not include a facility utilized to receive solid wastes for the purpose of recycling, separation or other processing of the materials in the solid wastes, or for the purpose of transferring the solid wastes directly from smaller to larger vehicles for transport, where the permanent disposal of solid wastes on the site does not occur.

- B. For the purposes of this Section, "Solid Waste Facilities Permit" means a permit issued for the operation of a solid waste facility pursuant to California Government Code Section 66796.30 et seq.
  
- C. For the purposes of this Section, solid waste disposal facilities shall be categorized as follows:
  - 1. Category A solid waste disposal facility is a facility which, pursuant to its Solid Waste Facilities Permit, is permitted to accept garbage, as defined in Chapter 9.08 of this Code, for disposal on site.
  - 2. Category B solid waste disposal facility is a facility which, pursuant to its Solid Waste Facilities Permit, is permitted to accept only nonhazardous solid wastes, other than garbage, for disposal on site.
  
- D. Beginning July 1, 1989, every person engaged in the business of operating a solid waste disposal facility shall pay a monthly business tax as follows:
  - 1. For operators of Category A solid waste disposal facilities, the tax rate shall be three dollars (\$3.00) per ton of solid waste accepted at the facility site during the month for which the tax is paid.
  - 2. For operators of Category B solid waste disposal facilities, the tax rate shall be two dollars and ten cents (\$2.10) per ton of solid waste accepted at the facility site during the month for which the tax is paid.
  
- E. Except as provided in Subsection F. below, the solid waste facility operator shall weigh all solid waste, including that which is recyclable, accepted at the solid waste disposal facility. The waste shall be weighed at a scale which is certified annually by the Santa Clara County Agricultural Commissioner/Sealer of Weights

and Measures. Proof of annual certification shall be submitted to the director of the City department designated by the City Manager.

- F. Wastes which are brought to the solid waste facility in small loads need not be weighed by the solid waste facility operator in cases where the weighing of such wastes would impede or interfere with the efficient operation of the solid waste disposal facility. The operator shall report to the Director the number of small loads accepted at the solid waste facility during the month for which the business tax is paid and the volume (in cubic yards) of waste in each small load, and shall include such wastes in the calculation of the tax at two hundred fifty (250) pounds per small load. For the purposes of this Section, "small load" shall mean a delivery of waste in an amount less than or equal to one (1) ton.
  
- G. A solid waste disposal facility operator who performs recycling processing of solid waste at the solid waste disposal facility may, in accordance with this Subsection, subtract from the quantity of solid waste subject to the business tax under Subsection D. above, the number of tons of recycled materials that have been processed at the facility during the month for which the tax is paid.
  - 1. Where the solid waste disposal facility includes a certified recycling processing area separate from the solid waste disposal area, the quantity of solid waste accepted at the facility and taken directly to the certified recycling processing area may be subtracted from the quantity of solid waste subject to the tax. Residues from a certified recycling processing area shall be weighed prior to disposal at the disposal area and the quantity of residues disposed of shall be subject to the tax. No solid waste disposal facility operator shall subtract any wastes taken to the recycling processing area from the quantity subject to the tax unless the recycling processing area has been certified by the director of the City department designated by the City Manager in accordance with rules and regulations promulgated by said director.

2. Where the operation of the solid waste disposal facility includes salvaging recyclable material from the solid wastes taken to the disposal area of the facility, the quantity of salvaged materials that are shipped off site may be subtracted from the quantity of solid waste subject to the tax. For the purposes of this Section, "salvaging" shall mean the controlled removal of waste material from the solid waste taken to the disposal area of the facility where such removal is for the purpose of recycling the removed waste material.
- H. The solid waste disposal facility operator may subtract from the quantity of solid waste subject to the business tax under Subsection D. above: (1) the number of tons of cover material that originates from any location off site, and (2) the number of tons of inert construction material that originates from any location off site. For the purposes of this Section:
1. "Cover material" means soils or other material suitable for use in covering compacted solid wastes in a solid waste disposal facility which the facility operator uses on site for cover purposes.
  2. "Inert construction material" means inert material such as rock, concrete, asphalt and dirt which is used for on-site construction purposes such as *internal roads and tipping or dumping pads*.
- I. The solid waste disposal facility operator shall submit to the City, at the same time as such operator remits payment of the tax imposed by this Section, a statement, together with supporting documentation, specifying for the month for which the tax is paid: (1) the total tonnage of solid waste accepted at the facility; (2) the total tonnage of solid waste accepted at the facility and taken directly to a certified recycling processing area; (3) the total tonnage of material salvaged from the solid wastes accepted at the facility; (4) the total tonnage of recycled

material shipped off site; and (5) the total tonnage of cover material and inert construction material that originated from any location off site and was accepted at the facility.

- J. The solid waste disposal facility operator shall keep and maintain at the local office of the solid waste facility all records relating to any and all wastes received at or disposed of on the facility site, including but not limited to weight receipts for solid wastes accepted at the facility and weight receipts for recycled materials shipped off site. Such records shall be kept and maintained for not less than three (3) years from the date such wastes were received or disposed of. All records pertaining to the tonnages of solid wastes accepted at the facility site, tonnages of recycled materials shipped off site, and tonnages of cover and inert construction material used on site shall be available for inspection by the Director, the director of the City department designated by the City Manager, the City Auditor, the City Attorney and their designees, upon written notice to the solid waste disposal facility operator.

#### **4.76.495 Suspension of Business Tax on Solid Waste Disposal Facilities**

The tax imposed by Section 4.76.490 shall be suspended as of July 1, 1992, and shall remain suspended as long as the disposal facility tax imposed by Chapter 4.78 of this Code remains in effect and in lieu of the tax imposed by Section 4.76.490 the solid waste disposal facility operator shall pay the tax imposed by Chapter 4.78.

### Part 5 EXEMPTIONS

#### **4.76.600 Exemptions – General**

Except as may be otherwise specifically provided in this Chapter, the terms hereof shall not be deemed or construed to apply to any person when imposition of the tax upon

that person would violate the Constitution of the United States or that of the State of California or preemptive federal or state law.

#### **4.76.610 Exemptions - Application - Issuance Conditions**

Any person desiring to claim exemption from the payment of the business tax shall make application therefor upon forms prescribed by the Director and shall furnish such information and make such affidavits as may be required. Upon the determination being made that the applicant is entitled to exemption from the payment of the business tax for any reason set forth in this Chapter, the Director shall issue a business tax certificate free to such person, which shall show upon its face that the business is exempt from payment of the tax.

#### **4.76.620 Exemptions - Grounds for Revocation - Notice - Rights of Hearing and Appeal**

- A. The Director may revoke any business tax certificate issued pursuant to Section 4.76.610, upon information that an exemption from payment of the tax is not warranted.
- B. Notice of revocation shall be given in the same manner and within the same time period as is provided for notices of assessment in Sections 4.76.850 through 4.76.870, and the person to whom the notice of revocation was issued shall have the same right of hearing and of appeal as is provided in Sections 4.76.850 through 4.76.870.

#### **4.76.630 Definition of Receipts for Private Gain**

For the purposes of Sections 4.76.640 and 4.76.650, the payment of necessary expenses incurred in the conducting or staging of any amusement or entertainment,

concert, exhibition, lecture, dance or athletic event from the receipts derived therefrom shall not be deemed to be the use of receipts for private gain of any person.

**4.76.640 Exemptions - Certain Organizations - Entertainments or Activities**  
**Permitted When**

The following organizations or associations shall be exempt from the payment of any business tax imposed by the provisions of this Chapter upon any of the following businesses, entertainments or activities:

- A. Any religious, fraternal, student cooperative, educational, military, state, county or municipal organization or association for the conducting of any business, which business is open to the members thereof only and not open to the public;
- B. Any religious, fraternal, educational, military, state, county or municipal organization or association for the conducting or staging of any amusement or entertainment, concert, exhibition, lecture, dance or athletic event, when the receipts derived are to be used wholly for the benefit of such organization and not for private gain of any person;
- C. Any student organization, association or cooperative sanctioned by the educational institution from which the membership is drawn, for the conducting or staging of any amusement or entertainment, concert, exhibition, lecture, dance or athletic event, when the receipts derived are to be used wholly for the benefit of such organization and not for private gain of any person;
- D. Any organization or association for the conducting or staging of any amusement or entertainment, concert, exhibition, lecture, dance or athletic event, when the use of the premises upon which such activity is conducted or staged is a municipal use. "Municipal use" means a use or performance which benefits the City as a whole or an organization or activity which benefits the City as a whole,

and which is sponsored by an organization deriving all or part of its income from the City, or is for the benefit of an organization or activity supported in whole or part by the City.

#### **4.76.650 Exemptions - Charitable Entertainments**

Any person conducting or staging any concert, exhibition, lecture, dance, amusement or entertainment where the receipts, if any, derived therefrom are to be used solely for charitable or benevolent purposes and not for private gain shall be exempt from the payment of any business tax under the provisions of this Chapter.

#### **4.76.660 Exemptions - Charitable Organizations**

The following organizations shall be exempt from the payment of a business tax under the provisions of this Chapter: Any charitable institution, organization or association organized for charitable purposes only.

#### **4.76.670 Exemptions - Employees of Certain Organizations**

Any natural person engaged in any of the businesses, professions or occupations mentioned in Sections 4.76.630 through 4.76.660 and 4.76.710 through 4.76.730, solely as an employee of any other person conducting, managing or carrying on any such business in the City, and not an owner, partner, associate or principal in such business, shall be exempt from payment of any business tax on the business, profession or occupation.

#### **4.76.680 Exemptions - Farmers and Poultrymen**

The provisions of this Chapter shall not be construed as requiring farmers, poultrymen or horticulturists residing and doing business in Santa Clara County to pay a business tax under this Chapter for the privilege of selling exclusively their own products. This



exemption shall not apply to nurseries or other commercial establishments who buy goods for resale as well as selling their own produce.

#### **4.76.690 Exemptions - Interstate Commerce**

Every peddler, solicitor or other person claiming to be entitled to exemption from the payment of any business tax provided for in this Chapter upon the ground that such tax casts a burden upon the right to engage in commerce with foreign nations or among the several states, or conflicts with the regulations of the United States Congress respecting interstate commerce, shall file a verified statement with the Director, disclosing the interstate or other character of the business entitling such exemption. Such statement shall state the name and location of the company or firm for which the orders are to be solicited or secured, the name of the nearest local or state manager, if any, and the address, the kind of goods, wares or merchandise to be delivered, the place from which the same are to be shipped or forwarded, the method of solicitation or taking orders, the location of any warehouse, factory or plant within the State of California, the method of delivery, the name and address of the applicant, and any other facts necessary to establish such claim of exemption. A copy of the order blank, contract form or other papers used by such person in taking orders shall be attached to the affidavit for the information of the Director.

#### **4.76.695 Exemptions - Occasional Transactions**

- A. The provisions of this Chapter shall not apply to persons having no fixed place of business within the City who come into the City for the purpose of transacting a specific item of business at the request of a specific patient, client or customer, provided that such person does not come into the City for the purpose of transacting business on more than five (5) days during any calendar year.
- B. For any person not having a fixed place of business within the City who comes into the City for the purpose of transacting business and who is not exempt as

provided in Subsection A., of this Section, the business tax payable by such person may be apportioned by the Director in accordance with administrative rules promulgated pursuant to Section 4.76.760.

**4.76.710 Exemptions - Peddling of Goods by Producer**

Every natural person peddling any goods or wares made or produced solely by such person shall be exempt from the payment of any business tax on such peddling business imposed under the provisions of this Chapter.

**4.76.715 Exemption - Sale of Hand-Produced Goods**

Artists and craftspersons who sell only their own designed, hand-produced goods and wares shall be exempt from payment of any business tax under the provisions of this Chapter if either of the following is established by the person claiming the exemption to the satisfaction of the Director:

- A. Sale of goods and wares in the artist's or craftsperson's dwelling under San José Municipal Code Section 20.30.110 for a period of no more than four (4) consecutive days twice in any calendar year; or
- B. Continuous sale of goods and wares on an annual basis at only one (1) location so long as the retail value of inventory at such location does not exceed two thousand dollars (\$2,000.00).

**4.76.720 Exemptions - Senior Citizens**

Every natural person of the age sixty-five (65) years or over whose annual gross receipts, as defined in Section 4.76.345 B.2., from any and all business are six thousand six hundred dollars (\$6,600.00) or less shall be exempt from payment of any business tax under the provisions in this Chapter. The limits described in this Section

shall be changed concurrently with changes made by the Social Security Administration regulating allowable earnings not affecting payment of social security retirement benefits.

**4.76.730 Exemptions - Teachers - Conditions**

The provisions of this Chapter shall not require the payment of a tax for the teaching of musical, artistic or educational subjects when the following conditions exist:

- A. The teaching is done at the residence of the teacher or at the residence of the pupil; and
- B. The teacher employs no assistants, does not display an advertising sign at the residence, and does not make a general practice of selling merchandise in connection with the teaching.

**4.76.740 Exemptions - Business Conducted at Certain City Facilities**

- A. Any business that is conducted at the California Theatre, Center for the Performing Arts, San José Civic Auditorium, San José Convention Center, or other City owned convention or cultural facilities pursuant to authorization or permission (by contract, permit, or otherwise) by the City to use or occupy any of such facilities for the purpose of conducting such business therein shall, but only to the extent such business is conducted therein, be exempt from payment of any business tax on such business conducted therein. This exemption applies only to business conducted at such facilities, and to the extent that any business to which this exemption applies also involves or includes the conducting of business at locations in the City other than such facilities, the business conducted at such other locations shall remain subject to payment of the business tax imposed under this Chapter. This exemption shall not apply to any business conducted at such facilities pursuant to a contract with the City having

a term in excess of one (1) year and providing for the conducting of such business at such facilities during the term of such contract.

- B. The exemption provided for in this Section shall not be deemed or construed to apply to construction, repair, custodial, or maintenance work done at such facilities. The provisions of Section 4.76.610 shall not apply with respect to the exemption provided for in this Section.

**4.76.741 Exemption - Vendors - Annual or Special Events Conducted by Nonprofit or Charitable Organizations**

The provisions of this Chapter shall apply to any person conducting a business for profit while said person is participating in a crafts fair, exhibition, parade, celebration, dance, amusement, entertainment, or other event consisting of a collection of food, beverage, art, crafts, or souvenir sales by various individuals or persons, when said crafts fair, exhibition, parade, celebration, dance, amusement, entertainment, or other event is conducted by a nonprofit or charitable organization, association, or institution, unless otherwise exempted. Vendors shall be exempted from the payment of the business tax while participating in such specified events if they meet all of the requirements for an exemption established by the Director, the City Director of Economic Development, and the nonprofit or charitable organization conducting the event. This exemption shall be for the duration of the event only.

**4.76.745 Family Day Care Home Exemption**

Every person operating a Family Day Care Home, as that term is defined in Article 1 of Chapter 3.4 of Division 2 of the California Health and Safety Code, having fourteen (14) or fewer children under the age of eighteen (18) years shall be exempt from the payment of any business tax imposed under the provisions of this Chapter.

**4.76.746 Family Caregiver Exemption**

- A. Any family member who receives compensation for providing care services to another family member who is ill and/or elderly shall be exempt from the payment of any business tax imposed under the provisions of this Chapter as a result of receiving compensation for the provision of such care.
  
- B. For purposes of this Section, the following definitions apply:
  - 1. "Care services" means assistance with one (1) or more of the following: dressing, feeding, toileting, bathing, grooming, mobility, monitoring or supervising daily living activities and related tasks.
  
  - 2. "Family member" means a spouse, domestic partner, parent, step-parent, aunt, uncle, sibling, child, the lineal ancestor or descendant of each of these, and legal guardian.
  
  - 3. "Domestic partners" has the meaning defined in Section 4.76.115.

**4.76.748 Police Officers Engaged in Secondary Employment While in Uniform Exemption**

Any City of San José police officer or reserve police officer who, in conformance with California Penal Code Section 70 and the policies and procedures of the City and the San José Police Department, engages in secondary employment as a private security guard with a state agency, local agency, or a private employer in a police uniform shall be exempt from the payment of the business tax imposed under the provisions of this Chapter.

## Part 6

## ADMINISTRATION AND ENFORCEMENT

**4.76.750 Enforcement - Duties of Director of Finance and Chief of Police**

It shall be the duty of the Director, and he or she is hereby directed, to enforce each and all of the provisions of this Chapter, and the Chief of Police shall render such assistance in the enforcement of this Chapter as may from time to time be required by the Director.

**4.76.760 Rules and Regulations - Apportionment**

For purposes of apportionment as may be required by law, and for purposes of administration and enforcement of this Chapter generally, the Director, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.

**4.76.770 Inspection of Business Tax Certificates**

The Director and all of his or her deputies shall have the power and authority to enter, free of charge, during business hours, any place of business taxed by the provisions of this Chapter and to demand exhibition of a business tax certificate and evidence of amount of tax paid. Any person to whom a business tax certificate has been issued and who fails to exhibit the business tax certificate or to provide evidence of the amount of the business tax paid in response to a lawful demand shall be guilty of a misdemeanor.

**4.76.780 Inspection and Examination of Places of Business**

The Director, in the exercise of the duties imposed upon him or her, and acting through his or her deputies, shall have the authority to inspect and examine all places of

business in the City to ascertain whether or not the provisions of this Chapter have been complied with.

#### **4.76.790 Audit and Examination of Records and Equipment**

The Director and his or her deputies shall have the power to audit and examine all books and records, and, where necessary, all equipment, of any person engaged in business in the City, for the purpose of ascertaining the amount of business tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this Chapter. If such person, after written demand by the Director, or his or her deputy, refuses to make available for audit, examination or verification such books, records or equipment as the Director or his or her deputy requests, the Director may, after full consideration of all information within his or her knowledge concerning the business and activities of the person so refusing, make an assessment in the manner provided in Sections 4.76.850 through 4.76.870 of any taxes estimated to be due.

#### **4.76.800 Tax Deemed Debt to City**

The amount of any business tax, penalties and interest imposed by the provisions of this Chapter shall be deemed a debt to the City and any person carrying on any business without first having procured a business tax certificate under this Chapter from the City so to do shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such business.

#### **4.76.810 Liability - Evidence of Doing Business**

In any action brought under or arising out of any of the provisions of this Chapter, the fact that a party thereto represented that the party engaged in any business for the transaction of which a business tax certificate is required hereunder, or that such party

exhibited a sign indicating such business, shall be conclusive evidence of the liability of such party to pay a business tax for such business.

**4.76.820 Reserved**

**4.76.840 Deficiency Determinations**

If the Director is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. One (1) or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 4.76.850 through 4.76.870.

**4.76.850 Tax Assessment - Authorized When - Nonpayment - Fraud**

- A. Under any of the following circumstances, the Director may make and give notice of an assessment of the amount of tax owed by a person under this Chapter:
1. If the person has not filed any statement or return required under the provisions of this Chapter;
  2. If the person has not paid any tax due under the provisions of this Chapter;



3. If the person has not, after demand by the Director, filed a corrected statement or return, or furnished to the Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this Chapter;
  4. If the Director determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter;
  5. Nonpayment of all or any portion of the business tax due shall invalidate any certificate previously issued to the taxpayer by the City.
- B. The notice of assessment shall separately set forth the amount of any tax known by the Director to be due or estimated by the Director, after consideration of all information within his or her knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

**4.76.860 Tax Assessment - Notice Requirements**

The notice of assessment shall be served upon the person either by handing it to the person, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business appearing on the face of the business tax certificate issued to the person or to such other address as the person registered with the Director for the purpose of receiving notices provided under this Chapter; or, should the person have no business tax certificate and should the person have no address registered with the Director for such purpose, then to such

person's last known address. For the purposes of this Section, a service by mail is complete at the time of deposit in the United States mail.

#### **4.76.870 Tax Assessment - Hearing - Application and Determination**

Within ten (10) days after the date of service, the person may apply in writing to the Director for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the business tax assessed by the Director shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the Director shall cause the matter to be set for hearing before him or her not later than thirty (30) days after the date of application, unless a later date is agreed to by the Director and the person requesting the hearing. Notice of such hearing shall be given by the Director to the person requesting such hearing not later than five (5) days prior to such hearing. At such hearing applicant may appear and offer evidence why the assessment as made by the Director should not be confirmed and fixed as the tax due. After such hearing the Director shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 4.76.860 for giving notice of assessment.

#### **4.76.890 Conviction for Chapter Violation - Taxes Not Waived**

The conviction and punishment of any person for failure to pay the required business tax shall not excuse or exempt such person from any civil action for the business tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

#### **4.76.900 Violation Deemed Misdemeanor - Penalty**

Any person violating any of the provisions of this Chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any

officer or employee of this City any material fact in procuring the business tax certificate herein provided for shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine or by imprisonment, or by both such fine and imprisonment as set forth in Chapter 1.08 of this Code.

#### **4.76.910 Operative Date**

The operative date of this Chapter shall be July 1, 2017.

#### **4.76.920 Application of Chapter – Payment of Tax**

- A. If approved by a majority of the voters at the November 2016 general election, the provisions of this Chapter shall go into effect on July 1, 2017. Persons engaged in business in the City with a business tax payment due date on or after July 1, 2017, shall be responsible for calculating and paying the business tax pursuant to this Chapter.
  
- B. Prior to the Operative Date of this Chapter, the City will make available an Online Filing System. The failure to provide an Online Filing System for whatever reason, including, without limitation, technical failure, shall not excuse either the obligation to file an application for a business tax certificate or pay the business tax, including any interest and penalties, in a timely manner as required under this Chapter.

#### **4.76.930 Severability**

Should any provision of this Chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

**4.76.940 Effect of State and Federal Reference / Authorization**

Unless specifically provided otherwise, any reference to a state or federal statute in this Chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Chapter.

**4.76.950 Subject to Annual City Audits**

Pursuant to Section 1215 of the City's Charter, as may be amended, the revenues from the tax imposed by this Chapter shall be subject to the annual audit performed by the City's independent auditor of the City's municipal books, records, accounts and fiscal procedures and which is reported in the City's Comprehensive Annual Financial Report.

**4.76.960 Remedies Cumulative**

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one (1) or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

**4.76.970 Amendment or Repeal**

This Chapter may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Chapter. The people of the City of San José affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;
- C. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Chapter); or
- D. The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax.