



DATE: July 15, 2024

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager

FROM: Marlene Subhashini, Assistant City Manager  
Sofia Mangalam, Community Development Director  
Waqas Hassan, Assistant Finance Director  
Priscilla Schaus, Communications Director/City Clerk

SUBJECT: PLACING A MEASURE ON THE NOVEMBER 5, 2024, GENERAL  
MUNICIPAL ELECTION BALLOT AMENDING THE BUSINESS  
LICENSE TAX

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## RECOMMENDATION

It is recommended that the City Council take the following actions:

1. Review and discuss the proposed three (3) models per Council's direction at the May 20, 2024, Council meeting, and a fourth alternative model related to the Business License Tax (BLT) increase, and select a preferred model; and
2. Adopt a Resolution of the City Council of the City of Foster City ordering the submission to the qualified voters of the City at the general municipal election to be held on November 5, 2024, a measure to amend certain sections in Chapters 5.04, 5.08 and 5.24 within Title 5 of Foster City Municipal Code based on the selected model; authorizing the submittal of ballot arguments in favor of or against the measure; providing for rebuttal arguments; and directing the City Attorney to prepare an impartial analysis.

## EXECUTIVE SUMMARY

On May 20, 2024, staff presented a report on potential update to the City's Business License Tax (BLT), including various models for BLT update, and sought policy direction from the City Council on the following:

- a. The preferred Business License Tax model;
- b. Whether to consider phasing the maximum tax increase over a three (3) year period for the preferred model;

- c. Whether to keep or eliminate the current Foster City Municipal Code (FCMC) exemption provision related to multiple corporate entities; and
- d. Whether to proceed with a potential ballot measure to increase the Business License Tax for the November 2024 General Election.

After deliberation, the City Council, by Minute Order No. 1977, directed staff to “develop three (3) variations of the BLT models that will retain the minimum tax of \$100 (\$200 for General Contractors), have a maximum tax of \$500,000, and have fixed gross receipt rates of \$0.75 per thousand, \$1.00 per thousand, and \$1.25 per thousand.” Additionally, the Council directed that the maximum tax increase be phased in over a three-year period, with both the minimum tax and maximum tax adjusted annually for inflation based on the local Consumer Price Index (CPI); and keeping the current FCMC exemption provision related to multiple corporate entities.

To qualify for the ballot, 2/3 of the City Council (4 members) are required to vote affirmatively to place the measure on the ballot. If so, approved by the Council, and then passed by a majority of voters (50% plus 1) on Tuesday, November 5, 2024, the ordinance would go into effect ten days after the certification of the election by the Council.

Per Council’s direction, staff and the consultant have prepared the three (3) BLT models for Council consideration. In addition, staff has also included an alternative model 4X-2 (previously presented at the May 20<sup>th</sup> meeting) based on the feedback received during the stakeholder outreach for Council reconsideration.

A resolution with corresponding ballot language and a draft ordinance have been prepared for each of the three models including the fourth alternative model (Attachments 1 through 4). The selected model via an Ordinance would amend Title 5, Business Licenses and Regulations, of Foster City Municipal Code.

## BACKGROUND

### Current BLT Structure

The City of Foster City's BLT Ordinance was enacted in 1972, shortly after the City's incorporation. The City of Foster City requires all businesses operating within the City of Foster City to obtain a business license and pay associated taxes in accordance with Title 5 – Business Licenses and Regulation of the Foster City Municipal Code. It wasn't until four decades later (in 2013) that the BLT Ordinance was amended, and a ballot measure (Measure U) to increase the BLT was approved by the Foster City voters. Chapters 5.04 to 5.40 of FCMC Title 5 set forth the provisions of the City's current BLT. All businesses, trades, professions, and occupations specified in the FCMC are subject to a BLT when there is sufficient evidence that business is being conducted in the City. Nonprofit Organizations as defined under Section 501(c)(3) of the United States Internal Revenue Code and Farmers Markets approved by the city are exempt from BLT. In addition, any business exempt under Federal or State law is also exempt from paying the BLT.

The current BLT is based on gross receipts with a single tax rate of \$0.75 per \$1000 of gross receipts, with a minimum tax of \$100 (\$200 for General Contractors) and a maximum

tax (\$28,597 for the FY 2023 licensing period). *Under the current structure, a business has to gross more than approximately \$38 million to hit the gross receipts cap and pay the maximum tax.* Generally, single-rate gross receipt tax structures allow the City to capture all gross receipts generated locally and tie the City to the economic growth of the business community.

### The Financial Challenge

On June 17, 2024, the City Council adopted the FY 2024-25 Budget. The FY 2024-25 Budget and 5-Year Financial Plan reflect ongoing General Fund structural deficits as budgeted annual expenditures, including transfers out to the City's CIP Fund exceed estimated annual revenues. Based on the Financial Plan, the current and next fiscal years' anticipated deficits are \$5.58 million and \$6.62 million respectively (around \$40 million in the five-year period). While the City anticipates continued volatility in its various revenue streams, it is also committed to maintaining existing service levels and prudent General Fund reserve levels to protect the City's long-term fiscal sustainability. The BLT increase was identified as one potential revenue enhancement option that would help with addressing the deficit. Potential additional revenues generated from the proposed BLT increase range from \$900,000 to \$1.9 million annually depending on the model.

### Initiation of BLT update discussion

As discussed, the City is anticipating ongoing structural deficits in its budget over the next five years. A structural deficit is a condition whereby annual ongoing expenditures exceed ongoing revenues. In other words, there are insufficient revenues to pay for the cost of operations and services provided to the community. In recognition of the fiscal challenges facing the City and the City's commitment to provide uninterrupted services to the community, the City Council directed staff to consider an update to the City's BLT as a potential revenue enhancement option in 2022. Although progress was made on the BLT update in 2022, those efforts were put on hold. In 2023, one of the goals that the City Council adopted at its Vision & Policy Summit was to "*Identify new revenue sources and strengthen existing resources to ensure Foster City finances are more resilient to economic fluctuations and support city services.*" Under this goal, two (2) measures/initiatives were identified including:

- Initiate and engage in ongoing dialogue with City businesses to build strong relationships and assess their needs and understand their perspectives on a BLT ballot measure.
- Research BLT methodologies and consider feasibility of various methodologies (e.g., gross receipts, square footage, employee count) with presentation to Council in January 2024.

The City Council reaffirmed this initiative as a key priority at its 2024 Vision & Policy Summit. A project team comprised of staff from various City departments and consultants was assembled to begin work on this initiative. Staff presented reports to Council on October 16, 2023 ([link](#)), December 18, 2023 ([link](#)) and February 16, 2024 ([link](#)), where staff outlined the strategy for amending the BLT Ordinance and revising the BLT rate, discussed steps leading to the potential ballot measure in the November 2024 General Election, provided preliminary analysis of the City's current BLT structure, shared pros and cons of the various BLT structures and provided a comparison to other cities' BLT structure. Following the

Council meetings, the project team began to explore potential BLT models that could generate additional revenue while meeting the City's goals, with the last meeting on the topic on May 20, 2024 ([link](#)).

### May 20, 2024, City Council Meeting

At the meeting, staff presented a detailed report including information on the following:

- General Overview of Business License Tax, discussing key points of comparison (pros and cons) for the various BLT Methodologies/Types of Measurements.
- An analysis of the current BLT structure (Single Rate Gross Receipts Tax).
- Comparison of city's current BLT structure to other cities.
- Initial models that were developed, including:
  - Model 1: Increase In Current Maximum Tax
  - Model 2: Gross Receipts Tax – Single Gross Receipts Rate
  - Model 3: Gross Receipts Tax – Classifications-Based Rate
  - Model 4: Tiered Gross Receipts
  - Model 5: Uniform Employee Tax Rate
- Preferred Model 4 and variations of Model 4 for Council's consideration.
- Summary of feedback received through Community Engagement efforts, Business Stakeholder outreach, Public Polling, Surveys, Town Halls, etc.

### ANALYSIS

At the May 20, 2024, City Council Meeting, the Council received the report on the BLT update and by Minute Order No. 1977, directed staff to:

1. Develop three (3) variations of the BLT models that retain the minimum tax of \$100 (\$200 for General Contractors), have a maximum tax of \$500,000, and have fixed gross receipt rates of \$0.75 per thousand (current rate), \$1.00 per thousand, and \$1.25 per thousand.
2. Phasing the maximum tax increase of \$500,000 over a three-year period, with both the minimum tax and maximum tax adjusted annually for inflation based on the local Consumer Price Index (CPI); and
3. Keep the current Foster City Municipal Code (FCMC) exemption provision related to multiple corporate entities.

### BLT Models per Council's Direction:

The following tables include the three variations of the BLT models as directed by the City Council at the May 20, 2024 City Council meeting.

Model maintaining the current rate of \$0.75 per \$1000 of gross receipts with a maximum tax payment of \$500K with estimated additional annual revenue potential of **\$891,703**.

Measure	Lower Bounds of Gross Receipts	Upper Bounds of Gross Receipts	Gross Receipt Tax Rate	Min Tax	Total Estimated Annual Gross Receipts	Total Estimated Annual Tax
0 - All Other Businesses	\$0	\$133,500	\$0.00	\$100.00	19,638,000	82,500
0 - General Contractors		\$267,000		\$200.00	15,917,000	76,800
1 - All Other Businesses	Greater than \$133,500		\$0.75	\$100.00	4,294,421,000	2,452,480
1 - General Contractors	Greater than \$267,000			\$200.00	147,492,000	110,603
						<b>\$ 2,722,383</b>

Example: If a business reports \$50,000,000 in annual gross receipts, its annual maximum business license tax will be as follows:

*\$100 (min. up to \$133,500 gross receipts) + \$37,399.88 (\$0.75/\$1,000 over \$133,500 of gross receipts) = \$37,499.88*

Model \$1.00 rate (25 cents increase) per \$1000 of gross receipts with a maximum tax payment of \$500K with estimated additional annual revenue potential of **\$1,395,898**.

Measure	Lower Bounds of Gross Receipts	Upper Bounds of Gross Receipts	Gross Receipt Tax Rate	Min Tax	Total Estimated Annual Gross Receipts	Total Estimated Annual Tax
0 - All Other Businesses	\$0	\$133,500	\$0.00	\$100.00	19,638,000	82,500
0 - General Contractors		\$267,000		\$200.00	15,917,000	76,800
1 - All Other Businesses	Greater than \$133,500		\$1.00	\$100.00	4,294,421,000	2,924,141
1 - General Contractors	Greater than \$267,000			\$200.00	147,492,000	143,137
						<b>\$3,226,578</b>

Example: If a business reports \$50,000,000 in annual gross receipts, its annual maximum business license tax will be as follows:

*\$100 (min. up to \$133,500 gross receipts) + \$49,866.50 (\$1.00/\$1,000 over \$133,500 of gross receipts) = \$49,966.50*

Model \$1.25 rate (50 cents increase) per \$1,000 of gross receipts with a maximum tax payment of \$500K with estimated additional annual revenue potential of **\$1,900,092**.

Measure	Lower Bounds of Gross Receipts	Upper Bound of Gross Receipts	Gross Receipt Rate	Min Tax	Total Estimated Annual Gross Receipts	Total Estimated Annual Tax
0 - All Other Businesses	\$0	\$133,500	\$0.00	\$100.00	19,638,000	82,500
0 - General Contractors		\$267,000		\$200.00	15,917,000	76,800
1 - All Other Businesses	Greater than \$133,500		\$1.25	\$100.00	4,294,421,000	3,395,801
1 - General Contractors	Greater than \$267,000			\$200.00	147,492,000	175,671
						<b>\$3,730,772</b>

Example: If a business reports \$50,000,000 in annual gross receipts, its annual maximum business license tax will be as follows:

$$\$100 \text{ (min. up to } \$133,500 \text{ gross receipts)} + \$62,333.13 \text{ (} \$1.25/\$1,000 \text{ over } \$133,500 \text{ of gross receipts)} = \$62,433.13$$

In all the three models presented above, the maximum tax payment of \$500K will be phased in over three years as follows:

- Effective January 1, 2025, the maximum tax payment will be two hundred and fifty thousand dollars (\$250,000)
- Effective January 1, 2026, the maximum tax payment will be three hundred and fifty thousand dollars (\$350,000)
- Effective January 1, 2027, and thereafter, the maximum tax payment will be five hundred thousand dollars (\$500,000)
- Effective January 1, 2028, and annually thereafter the maximum tax payment from the previous year will be increased based on inflation (CPI).

This means that the annual total revenues projected from the models and as shown in the tables above, will vary each year based on the maximum tax payments for that year. In addition, in the three models presented above, it is important to note that only the very large businesses that **gross over approximately \$666 million for \$.75/\$1,000 model, \$500 million for \$1.00/\$1,000 model and \$400 million for \$1.25/\$1,000 model in annual gross receipts** would be subject to the maximum tax of \$500K. This is approximately 8-10 businesses (less than 5%) of the total number of 1,651 businesses in Foster City.

In addition, per the Council’s direction, the minimum tax payment of \$100/\$200 will be increased annually commencing on January 1, 2026 by inflation (CPI) and the maximum tax payment of \$500K will be increased annually commencing on January 1, 2028 by CPI.

**Alternative Model**

Following the May 20, 2024, Council meeting, a second series of outreach meetings were held to share the proposed variations of BLT models directed by the City Council with the business stakeholders. Some businesses expressed concerns about the significant increase in tax liability with the new \$500,000 maximum tax. One of the businesses highlighted the struggling office market and the potential for increased vacancies and noted

that most companies are currently focused on cost containment, and any further increase in costs, such as through business license taxes, would be a significant burden. They expressed potential impact on the city's revenues if companies decide to leave the City due to the increased taxes.

Based on the concerns and feedback received on the \$500,000 maximum tax and the business survey results, staff is including a fourth alternative model (Model 4X-2) that was previously presented at the May 20<sup>th</sup> meeting for Council reconsideration.

Model 4X-2 is a tiered rate structure that involves a tax rate that increases (or progresses) as taxable gross receipts increase. It imposes a lower tax rate on businesses that report lower taxable gross receipts and a higher tax rate on those businesses that report higher taxable gross receipts.

1. Alternative model (Model 4X-2) includes a tiered gross receipts rate structure of \$0.75 to \$3.00 rate with a maximum tax of \$250K with estimated additional annual revenue potential of **\$1,451,981**.

Lower Bounds of Gross Receipts	Upper Bounds of Gross Receipts	Gross Receipt Rate	General Contractors Min Tax	All Other Businesses Min Tax	Total Estimated Annual Gross Receipts	Total Estimated Annual Tax
\$0	\$133,500	\$0.00	\$200.00	\$100.00	28,917,000	152,300
\$133,500	\$4,400,000	\$0.75	\$200.00	\$100.00	327,707,000	254,732
\$4,400,000	\$8,500,000	\$0.88	\$3,399.88	\$3,299.88	231,863,000	182,125
\$8,500,000	\$12,650,000	\$1.00	\$6,987.38	\$6,887.38	150,644,000	128,067
\$12,650,000	\$16,750,000	\$1.13	\$11,137.38	\$11,037.38	161,009,000	146,203
\$16,750,000	\$20,900,000	\$1.25	\$15,749.88	\$15,649.88	53,290,000	50,850
\$20,900,000	\$25,000,000	\$1.38	\$20,937.38	\$20,837.38	23,148,000	23,928
\$25,000,000		\$3.00	\$26,574.88	\$26,474.88	3,500,890,000	2,344,456
						<b>\$3,282,661</b>

Example: If a business reports \$50,000,000 in annual gross receipts, its annual maximum business license tax will be as follows:

$$\$26,474.88 \text{ (min. up to } \$25,000,000 \text{ gross receipts)} + \$75,000 \text{ (} \$3.00/\$1,000 \text{ over } \$25,000,000 \text{ of gross receipts)} = \$101,474.88$$

In addition to lowering the maximum tax payment to \$250K, which was somewhat palatable to the large businesses when compared to the maximum tax of \$500K, this model also achieves the following objectives:

- Updates the 75 cents rate which has remained the same since the Ordinance was first adopted in 1972 to a modern progressive rate structure that is equitable, and fair based on the size of the business.
- A modest increase to the gross receipt rate for middle to large businesses.
- Creating tiers so that medium to large businesses pay a lower rate (share of the overall BLT) than the largest businesses.

COMMUNICATION AND OUTREACH

To understand the impact on businesses and assess the support for a BLT increase, the project team conducted a robust engagement effort with the community, Chamber of Commerce, local businesses and key stakeholders. This effort included utilizing surveys, 1:1 and group meetings, social media and direct outreach efforts to share information on the City services, City budget, the proposed BLT models. A fiscal sustainability survey was conducted to understand the community's needs and perspectives on the potential BLT ballot measure for the November 2024 General Election. In addition, a business survey was also administered by the consultant FM3.

- Community Priorities Survey

A Communities Priority Survey asking the community to identify their priorities on public safety, parks, infrastructure, and more was launched in March 2024. Additionally, the City and the consultant leveraged a variety of outreach and engagement channels to share information regarding the measure and collect feedback from community members. These efforts included, but were not limited to: a press release covered in local media outlets; paid social media promotion; printed informational material mailed to residents and local businesses included with utility bills; widespread direct outreach emailed to thousands of local businesses, community organizations and residents; promotion in digital newsletters sent to thousands of community members; flyers distributed at City facilities and public gathering areas; promotion via the City website; and graphics displayed on City digital marquees and posting boards.

The 213 responses to the Community Priority Survey indicated Public Safety issues are top of mind, with respondents placing a "High Priority" on "Maintaining 911 Response Times" (79%), "Helping Prevent Crimes, Thefts and Burglaries" (78%) and "Keeping Public Areas Safe and Clean" (63%).

- Town Hall Events

Three (3) town halls were hosted by staff on May 29, May 30, and July 9. These events were promoted via direct mailer, as well as on the City's digital marquee and in online and social media announcements.

- In-person May 29 Townhall: The May 29 meeting was an in-person and had two (2) attendees who asked detailed questions about the construct of the BLT when compared to other cities, and in particular regarding language for apportionment and provisions for firms with multiple entities operating within the City.
- Virtual May 30 Townhall: The virtual meeting on May 30 had approximately 18 attendees, predominantly from the local business community. Attendees at this meeting asked questions regarding what other models the City had considered, how the potential changes in BLT would affect small work-from-home businesses and how office leases may pass through any increased costs to the tenants. Some attendees expressed concern regarding the size of the increase for the largest BLT payers.
- Hybrid July 9 Townhall: The July 9 meeting was a hybrid. The City and the consultant presented an update on the May 20<sup>th</sup> City Council meeting, three (3) BLT models under consideration and an overview of the City's budget. There were approximately 30 attendees, with participation from both the local business community and general public. Attendees at this meeting raised issues related to the Recreation Center, the potential impacts of a revised BLT on large employers in the City, businesses leaving

the City, business vacancies, loss of sales tax and how the City planned to more fully address fiscal stability in the future. One participant also sought additional clarity on several aspects of the existing BLT ordinance, including apportionment formulas and impact on businesses with multiple entities.

- Business Stakeholder Outreach

The City conducted in-person and virtual outreach to various sized businesses. Some of these meetings were convened in collaboration with the Foster City Chamber of Commerce. Staff also set up a website allowing individual businesses to schedule briefings with City staff and consultants

Outreach meetings held to date:

- Wednesday, May 1, 2024, 2:00 pm in-person meeting (Gilead)
- Thursday, May 9, 2024, 10:00 am virtual meeting (Chamber of Commerce, multiple businesses)
- Thursday, May 9, 2024, 1:00 pm virtual meeting (Visa)
- Thursday, May 9, 2024, 2:00 pm in-person meeting (Chamber of Commerce, multiple businesses)
- Wednesday, May 15, 2:00 pm virtual meeting (Cowan Capital)
- Wednesday, May 15, 1:00 pm virtual meeting (PG&E)
- Wednesday, May 15, 1:00 pm virtual group meeting (Chamber of Commerce, multiple businesses)
- Thursday, May 16, 2024, 2:00pm virtual meeting (Bailard)
- Thursday, May 16, 2024, 10:00 am virtual meeting (Zoox)
- Thursday, May 16, 2024, 11:00 am virtual meeting (Sycomp)
- Wednesday, June 05 phone call (Costco)
- Wednesday, June 12, 12:00 pm virtual meeting (Visa)
- Wednesday, June 12, 2:00 pm virtual meeting (Hudson Pacific Properties)

Feedback/Questions received from businesses prior to the May 20<sup>th</sup> City council meeting include the following:

- Concerns about the tax increases faced by the multiple entities under the same management in Foster City.
  - Suggested limiting taxing multiple entities to avoid paying separately for each entity.
- Questions regarding apportionment. There is language in the existing ordinance regarding apportionment, but some have said they may scrutinize these provisions more closely the higher the levy rises. Some have cautioned they believe the bulk of their receipts/operations are located outside of the City and would impact how they report gross receipts moving forward.
- Smaller business owners have characterized efforts to reduce the relative share of BLT paid by small firms as “fair”, and others even expressed a willingness to pay modest increases to support the City.
- Concerns about the proposed tax increase, questioning how it would address the identified budget deficits, and if the City will continue to move the goal post on businesses by looking at future BLT increases.
- Concerns about the exponential increase affecting the largest firms with consideration to a phased approach (even for \$250k maximum tax model).
- The increase to the maximum tax is unreasonable.

- Questions about how the city is funding the remaining gap in the budget.
- Sourcing receipts gets complicated, and predictability is important.
- If the City has considered the fiscal impact if one or more large businesses leave the City and take their business to a more tax-friendly city.
- If the City has considered the loss of sales tax revenue that may potentially be lost if the large businesses leave the City.
- How the revenue numbers were taken into consideration for various models.
- Almost all the stakeholders emphasized that they are sympathetic and supportive towards the city's financial constraints.
- Some small business owners noted that they would not mind paying \$200 instead of the minimum \$100 tax.
- A small business owner expressed concern about being double taxed, paying for taxes in other places for the same earnings.
- Some small business owners were perplexed with the models presented by staff that showed zero increase to their tax structure as they received certain messages showing that City is increasing taxes ranging from 9x to 17x.
- The idea of modernization of tax structure sounds reasonable, large businesses should pay their fair share.
- If the City has taken into considered impact fees, permit fees, and property tax that a large business pays i.e. the cost of doing business in the City.
- Some business owners expressed appreciation for all the facilities that the City offers and noted that the proposed increase in tax is completely understandable and is supportive of the same.
- Question regarding the potential impact of city business license fees updates on utility providers.

Feedback/Questions received from Businesses post May 20th City council meeting include the following:

- One of the businesses expressed concerns about the significant increase in tax liability with the new \$500,000 maximum tax including expressing concerns that a single business with multiple entities may be subject to 2x or 3x the maximum tax.
- Other businesses highlighted the struggling office market and the potential for increased vacancies and noted that most companies are currently focused on cost containment, and any further increase in costs, such as through business license taxes, would be a significant burden. The discussions also focused on the potential impact on the city's revenue if companies chose to leave the City were pushed out due to the increased costs.
- Business Survey  
To assess the opinions of businesses currently paying Foster City's BLT, FM3 conducted a Business License Tax Business Survey from June 4 to July 3, 2024. FM3 completed 52 online and telephone interviews with Foster City businesses during this period (invites were sent to 1,889 business contacts).

The results show that businesses widely view Foster City as a good place to do business, and half expect their businesses to grow in the next few years. However, many have reservations about the proposal to update the current BLT, and there is a strong preference to ensure that the majority of businesses currently paying the

minimum BLT would see no change in what they pay. The results of the survey noted that local businesses like operating in Foster City, plan to continue operation into the future, and many are hoping to grow. Most businesses are familiar with the BLT and find it easy to understand, file, and pay. However, there are mixed opinions on its current fairness and general unfamiliarity with the benefits of paying it. With that background, most businesses surveyed were generally not enthusiastic about a potential update to the BLT currently under consideration. However, support increased modestly when its rationale was presented and was greater for models with a smaller tax rate (\$1.00 rather than the \$1.25 per \$1000 of gross receipts) and maximum tax increases (see Attachment 5 for additional details).

### **Increasing the Business License Tax Requires a Vote of the People**

The proposed BLT measure is a general tax. Two actions are required to implement an increase to the BLT when the tax is for general purposes and the proceeds will go to General Fund revenues:

1. Adoption of a resolution placing a measure on the ballot by 2/3 vote of all members of the City Council; and
2. Majority voter approval (Cal. Gov't Code § 53723 and 53724(b)).

Further, in accordance Article XIIC, section 2(b) of the California Constitution, the measure must be voted upon at a General Municipal Election in which members of the governing body of the agency are subject to an election, which in Foster City occurs in November of even- numbered years. The submittal deadline for a ballot measure to be included in the November 5, 2024, General Municipal Election is August 9, 2024. Staff is recommending that City Council determine at this meeting whether to place a measure on the ballot for the November 5, 2024 election and if so select which model the Council would like to submit to the voters. The last Council meeting prior to the deadline for submitting measures is August 5, 2024, however, staff does not recommend waiting until that meeting as there may not be sufficient time to process the needed documentation and submit it. If approved by a majority of Foster City voters (50% plus 1) at the November 2024 election, the ordinance would go into effect no earlier than ten (10) days following certification of the election results by the City Council. The legal deadline for the County Elections Official to provide the canvass of the election results is December 5, 2024. Election certification has historically been done at the first City Council meeting in December. As the certified results may not be ready by the first meeting in December (December 2), a special meeting to certify results would be held on December 9, 2024.

### **Proposed Amendments to Foster City Municipal Code Title 5, Section I. Business Licenses Generally**

The City's current BLT Ordinance is found FCMC Title 5, Section I. Business Licenses Generally. In addition to amendments related to gross receipt rates and maximum tax , staff is recommending revisions to the following sections in Chapters 5.04, 5.08, and 5.24 within Title 5:

#### **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. When, by reason of the provisions of the Constitution of the United States or the Constitution of California, the license fee imposed by this chapter cannot be enforced without there being an apportionment according to the amount of business done in the City or in the state, as the case may be, the City Manager or designee shall, in consultation with City Attorney Office, prepare and issue regulations with respect to apportionment and such regulations shall provide adequate notice.

#### **5.08.050 Gross receipts.**

As used in this article, “gross receipts”, except as otherwise specifically provided, includes the total amounts attributable to business activity within the city actually received or receivable by a person from all sales of goods, materials, wares or merchandise, and the total amounts actually received or receivable by a person for the performance of any act or service, of whatever nature it may be, 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. ~~A.~~—Cash discounts allowed and taken on sales;
- B. Transactions between a partnership and its partners;
- C. ~~B.~~—Credit allowed on property accepted as part of a purchase price and which property may later be sold;
- D. ~~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;
- E. ~~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;
- F. ~~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;
- G. ~~F.~~—That portion of the receipts of a business related to sales of goods or services to the city of Foster City;
- H. ~~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;
- I. ~~H.~~ Receipts of refundable deposits, except that refundable deposits forfeited and taken into income shall not be excluded;
- J. ~~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.”

In addition to the above said edits, definitions for Solicitor (section 5.08.080) and Specialty

Contractor (section 5.08.090) have been deleted from Chapter 5.08.

**Depending on the final model, the section ‘5.24.010 Rates’ would be amended in the respective ordinances as follows:**

**Model \$0.75 rate with \$500K maximum tax**

Section 5.24.010 would be amended to reflect the model \$0.75 rate with \$500K maximum tax payment phased in over 3 years and thereafter adjusted for inflation (CPI), as included in the Ordinance. For the redline version, please refer to Attachment 1.

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 percent) of gross receipts or part thereof up to the maximum tax payment amount set forth in section 5.24.010 B. below:

For purposes of calculating the gross receipts, cents will be rounded up to the nearest dollar.

A. Minimum Tax. The minimum tax shall be as follows:

<b>Effective Date</b>	<b>General Contractor</b>	<b>All Other Businesses</b>
January 1, 2025, and thereafter	\$200	\$100

Effective January 1, 2026, and every January 1st thereafter, the minimum tax payment from the previous year 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 dollar amount.

B. Maximum Tax Payment. The maximum amount of the tax to be paid is as follows:

1. Effective January 1, 2025, the maximum tax payment will be two hundred and fifty thousand dollars (\$250,000).
2. Effective January 1, 2026, the maximum tax payment will be three hundred and fifty thousand dollars (\$350,000).
3. Effective January 1, 2027, and thereafter, the maximum tax payment will be five hundred thousand dollars (\$500,000).
4. Effective January 1, 2028, and every January 1st thereafter, the maximum tax payment from the previous year 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 thousand dollars.

**Model \$1.00 rate with \$500K maximum tax**

Section 5.24.010 would be amended to reflect the model \$1.00 rate with \$500K maximum tax payment phased in over 3 years and thereafter adjusted for inflation (CPI), as included in the Ordinance. For the redline version, please refer to Attachment 2.

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 one dollar per one thousand dollars (or 0.10 percent) of gross receipts or part thereof up to the maximum tax payment amount set forth in section 5.24.010 B. below: For purposes of calculating the gross receipts, cents will be rounded up to the nearest dollar.

A. Minimum Tax. The minimum tax shall be as follows:

<b>Effective Date</b>	<b>General Contractor</b>	<b>All Other Businesses</b>
January 1, 2025, and thereafter	\$200	\$100

Effective January 1, 2026, and every January 1st thereafter, the minimum tax payment from the previous year 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 dollar amount.

B. Maximum Tax Payment. The maximum amount of the tax to be paid is as follows:

1. Effective January 1, 2025, the maximum tax payment will be two hundred and fifty thousand dollars (\$250,000)
2. Effective January 1, 2026, the maximum tax payment will be three hundred and fifty thousand dollars (\$350,000)
3. Effective January 1, 2027, and thereafter, the maximum tax payment will be five hundred thousand dollars (\$500,000).
4. Effective January 1, 2028, and every January 1st thereafter, the maximum tax payment from the previous year 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 thousand dollars.

**Model \$1.25 rate with \$500K maximum tax**

Section 5.24.010 would be amended to reflect the model \$1.25 rate with \$500K maximum tax payment phased in over 3 years and thereafter adjusted for inflation (CPI), as included in the Ordinance. For the redline version, please refer to Attachment 3.

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 one dollar and twenty-five cents per one thousand dollars (or 0.125 percent) of gross receipts or part thereof up to the maximum tax payment amount set forth in section 5.24.010 B. below:

For purposes of calculating the gross receipts, cents will be rounded up to the nearest dollar.

A. Minimum Tax. The minimum tax shall be as follows:

<b>Effective Date</b>	<b>General Contractor</b>	<b>All Other Businesses</b>
January 1, 2025, and thereafter	\$200	\$100

Effective January 1, 2026, and every January 1st thereafter, the minimum tax payment from the previous year 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 dollar amount.

B. Maximum Tax Payment. The maximum amount of the tax to be paid is as follows:

1. Effective January 1, 2025, the maximum tax payment will be two hundred and fifty thousand dollars (\$250,000)
2. Effective January 1, 2026, the maximum tax payment will be three hundred and fifty thousand dollars (\$350,000)
3. Effective January 1, 2027, and thereafter, the maximum tax payment will be five hundred thousand dollars (\$500,000).
4. Effective January 1, 2028, and every January 1st thereafter, the maximum tax payment from the previous year 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 thousand dollars.

**Alternative Model 4X-2 Gross Receipts \$0.75 to \$3.00 with \$250K maximum tax**

Section 5.24.010 has been amended to reflect the model 4X-2 gross receipts \$0.75 to \$3.00 with \$250K maximum tax payment, as included in the Ordinance. For the redline version, please refer to Attachment 4.

5.24.010 Rates

For tax years beginning on or after January 1, 2025, every person who engages in business at a fixed place of business within the city shall pay a license tax at the following rates to the maximum tax limit set forth in section 5.24.010 B. below:

- A minimum of \$200 for gross receipts between \$0 and \$267,000 for General Contractors or a minimum of \$100 for gross receipts between \$0 and \$133,500 for all other businesses.
- 0.075% (75 cents per \$1,000) for gross receipts between \$133,500 and \$4,400,000.
- 0.088% (88 cents per \$1,000) for gross receipts between \$4,400,001 and \$8,500,000.
- 0.1% (\$1 per \$1,000) for gross receipts between \$8,500,001 and \$12,650,000.
- 0.113% (\$1.13 per \$1,000) for gross receipts between \$12,650,001 and \$16,750,000.
- 0.125% (\$1.25 per \$1,000) for gross receipts between \$16,750,001 and \$20,900,000.
- 0.138% (\$1.38 per \$1,000) for gross receipts between \$20,900,001 and \$25,000,000.
- 0.3% (\$3.00 per \$1,000) for gross receipts over \$25,000,000.

For purposes of calculating the gross receipts, cents will be rounded up to the nearest dollar. These rates are subject to the following:

A. Minimum Tax. The minimum tax shall be as follows:

<b>Effective Date</b>	<b>General Contractor</b>	<b>All Other Businesses</b>
January 1, 2025, and thereafter	\$200	\$100

Effective January 1, 2026, and every January 1st thereafter, the minimum tax payment from

the previous year 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 dollar amount.

B. Maximum Tax Payment. The maximum amount of the tax to be paid is as follows:

1. Effective January 1, 2025 the maximum tax payment will be two hundred and fifty thousand dollars (\$250,000).
2. Effective January 1, 2026, and every January 1st thereafter, the maximum tax payment from the previous year 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 thousand dollars.

### **Ballot Initiative Process**

If the City Council wishes to proceed with the ballot measure, the City Council needs to approve the attached resolution placing the ordinance on the November 2024 ballot. The ordinance would only become effective if approved by a majority of the voters at the November 2024 election.

The ballot measure would be presented to the voters at the November 5, 2024, election. The measure must be no longer than 75 words and phrased as a question stating the nature of the ordinance (Cal. Elections Code § 13119, 13247 and 9051). Elections Code Section 13119 contains the following specific requirements pertaining to local elections on tax measures:

- a) The ballots used when voting upon a measure proposed by a local governing body or submitted to the voters as an initiative or referendum measure pursuant to Division 9 (commencing with Section 9000), including a measure authorizing the issuance of bonds or the incurrence of debt, shall have printed on them the words "Shall the measure (stating the nature thereof) be adopted?" Opposite the statement of the measure to be voted on, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his or her vote shall be counted in favor of the adoption of the measure. If he or she stamps a cross (+) in the voting square after the printed word "No," his or her vote shall be counted against its adoption.
- b) If the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.
- c) The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.

A resolution with corresponding ballot language and its draft ordinance has been prepared for each of the four (4) models. For Model 1, see Attachment 1; for Model 2, see Attachment 2; for Model 3, see Attachment 3 and for Model 4, see Attachment 4. If the Council decides to move forward with one of the models, then the Council should adopt the resolution it would like, which would submit the Council's ballot measure to voters at the November 5, 2024, regular municipal election. Provided below is the ballot language for the four (4) models (please note that the additional revenue numbers have been rounded to the nearest \$100,000).

<b>Model \$0.75 rate with \$500K maximum tax</b>	
To protect Foster City's financial stability and maintain essential services including 911 emergency response, property crime prevention, street repairs, and infrastructure maintenance, shall an ordinance amending the business license tax by retaining the current rate of \$0.75 per \$1000 of gross receipts, retaining the \$100/\$200 minimum tax and increasing the maximum tax payment both with annual inflation adjustments, generating approximately \$900,000 annually for locally controlled general fund purposes, until ended by voters, be adopted?	Yes
	No

<b>Model \$1.00 rate with \$500K Maximum Tax</b>	
To protect Foster City's financial stability and maintain essential services including 911 emergency response, property crime prevention, street repairs, and infrastructure maintenance, shall an ordinance amending the business license tax by increasing the rate by 25 cents to \$1.00/\$1000 of gross receipts, retaining the \$100/\$200 minimum tax and increasing the maximum tax payment both with annual inflation adjustments, generating approximately \$1,400,000 annually for locally controlled general fund purposes, until ended by voters, be adopted?	Yes
	No

<b>Model \$1.25 rate with \$500K Maximum Tax</b>	
To protect Foster City's financial stability and maintain essential services including 911 emergency response, property crime prevention, street repairs, and infrastructure maintenance, shall an ordinance amending the business license tax by increasing the rate by 50 cents to \$1.25/\$1000 of gross receipts, retaining the \$100/\$200 minimum tax and increasing the maximum tax payment both with annual inflation adjustments, generating approximately \$1,900,000 annually for locally controlled general fund purposes, until ended by voters, be adopted?	Yes
	No

<b>Model 4X-2 Gross Receipts \$0.75 to \$3.00 with \$250K Maximum Tax</b>	
To protect Foster City's financial stability and maintain essential services including 911 emergency response, property crime prevention, street repairs, and infrastructure maintenance, shall an ordinance amending the business license tax with varying the rates from \$0.75 to \$3.00 per \$1000 of gross receipts, retaining the \$100/\$200 minimum tax and increasing the maximum tax payment both with annual inflation adjustments, generating approximately \$1,400,000 annually for locally controlled general fund purposes, until ended by voters, be adopted?	Yes
	No

Calling for Election and Consolidation of Election

If the City Council wants to place a measure on the November 5th ballot, the Council must adopt a resolution placing any such measure on the ballot and submit it to the County of San Mateo Board of Supervisors and Assessor County Clerk-Recorder Elections' Office no later than 5:00 PM on August 9, 2024. The resolution contains the wording of the measure as it would appear on the ballot and request its consolidation with the November 5, 2024, General Election. The draft resolutions presented for the Council's consideration also establishes Argument and Rebuttal deadlines that correspond to the deadlines set by the County.

If the measure is approved by a majority (50% + 1) vote of the voters, it cannot be changed absent a subsequent vote of the people (Cal. Elections Code § 9222 and 9217).

### **Impartial Analysis**

The Elections Code requires that when any city measure qualifies for the ballot, that the governing body direct the city elections official to transmit a copy of the measure to the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure (Cal. Elections Code § 9280). The impartial analysis is required not to exceed 500 words. The draft resolutions presented for the Council's consideration include language directing the City Attorney to submit the impartial analysis for this measure in accordance with State law.

### **Primary Arguments**

The Elections Code allows any of the following to file a written primary argument (for or against) not to exceed 300 words in length for or against any city measure:

- The City Council or any member or members of the City Council authorized by it;
- The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure;
- Bona fide associations of citizens; or
- Individual voters who are eligible to vote on the measure.

The City Council has the authority to prepare a primary argument as a whole body or authorize individual Councilmembers to do so in lieu of the whole Council. If an individual Councilmember decides to author or sign an argument as an individual Councilmember, authorization is required from the City Council by placing their name or names in the attached resolution as either in favor of or against the measure and adopting the resolution.

For example, if Councilmembers A and B want to author and sign a primary argument in favor of the measure, their names would be incorporated into the attached resolution as "Councilmember(s) in Favor" and they would be authorized to give their opinions as individual Councilmembers. Likewise, if Councilmembers C and D want to author and sign a primary argument against the measure, their names would be incorporated into the attached resolution as "Councilmember(s) Against."

Only one argument in favor of and one argument against the measure will be placed in the sample ballot. Pursuant to Elections Code § 9287, if more than one argument for or more than one argument against any city measure is submitted to the City Clerk within the time prescribed, the City Clerk shall select one of the arguments in favor and one of the arguments against the measure for printing and distribution to the voters. In selecting the argument, the City Clerk shall give preference and priority, in the order named, to the arguments of the following:

1. The City Council or any member or members of the City Council authorized by it;
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure;
3. Bona fide associations of citizens; or
4. Individual voters who are eligible to vote on the measure.

The proposed resolutions authorize the Mayor, or his designee(s), to prepare a written argument in favor of the proposed measure on behalf of the City Council.

#### FISCAL IMPACT

If approved by voters in November, the estimated additional revenues generated by the four models could range from approximately \$986,911 to \$1,995,300 annually. The cost of the ballot measure is approximately \$15,000, which would account for San Mateo County election costs as well as publishing expenses. This amount is incorporated in the FY 2024-25 adopted budget.

#### ENVIRONMENTAL ASSESSMENT

In accordance with CEQA Guidelines Section 15378(b)(4), placement of a ballot measure on the ballot to amend the City's business license tax is not a project subject to CEQA, because it is a financing decision without commitment to a specific project that may result in a potentially significant physical impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the actions proposed are not subject to CEQA.

#### ATTACHMENTS:

Attachment 1 – Resolution for Model \$0.75 rate with \$500K maximum tax with corresponding Ordinance as Exhibit A

Attachment 2 – Resolution for Model \$1.00 rate with \$500K maximum tax with corresponding Ordinance as Exhibit A

Attachment 3 – Resolution for Model \$1.25 rate with \$500K maximum tax with corresponding Ordinance as Exhibit A

Attachment 4 – Resolution for Model 4X-2 with a tiered rate with \$250K maximum tax with corresponding Ordinance as Exhibit A.

Attachment 5 – Memo by FM3 on Businesses Survey Analysis