

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FOSTER CITY AMENDING SECTION 5.04.060 (CONSTITUTIONAL APPORTIONMENT) OF CHAPTER 5.04 (GENERAL PROVISIONS), SECTIONS 5.08.050 (GROSS RECEIPTS), 5.08.080 (SOLICITOR), 5.08.090 (SPECIALTY CONTRACTOR), AND 5.08.100 (SWORN STATEMENT) OF CHAPTER 5.08 (DEFINITIONS), AND SECTION 5.24.010 (RATES) OF CHAPTER 5.24 (GROSS RECEIPTS TAX), WITHIN SECTION I (BUSINESS LICENSES GENERALLY) OF TITLE 5 (BUSINESS LICENSES AND REGULATION) OF THE FOSTER CITY MUNICIPAL CODE TO UPDATE THE CITY'S BUSINESS LICENSE TAX

CITY OF FOSTER CITY

WHEREAS, 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 (FCMC); and

WHEREAS, the City's Business License Tax (BLT) Ordinance was enacted in 1972, shortly after the City's incorporation; and

WHEREAS, the BLT Ordinance was last amended and a ballot measure (Measure U) to increase the BLT was approved by the Foster City voters in 2013; and

WHEREAS, Chapters 5.04 to 5.40 of FCMC Title 5 outline the provisions of the City's current BLT; and

WHEREAS, the current BLT model which the City follows is based on a gross receipts model with a single tax rate of \$0.75 per \$1,000 of gross receipts, utilizes a minimum tax of \$100 (\$200 for General Contractors) and a maximum tax (\$28,597 based on FY 2023 licensing period); and

WHEREAS, under the current BLT model, a business has to gross more than approximately \$33 million in gross receipts to pay the maximum tax; and

WHEREAS, the City is anticipating ongoing structural deficit in its budget over the next five years; and

WHEREAS, 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 increase to the City's BLT as a potential revenue enhancement option in 2022; and

WHEREAS, 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"* and directed staff to research BLT methodologies and

consider feasibility of various methodologies (e.g., gross receipts, square footage, employee count); and

WHEREAS, the City Council desires, to amend various sections of Chapters 5.04, 5.08, and 5.24 within Section I (Business License Generally) of Title 5 (Business Licenses and Regulations) of the FCMC, with the funds to be deposited in the City's General Fund and to be used for locally controlled general fund purposes to protect Foster City's financial stability and maintain essential services including but not limited to 911 emergency response, property crime prevention, street repairs, and infrastructure maintenance; and

WHEREAS, this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 *et seq.*, "CEQA," and 14 Cal. Code Reg. §§ 15000 *et seq.*, "CEQA Guidelines"). The tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required; and

WHEREAS, the City Council believes that it is in the best interests of the City to submit the proposed amendments to the BLT to the voters of Foster City.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF FOSTER CITY DO ORDAIN AS FOLLOWS:

Section 1. Amendment. Section 5.04.060 (Constitutional Apportionment) of Chapter 5.04 (General Provisions), Sections 5.08.050 (Gross Receipts), 5.08.080 (Solicitor), 5.08.090 (Specialty Contractor), and 5.08.100 (Sworn Statement) of Chapter 5.08 (Definitions), and Section 5.24.010 (Rates) of Chapter 5.24 (Gross Receipts Tax), within Section I (Business Licenses Generally) of Title 5 (Business Licenses and Regulation) of the Foster City Municipal Code are hereby amended as set forth in Exhibit 1 which is attached hereto and incorporated herein by reference.

All other provisions of Chapters 5.04 through 5.40 within Section 1 (Business Licenses Generally) of Title 5 (Business Licenses and Regulation) not amended by this Ordinance remain in full force and effect.

Section 2. Audits. Proceeds resulting from the BLT shall be deposited into the City's General Fund and become subject to the same audit requirements as other General Fund revenues. Any auditor's report shall include an accounting of the revenues received from the BLT and shall be presented to the City Council annually and made available for public review.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity

of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 4. Effective Date. This Ordinance shall go into effect in accordance with Elections Code Section 9217 and shall be deemed adopted and become effective only if approved by a majority of the eligible voters of the City of Foster City voting thereon, at an election to be held on November 5, 2024, and shall take effect ten (10) days after the City Council has certified the results of that election by resolution. The levying and collection of the BLT shall be as specified in Chapters 5.04 through 5.40 within Section I of Title 5 of the Foster City Municipal Code and as directed by the City Council.

PASSED AND ADOPTED by the voters of the City of Foster City this November 5, 2024.

It is hereby certified that this Ordinance was duly adopted by the voters at the November 5, 2024, election, and that the City Council declared the results of such election, in the manner required by law, at a meeting of the City Council held on December __, 2024 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Patrick Sullivan, Mayor

ATTEST:

Priscilla Schaus, City Clerk

EXHIBIT 1

A. Section 5.04.060 of Chapter 5.04 in Title 5 of the Foster City Municipal Code is hereby amended to read as follows:

“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.

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

collector determine the gross receipts measure of license tax to be the proper basis, he may require the applicant to submit, either at the time of termination of applicant's business in the city or at the end of each three-month period, a sworn statement of the gross receipts and pay the amount of license tax therefor; provided, that no additional license tax during any one calendar year shall be required after the licensee has paid an amount equal to the annual license tax as prescribed in this article."

B. Section 5.08.050 of Chapter 5.08 in Title 5 of the Foster City Municipal Code is hereby amended to read as follows:

"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.”

C. Sections 5.08.080 and 5.08.090 of Chapter 5.08 in Title 5 of the Foster City Municipal Code are hereby deleted in their entirety:

5.08.080 Solicitor.

~~As used in this article, “solicitor” means one who engages in the business of going from house to house, place to place or in or along the streets within the city, selling or taking orders for, or offering to sell or take orders for, goods, wares, merchandise or other things of value for future delivery, or for services to be performed in the future. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(j))~~

5.08.090 Specialty contractor.

~~As used in this article, a “specialty contractor” is as defined in Section 7058 of the Business and Professions Code of the state as it now exists or may hereafter be amended. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(i))~~

D. Section 5.84.100 of Chapter 5.08 in Title 5 of the Foster City Municipal Code is hereby renumbered to be Section 5.08.080:

“5.08.100080 Sworn statement.

As used in this article, “sworn statement” means an affidavit sworn before a person authorized to take oaths, or a declaration or certification made under penalty of perjury.”

E. Section 5.24.000 of Chapter 5.24 in Title 5 of the Foster City Municipal Code is amended to read as follows:

“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:

~~subject to the following:~~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:

Effective Date	General Contractor	Specialty Contractor	Solicitor	All Other Businesses
January 1, 2014	\$100	\$50	\$50	\$50
January 1, 2015	\$150	\$75	\$75	\$75
January 1, 2016, and thereafter	\$200	\$100	\$100	\$100
<u>January 1, 2025, and thereafter</u>	<u>\$200</u>			<u>\$100</u>

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.~~Gross Receipts Limit.~~ The maximum amount of the tax to be paid is~~The limit upon which the license tax shall be computed will be~~ 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).

~~1. Effective January 1, 2014, taxable gross receipts shall be limited to ten million dollars.~~

~~2. Effective January 1, 2015, taxable gross receipts shall be limited to twenty million dollars.~~

~~3. Effective January 1, 2016, taxable gross receipts shall be limited to thirty million dollars.~~

~~4. Effective January 1, 2017, and every January 1st thereafter, the taxable gross receipts limit shall be adjusted by the percentage change in the Consumer Price Index (All Urban Consumers) issued by the Bureau of Labor Statistics of the United States Department of Labor for the San Francisco-Oakland-San Jose, California, area (or any successor to that index) for the month of October immediately preceding, rounded to the nearest ten thousand dollars.~~

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."