

RESOLUTION NO. _____

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 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, 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

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 \$1000 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 staff began to explore potential BLT models that could generate additional revenue and presented to City Council at various public meetings; and

WHEREAS, at the July 15 public meeting, the City Council selected the BLT model retaining the minimum tax of \$100 (\$200 for General Contractors), with a maximum tax of \$500,000, and a fixed gross receipt rate of \$1.00 per \$1000 of gross receipts. In addition, 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

WHEREAS, a proposed ordinance attached hereto and incorporated herein by reference as Attachment "A" ("the Ordinance") would amend various sections of Chapters 5.04, 5.08 and 5.24 within Title 5 of FCMC and revise the BLT on businesses operating in the City; and

WHEREAS, on June 3, 2024, the City Council approved City Resolution No. 2024-53 calling and giving notice of the holding of a General Municipal Election to be held on November 5, 2024 for the election of three members of the City Council as required by the provisions of the laws of the State of California relating to general law cities; and,

WHEREAS, California Constitution Article XIIC, Section 2, provides that no local government may increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote, and that a measure proposing to adopt a general tax must be consolidated with a regularly scheduled General Municipal Election for members of the City Council; 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, the Foster City Council is authorized by California Elections Code Section 9222 and California Revenue and Taxation Code Section 7285.9 to place such a measure before the voters; and

WHEREAS, California Government Code Section 53724(b) authorizes the City Council to place such a tax measure before the voters subject to a two-thirds vote of all members of the legislative body; and

WHEREAS, California Elections Code section 9282 authorizes the filing of written arguments for and against measures placed on the ballot, with priority determined according to state law; and

WHEREAS, the approval of this Resolution 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, it is desirable that the General Municipal Election be consolidated with the other county and state elections to be held on the same date, that within the city, precincts, polling places and election offices of the two elections to be the same, that the County Election Department of the County of San Mateo canvass the returns of the General Municipal Election, and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Foster City that the City Council does hereby declare, determine and order as follows:

- A. The above recitals are true and correct and incorporated herein as findings.
- B. That the City Council finds and determines that this activity is not a “Project” as defined under Section 15378(b)(4) of the California Environmental Quality Act (CEQA) Guidelines 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.
- C. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there has been called and ordered to be held in the City of Foster City, California, on Tuesday, November 5, 2024, a General Municipal Election.
- D. That the City Council, pursuant to its right and authority, hereby submits to the voters of the City and orders the following question submitted to the voters at the November 5, 2024 General Municipal Election:

City of Foster City Business License Tax Measure

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	<input type="checkbox"/>
	No	<input type="checkbox"/>

- E. That the Ordinance to be placed before the voters is attached as Exhibit “A” hereto and incorporated into this resolution by reference. The “full text” of the proposed ordinance shall appear in the Voter Information Pamphlet.

- F. That the City Clerk is directed to file certified copies of this Resolution with the Board of Supervisors and the Elections Office of the County of San Mateo, together with the attached ballot measure.
- G. The City Clerk is directed to transmit a copy of the measure to the City Attorney, and City Attorney is directed to prepare an impartial analysis of the measure not exceeding 500 words showing the effect of the measure on the existing law and the operation of the measure and to file the analysis no later than August 20, 2024 with the City Clerk by 5:00 pm.
- H. The City Council authorizes the Mayor or their designee(s) to file written argument(s) not exceeding 300 words regarding the City Measure as specified above, accompanied by the printed name(s) and signature(s) of the person(s) submitting it, in accordance with Article 4, Chapter 3, Section 9 of the California Elections Code. Primary Arguments must be submitted to the City Clerk not later than August 13, 2024 by 5:00 pm. If more than one argument for or against is received, the priorities established by Elections Code Section 9287 shall control. That pursuant to Sections 9220 and 9285 of the California Elections Code, when the City Clerk has selected arguments for and against the measure which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor.
- I. The authors may prepare and submit rebuttal arguments not exceeding 250 words. A rebuttal argument may not be signed by more than five (5) authors. Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument which it seeks to rebut. Rebuttal Arguments must be submitted to the City Clerk not later than August 20, 2024 by 5:00 pm.
- J. The measure requires a simple majority of the voters voting on the proposed measure to pass.
- K. The City Clerk is authorized, instructed and directed to work with the County Elections Office as needed to properly and lawfully conduct the election on the measure. The ballots to be used in the election shall be in the form and content as required by law. The County Elections Office is authorized to canvass the returns of the General Municipal Election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.
- L. The Board of Supervisors is requested to instruct the County Elections Office to provide such services as may be necessary for the holding of the consolidated election. The election shall be held in all respects as if there were only one election. The City acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418. The City recognizes that the County will incur additional costs because of this consolidation and agrees to reimburse the County for those costs. The City Manager is hereby authorized and directed

to expend the necessary funds to pay for the City's cost of placing the measure on the election ballot.

- M. The City Clerk is hereby directed to cause notice of the measure to be published once in an official newspaper of general circulation for the City of Foster City, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the Regular Meeting held on the 15th day of July, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

PATRICK SULLIVAN, MAYOR

ATTEST:

PRISCILLA SCHAUS, CITY CLERK