



DATE: October 16, 2023

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager

FROM: Marlene Subhashini, Assistant City Manager  
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DEPARTMENT: City Manager  
Finance  
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SUBJECT: PRELIMINARY REPORT ON POTENTIAL BUSINESS LICENSE  
TAX ORDINANCE AMENDMENT AND NOVEMBER 2024  
GENERAL ELECTION BALLOT MEASURE

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## RECOMMENDATION

It is recommended that the City Council review and discuss a preliminary report regarding amending the City of Foster City's Business License Tax (BLT) Ordinance and by Minute Order, provide direction to staff regarding the following: (1) Reissuance of the Request for Proposals (RFP) for BLT consulting services if responses received exceed the City Manager purchasing policy authority of \$50,000; (2) Whether to consider placing a BLT ballot measure on the November 2024 General Election.

## EXECUTIVE SUMMARY

Earlier this year, the City Council adopted its key priorities and initiatives for the calendar year 2023 ([link](#)). Anticipating the fiscal challenges that are ahead of us, the City Council adopted Goal 3.1 "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.

At the October 16 meeting, staff would like to provide a preliminary report on the approach to amending the BLT Ordinance, and steps leading up to adding a ballot measure on the November 2024 General Election.

## BACKGROUND

The City of Foster City requires all businesses operating within the city to obtain a business license and pay business license taxes. This revenue is locally controlled and funds essential services. BLT is a common and important revenue source for many cities. BLT is an annual tax charged to anyone doing business in a city.

There are several types of BLT methodologies based on either: gross receipt, a flat tax, employee count, payroll tax, square footage, etc. A BLT based on gross receipts is structured to impose taxes on all sales made by a company, regardless of the income source. Gross receipts taxes are levied on the seller of goods or services rather than on consumers. This is one of the most common methods of business taxation in California.

As a widely used methodology, there are many established guidelines for what constitutes gross receipts and how to administer the tax. In addition, with a uniform tax rate on gross receipts for all businesses, generally also subject to a minimum registration tax, this approach is also a relatively simple tax structure that allows for adaptability.

## CITY'S CURRENT BUSINESS LICENSE TAX STRUCTURE

The City of Foster City's BLT Ordinance was enacted in 1972, shortly after the City's incorporation. Since that time, the BLT Ordinance has only been updated once in 2013 (Attachment 1). Foster City Municipal Code Title 5 "Business Licenses and Regulation" Chapters 5.04 to 5.40 outlines the provisions of the City's BLT. The model which the City follows is based on the aforementioned gross receipts model with a single tax rate. This model has growth potential, yet is also equitable to businesses during economic downturns; which also means there may be significant revenue volatility during periods of expansion and contraction (gross receipts are self-reported by each business).

The City has approximately 1,700 Business License Tax licensees. Per its adopted 2023-24 Budget ([link](#)), the current tax rate is 0.075% with a gross receipts cap of \$38,129,333 for a maximum tax of \$28,597 for the calendar year 2023. There are approximately 24 businesses with gross receipts that exceed the cap. The gross receipts cap is adjusted annually based on inflation. FY 2022-23 revenues were \$1.73 million and slightly below

the FY 2018-19 level of \$1.76 million. Fiscal Years 2020-21 and 2021-22 revenues were \$1,506,696 and \$1,583,789 respectively.

## **CITY'S FINANCIAL OUTLOOK**

On June 20, 2023, the City Council adopted the FY 2023-24 Budget. The FY 2023-24 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 \$6.32 million and \$6.78 million respectively.

In response to this fiscal challenge, City staff have been tasked with finding new revenue sources to resolve the anticipated General Fund structural deficits forecasted for the next five (5) years. 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.

As noted earlier, the City has a BLT that includes a gross receipts component consisting of a gross receipts rate of 0.075% with a gross receipts cap of \$38,129,333 for a maximum tax of \$28,597 for the calendar year 2023. FY 2022-23 BLT revenues were \$1.73 million and slightly below the FY 2018-19 level of \$1.76 million. To protect Foster City's fiscal stability and maintain essential services, the City is exploring the possibility of increasing the gross receipts cap and/or a combination of BLT methodologies. The objective would be to propose a business tax structure that is fair, progressive and business-friendly while generating additional revenue for the City to continue to provide vital and high-quality services to the community. Based on City Council direction and following stakeholder engagement, the proposed BLT ballot measure will be placed in the November 2024 General Election.

## **ANALYSIS**

In order to adequately inform the City Council and the business community, a comprehensive report on the City's current BLT ordinance, other license tax fee structures, and notably, impact of proposed changes to BLT on the City's revenue and business community is critical. Given the complexity of the BLT structure, staff would like to seek the expertise of a consultant to prepare an informational report on BLT. During our informal discussion with two (2) consulting firms regarding the BLT ballot measure, it was noted that the scope of services would be under \$50,000. The City has a purchasing policy under which if the contract amount is between \$10,000- \$50,000, the City Manager can authorize the issuance of an RFP and is authorized to approve contracts under \$50,000.

On September 19, 2023, staff issued an RFP for BLT consulting services with an initial due date for proposals/response by October 9, 2023 (see Attachment 2). The RFP was advertised in following ways:

1. Sent to consulting firms via email
2. Posted on City's RFP webpage
3. Shared via LinkedIn

Staff received only one (1) response to the RFP by the initial deadline. Due to inadequate response, staff has extended the timeline by an additional two (2) weeks (October 23, 2023). If RFP responses received are greater than \$50,000 threshold of the City Manager's approving authority, per the purchasing policy, staff will re-issue the RFP as directed by the City Council at this meeting (see Attachment 2).

The main scope of services is to prepare an informational report that compares Foster City's business license tax with other local jurisdictions, provide an analysis of comparable cities' business license tax structures and alternative fee structures, formula, its impact on existing businesses and the City's revenues. Staff is anticipating that the study will be done in time to present a report to the City Council by January 2024. Below is an outline of anticipated next steps:

- Work with the consultant to prepare an informational report for the City Council's review and seek direction on the preferred methodology to amend the BLT Ordinance.
- Stakeholder Outreach and engagement: This will be a multi-faceted outreach, including:
  - Engaging a consultant to conduct a focused stakeholder outreach leading up to the November 2024 ballot. The consultant would be tasked with various aspects of the stakeholder outreach including but not limited to:
    - A dedicated webpage with information regarding the current business license tax program, background on modernizing the tax, discussions to date, the options being considered, and the timeline for a ballot measure.
    - A unique email address for public comment.
    - A direct, targeted outreach to the approximately 24 businesses that would potentially be impacted by such changes to the BLT Ordinance.
    - Community workshop(s) for local businesses and residential community to inform them of the proposed amendments to the BLT Ordinance.
    - A survey for our local businesses.
- Preparation for Ballot Measure: BLT is considered a general tax that would require a 2/3rd majority vote of the City Council (4 out of 5 Councilmembers) to be placed on the ballot and a simple majority vote (50% + 1) of the voters to pass. By law, a general tax may only be placed on the ballot when there is a City Council election, except in cases of emergency declared by a unanimous vote of the City Council. California Constitution Article XIII C Section 2(b) governs this requirement, which restricts the placement of such a measure during such election years.

The following timeline outlines steps that would need to be taken for the inclusion of a ballot measure:

- *Calling for Consolidation of Election*  
A separate resolution is necessary to call for the election and place the measure on the ballot for the November 2024 General Election. The City Council must adopt the resolution and submit it to the County of San Mateo Board of Supervisors and Assessor-County Clerk-Recorder Elections' Office by August 2024. The resolution would call for an election on the proposed measure and request its consolidation with the November 2024 General Election. The draft resolution will contain the wording of the measure as it will appear on the ballot.
- *Submission of Ballot Arguments*  
Arguments for or against the measure must be submitted by August 2024 to the City Clerk Department. Arguments may not exceed three hundred (300) words and cannot be signed by more than five (5) persons. The deadline for submission of rebuttals to the City Clerk Department is August 2024. Rebuttals may be authored by the original signers of the argument or anyone they designate on the Signature Release Form. The new signer does not have to be a registered voter or live in the City. Rebuttals are limited to 250 words.
- *Preparation of Argument in Support of Measure*  
Under Elections Code Section 9282, a ballot argument for a City Council sponsored measure may be submitted by the City Council, or a member or members of the Council authorized by the City Council, or an individual voter who is eligible to vote on the measure, or bona fide association of citizens, or a combination of voters and associations. The argument may not exceed three hundred (300) words.
- *Impartial Analysis*  
Under Elections Code Section 9280, the City Attorney will prepare an impartial analysis of each measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit the impartial analysis to the City Clerk Department by August 2024.

## TIMELINE AND ELECTION REQUIREMENTS

Formal City Council action would be needed to place a ballot measure on the November 2024 General Election. The County of San Mateo's deadline for submitting a ballot measure is August 2024. The following timeline outlines steps that would need to be taken for the inclusion of a ballot measure:

MONTH	ACTION
Jan 2024	Informational Report to the City Council and Policy Direction on BLT Ordinance Amendment.
Feb-April 2024	Amendments to the BLT Ordinance based on the policy direction
Feb-August 2024	Stakeholder outreach
May/June 2024	Introduction of BLT Ordinance Amendment and Resolution to Authorize Ratification on November 2024 General Election (listed actions above "Inclusion of a ballot measure")
August 9, 2024	Submission Deadline to County Elections Office
November 5, 2024	General Election
December 2024	Certification of Election Results
January 1, 2025	Effective Date (If Passed)

If directed, staff will prepare the BLT ordinance amendment and bring a Resolution to the City Council in May/June 2024 seeking authorization to place a BLT ballot measure on the November 2024 General Election.

### NEXT STEPS

Staff will select a qualified consultant to work on an informational report that would compare Foster City's BLT with other local jurisdictions, include an analysis of comparable cities' business license tax structures and alternative fee structures, formula, its impact on existing businesses and the City's revenues. Upon completion of the report for BLT ordinance amendments, staff will present the report to the City Council in January 2024 to seek direction on the preferred methodology to amend the BLT Ordinance. Staff will then work with the consultant on the proposed amendments to the BLT Ordinance and introduce the ordinance to the City Council in May/June 2024. Parallel to this, staff will issue another RFP to engage a consultant to conduct a focused stakeholder outreach leading up to the November 2024 ballot.

### CEQA

Not applicable

### FISCAL IMPACT

The exact agreement amount for the consulting services, including BLT amendments and stakeholder outreach is unknown at this time. However, there are funds available in the Economic Development Division budget due to savings from the vacant Economic Development Manager position. Those savings will be used to fund the consulting services; therefore, no additional appropriation is required.

## CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Smart Planning, Development, and the Local Economy

### ATTACHMENTS

Attachment 1 – Current BLT Ordinance

Attachment 2 – RFP