



## Agenda Report

22-952

Agenda Date: 7/12/2022

### REPORT TO COUNCIL

#### **SUBJECT**

Supplemental Report on the Adoption of Resolutions Calling for a Municipal General Election and Ordering Consolidation with the Gubernatorial General Election for the Purpose of Submitting to the Voters a Business License Tax (BLT) Modernization Measure and Utility Transfer Charter Amendment; Authorizing the City Clerk to Contract with the County of Santa Clara for Services to be Performed in Connection with the Gubernatorial General Election to be Held on November 8, 2022, as well as Directing the City Attorney to Prepare an Impartial Analysis; and Setting Priorities for Ballot Arguments

#### **COUNCIL PILLAR**

Deliver and Enhance High-Quality, Efficient Services and Infrastructure

#### **BACKGROUND**

At the July 5, 2022 City Council meeting, Staff presented recommendations to adopt two resolutions for the placement of a Utility Transfer Charter Amendment and a Business License Tax Modernization Measure on the November 2022 ballot. (RTC 22-891).

The Council unanimously approved the placement of the Utility Transfer Charter Amendment, but continued action related to the Business License Tax Modernization Measure to July 12, 2022 and asked staff to facilitate an ad hoc working group comprised of Councilmembers Chahal, Hardy and Park to further engage with the Silicon Valley Central Chamber and any other stakeholders, regarding comments received on the proposed measure at the July 5, 2022 meeting.

In the packet for the July 12<sup>th</sup> Council meeting is RTC 22-936 that summarizes the actions taken by Council and states that the results of the Working Group would be forwarded to the City Council via a supplemental report. The purpose of this report is to provide the supplemental information.

#### **DISCUSSION**

During the continuation period, the Working Group met several times with diverse stakeholders and staff to discuss possible modifications to Staff's original proposal. Four alternatives were discussed:

- 1. Modified Small Business Proposal.** This proposal would retain the elements of the original staff model (progressive, consistent incremental increases, an \$80 subsidy for small businesses with 1-4 employees, a cap of \$350,000, CPI with 5% limit, etc) while modifying the incremental rate increases for businesses in two categories (20-49 & 50-99) from \$15 to \$10. This would mitigate the impact for these small businesses while retaining approximately \$9.3 million in revenue - a reduction of approximately \$200,000 from the original model.

| Employee Range | Business Tax Rate                          | Employee Range | # of Businesses | Estimated Revenue | Average per Business |
|----------------|--|----------------|-----------------|-------------------|----------------------|
| 1-4            | \$75 plus \$15 per employee                | 1-4            | 3,838           | \$ 366,315        | \$ 95                |
| 5-9            | \$135 plus \$30 per employee over 4        | 5-9            | 842             | 173,820           | 206                  |
| 10-19          | \$285 plus \$45 per employee over 9        | 10-19          | 559             | 268,620           | 481                  |
| 20-49          | \$735 plus \$55 per employee over 19       | 20-49          | 445             | 584,255           | 1,313                |
| 50-99          | \$2,385 plus \$65 per employee over 49     | 50-99          | 151             | 540,705           | 3,581                |
| 100-249        | \$5,635 plus \$90 per employee over 99     | 100-249        | 87              | 921,165           | 10,588               |
| 250-499        | \$19,135 plus \$105 per employee over 249  | 250-499        | 34              | 1,031,845         | 30,348               |
| 500-999        | \$45,385 plus \$120 per employee over 499  | 500-999        | 32              | 2,190,920         | 68,466               |
| 1000+          | \$105,385 plus \$135 per employee over 999 | 1000+          | 15              | 3,211,340         | 214,089              |
|                |  |                | 6,003           | 9,288,985         |                      |

- 2. Tiered Model.** This proposal would create flat rate tiers, generate approximately \$8.5 million and have a cap of \$200k. In discussing this proposal, significant increases in taxes were noted as businesses added employees which could serve as a disincentive to business growth. For example, a business with 49 employees would pay \$1,500, but the addition of just two employees would raise their tax to \$4,000. This impact continued throughout the tiers. Efforts were made to mitigate this impact by breaking down the tiers; however, this concern continued.

| Employee Tiers               | # in SC | Tax Amount    | Estimated Revenue | Average per Employee for Midrange | Notes   |
|------------------------------|---------|---------------|-------------------|-----------------------------------|---|
| 0-4                          | 3,838   | \$ 50.00      | \$ 191,900        | 25                                | SJ: \$210.00 - \$278.42                                   |
| 5-9                          | 842     | \$ 200.00     | \$ 168,400        | 28.5                              | SJ: \$312.63 - \$449.47                                   |
| 10-19                        | 559     | \$ 500.00     | \$ 279,500        | 33.3                              | SJ: \$483.68 - \$791.57                                   |
| 20-49                        | 445     | \$ 1,500.00   | \$ 667,500        | 42.9                              | SJ: \$825.78 - \$1,977.47                                 |
| 50-99                        | 151     | \$ 4,000.00   | \$ 604,000        | 53.3                              | SJ: \$2,023.08 - 4,247.97                                 |
| 100-249                      | 87      | \$ 10,000.00  | \$ 870,000        | 57.1                              | SJ: \$4,303.58 - \$12,798.07                              |
| 250-499                      | 34      | \$ 25,000.00  | \$ 850,000        | 66.7                              | SJ: \$12,855.08 - \$27,050.57                             |
| 500-999                      | 32      | \$ 60,000.00  | \$ 1,920,000      | 77.4                              | SJ: \$27,107.58 - \$61,274.11                             |
| 1000+                        | 15      | \$ 200,000.00 | \$ 3,000,000      | 100                               | SJ: \$61,342.58 - \$171,300.69,<br>2000 used as mid range |
| Total Tax Revenue Generated: |         |               | \$ 8,551,300      |                                   |   |

- 3. Flat Rate - \$45.** In this proposal, all businesses would be charged a flat fee of \$45 to ease administration and compliance. While this proposal would retain many of the elements of the original staff proposal, (a cap of \$350,000, CPI with 5% increase, every business paying their fair share), this proposal would differ as follows: 1) Revenue would decline significantly from \$9.8 million (includes tax revenue from rental units) in the original staff proposal to \$6.0 million; 2) Implementation Start Date would move from January, 2024 to July 2023 with a rolling implementation; 3) The base rate of \$75 with \$15 per rental unit would be modified to a flat \$15 per unit; 4) While a subsidy would continue to be offered, given the low rate of \$45, businesses eligible for a subsidy would be revised as follows:

| Employee Range | Subsidy per Business |
|----------------|----------------------|
| 0-4            | \$ 30                |
| 5-9            | 75                   |
| 10-19          | 100                  |
| 20-49          | 200                  |

| Employee Range                | Business Tax Rate        | Number of Employees Subject to Tax | Number of Businesses Subject to Cap | Revenue * (Includes Rental) |
|-------------------------------|--------------------------|------------------------------------|-------------------------------------|-----------------------------|
| All employees including owner | <b>\$45</b> per employee | 127,619                            | 1                                   | \$6.0m                      |

- 4. Hybrid Flat Rate - \$45/\$60.** This proposal would maintain all of the attributes of the Flat Rate proposal with the exception that a progressive increase would be included for businesses with 500 or more employees. This proposal is a staff modification to the Working Group's original flat model which seeks to retain the value of a flat \$45 rate for the first 499 employees but allows for a modest per employee increase to \$60 for business once their employee count exceeds 500. This model would generate approximately \$6.5 million (including tax revenues from rental units).

| Employee Range | Business Tax Rate                        | Number of Businesses Subject to Cap | Estimated Revenue   |
|----------------|--|-------------------------------------|---------------------|
| 1-499          | <b>\$45</b> per employee                 |                                     | \$ 3,065,715        |
| 500+           | \$22,455 plus \$60 per employee over 499 | 2                                   | 3,105,340           |
|                |  |                                     | <b>\$ 6,171,055</b> |

The Working Group discussed the various models and determined to bring forward the original staff model, the \$45 flat rate model and the hybrid \$45/60 model consideration by the full City Council.

Staff will present an overview of the Working Group's efforts at the July 12<sup>th</sup> meeting with the members of the Working Group available to respond to questions.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA guidelines section 15378(b)(5) in that it is a governmental organization or administrative activity that will not result in direct or indirect changes in the environment.

### **FISCAL IMPACT**

Additional ongoing revenues of approximately \$6 million to \$9 million are projected with the successful passage of the proposed Business License Tax Ballot Measure. The actual amounts will

be dependent on which proposal, if any, is brought forward, and whether the measure is successful at the November 2022 ballot.

The FY2022/23 Adopted Budget includes \$350,000 to cover election costs and existing funding to conduct basic education and voter outreach. Actual costs will be determined by the County Registrar of Voters based on the number of ballots and the actual printing costs allocated to the City of Santa Clara. A future budget amendment may be brought forward at a later date if required.

### **COORDINATION**

This report has been coordinated with the City Manager's Office, the Finance Department, the City Clerk's Office and City Attorney's Office.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

### **ALTERNATIVES**

1. That the Council Adopt a Resolution Calling for a Municipal General Election and Ordering Consolidation with the Gubernatorial General Election for the Purpose of Submitting to the Voters a Business License Tax (BLT) Modernization Measure and Utility Transfer Charter Amendment; Authorizing the City Clerk to Contract with the County of Santa Clara for Services to be Performed in Connection with the Gubernatorial General Election to be Held on November 8, 2022, as well as Directing the City Attorney to Prepare an Impartial Analysis; and Setting Priorities for Ballot Arguments.
2. That the Council provide direction on a preferred Business License Tax Modernization model.
3. That the Council take no action and defer placement of a ballot measure on this issue for the November 2022 election.

### **RECOMMENDATION**

1. That the Council provide direction on the preferred Business License Tax Modernization model.
2. Council Adopt a Resolution Calling for a Municipal General Election and Ordering Consolidation with the Gubernatorial General Election for the Purpose of Submitting to the Voters a Business License Tax (BLT) Modernization Measure and Utility Transfer Charter Amendment; Authorizing the City Clerk to Contract with the County of Santa Clara for Services to be Performed in Connection with the Gubernatorial General Election to be Held on November 8, 2022, as well as Directing the City Attorney to Prepare an Impartial Analysis; and Setting Priorities for Ballot Arguments.

Reviewed by: Cynthia Bojorquez, Assistant City Manager

Approved by: Rajeev Batra, City Manager

**ATTACHMENTS**

1. Resolution - Original Staff Proposal
2. Resolution - Flat \$45
3. Resolution - Hybrid Flat

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA ORDERING THE SUBMISSION OF A BALLOT MEASURE — KNOWN AS THE ‘CITY OF SANTA CLARA BUSINESS LICENSE UPDATE / TAX EQUITY MEASURE’ TO THE QUALIFIED ELECTORS OF THE CITY AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2022, REGARDING A BALLOT MEASURE TO AMEND CITY CODE CHAPTER 3.40 TO MODERNIZE AND INCREASE THE BUSINESS LICENSE TAX; CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF SANTA CLARA ON TUESDAY, NOVEMBER 8, 2022, FOR AVOTE ON SAID BALLOT MEASURE ; REQUESTING CONSOLIDATION WITH THE GUBERNATORIAL GENERAL ELECTION AND ELECTION SERVICES FROM SANTA CLARA COUNTY; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS; AND SETTING PRIORITIES FOR BALLOT ARGUMENTS

**BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, Santa Clara’s Business License Tax has not been updated in 30 years;

**WHEREAS**, the current tax does not reflect the way business operates in the City today;

**WHEREAS**, the measure as written will allow the City of Santa Clara to treat all businesses equitably;

**WHEREAS**, this measure will allow the city to maintain the essential priorities upon which local businesses and residents rely, including public safety, clean and safe streets, COVID-19 response, street and sidewalk repair, and flood protection;

**WHEREAS**, the measure as written requires strict oversight, financial audits and disclosures, and must be spent locally, without being taken by the state;

**WHEREAS**, the next Gubernatorial General Election will be held November 8, 2022;

**WHEREAS**, the California Constitution Article XIII C, Section 2(b) requires a proposed tax to be submitted to voters at a general municipal election;

**WHEREAS**, the City Council intends to submit a ballot measure and ballot question, concerning an increase in the Business License Tax rate, as described in this Resolution, to the qualified electors of the City of Santa Clara at such election;

**WHEREAS**, pursuant to the requirements of the City Charter there is called and ordered to be held in the City of Santa Clara, California, on Tuesday, November 8, 2022, a special municipal election placing on the ballot one measure that, if passed, would amend City Code Chapter 3.40; and, **WHEREAS**, in the course of conducting a special municipal election on November 8, 2022, it is desirable that such special municipal election be consolidated with the general election, pursuant to Santa Clara City Charter section 600.02, to be held on the same date as if there were only one election. It is also necessary for the City to request services of the County as set forth in this resolution.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. SPECIAL ELECTION. That pursuant to the requirements of the City Charter, there is called and ordered to be held in the City of Santa Clara, California, on Tuesday, November 8, 2022, a special municipal election placing one measure on the ballot that, if passed, would amend City Code Chapter 3.40 to increase business license tax rates.
2. BALLOT QUESTION. That the ballot question shall read as follows:

| CITY OF SANTA CLARA BUSINESS LICENSE UPDATE / TAX EQUITY MEASURE   |     |
|--|-----|
| To protect Santa Clara's financial stability and maintain essential services such as 911 emergency/public safety/crime reduction services, safe/clean public areas, pothole repair, parks and libraries, shall an ordinance to update Santa Clara's 1992 business license tax to \$75, increasing incrementally between \$15 to \$135 per employee or rental unit, with larger businesses paying more, generating approximately \$9,000,000 annually until ended by voters with independent financial audits, all funds staying local, be adopted? | Yes |
|  | No  |

3. MEASURE. That the measure read as set forth on Exhibit A (attached hereto and incorporated herein by reference, with additions to and deletions from the current text indicated thereon) which, if passed by the voters, shall amend the Municipal Code of the City of Santa Clara.
4. NOTICE OF ELECTION. That in accordance with the City Charter and applicable state law, the City Clerk is hereby authorized and directed on behalf of the City Council to

cause notice of the time and place of the holding of the election to be published once in a newspaper of general circulation, printed, published, and circulated in the City of Santa Clara, and hereby designated for that purpose by the City Council of Santa Clara. Furthermore, the City Clerk hereby is authorized, instructed and directed to coordinate with the County of Santa Clara Registrar of Voters to procure and furnish any and all official ballot, notices, printer matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

5.        **CONSOLIDATION REQUEST.** Pursuant to the requirement of Part 3 (Consolidation of Elections; Section 10400 et seq) of Division 10 of the Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to consolidate the special municipal election with the Gubernatorial general election on November 8, 2022, and to further provide that, upon consolidation, the consolidated election shall be held and conducted in all respects as if there were only one election, and only one form of ballot shall be used, election officers appointed, voting precincts designated, ballot printed, pools opened and closed, ballots opened and returned, returns canvassed, and all other proceedings in connection with the election shall be regulated and done by the Registrar of Voters of the County of Santa Clara in accordance with the provisions of applicable laws regulating consolidating elections. This City Council requests and consents to such consolidation.

6.        **REQUEST FOR COUNTY SERVICES.** Pursuant to Section 10002 of the California Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to permit the Registrar of Voters to render services to the City of Santa Clara relating to the conduct of Santa Clara's special municipal election to be held on Tuesday, November 8, 2022. Services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections.

7.        **ELECTION COSTS.** Subject to the approval of the Board of Supervisors of the foregoing requests, the City Clerk is hereby authorized to engage the services of the Registrar



of Voters of the County of Santa Clara to aid in the conduct of the election. The City Director of Finance is authorized and directed to pay the costs of services, provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.

8. BALLOT AND REBUTTAL ARGUMENTS FOR MEASURE. Primary and rebuttal arguments for the measure may be filed consistent with Elections Code Section 9282, et seq.

9. BALLOT ARGUMENT (IN FAVOR) OR (AGAINST) MEASURE. The Council hereby selects the following course of action regarding argument (in favor) or (against) the measure:

(Council to select one of the following concurrent with the adoption of resolution):

A. Authorizes the City Council as a body to submit a written argument (in favor) or (against) the measure and in the event an argument is filed for the measure, a rebuttal argument.

B. Authorizes (#) of member(s) of the City Council to submit a written argument (in favor) or (against) the measure: (one or more name(s)): at (Name(s) discretion, the argument may also be signed by other members of the City Council, bona fide associations or individual voters who are eligible to vote on the measure. In the event that an argument is filed for the measure, (Name(s) is also authorized to submit a rebuttal argument on behalf of the City Council, which, at (Name(s) discretion, may also be signed by members of the City Council, bona fide associations, or individual voters who are eligible to vote on the measure. Signatures on the rebuttal argument may be different from those who signed the primary argument. OR

C. Takes no action with regard to authorizing the Council or member of the Council to submit a written argument (in favor) or (against) the measure, in which case the City Clerk shall select an argument against the measure in accordance with the priority order set forth in Elections Code section 9287.

10. IMPARTIAL ANALYSIS. Pursuant to Elections Code Section 9280, the City Council hereby directs the City Attorney to prepare an impartial analysis of the measure.

11. TRANSMITTAL OF RESOLUTION. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters.

12. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15378(b)(4) and 15378(b)(5) that this resolution is exempt from the requirements of the California Environmental QUALITY Act (CEQA) in that it involves fiscal and administrative activities that will not result in a potentially significant impact on the environment.

13. That in all particulars not recited in this resolution, the special municipal election shall be held and conducted as provided by law for holding municipal elections.

14. That this resolution provides notice of the time and place for holding the general municipal election and the City Clerk is authorized, instructed and directed to give further or additional notice of the general municipal election in time, form and manner as required by law.

15. That the proposed measure shall not take effect unless and until approved by a vote of at least 50% plus one of the voters voting on the question at the election.

16. Effective date: This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE    DAY OF                      , 2022, BY THE FOLLOWING VOTE:

AYES:                      COUNCILORS:

NOES:                      COUNCILORS:

ABSENT:                      COUNCILORS:

ABSTAINED:                      COUNCILORS:

ATTEST: \_\_\_\_\_  
HOSAM HAGGAG  
CITY CLERK  
CITY OF SANTA CLARA

Attachment: Exhibit A Ordinance Amending and Restating Santa Clara City Code Chapter 3.40

**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF SANTA CLARA,  
CALIFORNIA, AMENDING AND RESTATING CHAPTER 3.40  
("BUSINESS LICENSE") OF TITLE 3 ("REVENUE AND  
FINANCE") OF "THE CODE OF THE CITY OF SANTA CLARA,  
CALIFORNIA" TO MODERNIZE AND INCREASE THE TAX RATE**

**BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SANTA CLARA**

**SECTION 1:** That Chapter 3.40 (entitled "Business License") of Title 3 (entitled "Revenue and Finance") of "The Code of the City of Santa Clara, California" ("SCCC") is amended and restated in its entirety to be numbered, entitled, and to read as follows:

**Chapter 3.40**

**BUSINESS TAX**

**3.40.010 Purpose.**

This chapter is enacted to raise revenue for municipal purposes and not for the purpose of regulation. The payment of a business tax required by this chapter, and its acceptance by the City, and the issuance of a business tax certificate to any person shall not entitle the holder thereof to carry on any business unless he or she has complied with all of the requirements of the City Code and all other applicable laws, nor to carry on any business in any building, on any premises, or in any location designated in such business tax certificate in the event that such building, premises or location is situated in a zone or locality in which the conduct of such business is in violation of any law.

**3.40.020 Effect on other fees and charges.**

Persons required to pay a business tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any other charge, fee, or tax as may be imposed by the City for the privilege of doing business within the city, or for the cost of regulating a business, and such persons shall remain subject to the regulatory provisions of all other ordinances, codes, and resolutions of the City, including but not exclusive to regulations for

zoning, building, fire, and safety.

#### **3.40.030 Chapter controlling.**

To the extent that the provisions of this chapter are inconsistent with the provisions of any other chapter of the City Code or parts thereof, the provisions of this chapter shall be deemed controlling.

#### **3.40.040 Definitions.**

The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(a) "Business tax certificate" means the document issued as a result of a completed tax affidavit and taxes paid.

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

(c) "Business community" means any and all areas of the City not zoned as residential.

(d) "CPI Index" The Consumer Price Index—All Urban Consumers for All Items for the San Francisco-Oakland-Hayward Area or any successor to that index designated by the Federal Bureau of Labor Statistics or the city council.

(e) "Director" means the Director of Finance or his or her designee.

(f) "Employee" means any or all persons engaged in the operation or activity of any business, whether as owner, a corporate officer, a partner, agent, manager, solicitor or any and all persons employed or working in such business either full time, part-time, permanent or temporary.

~~(g) "Fiscal year" means an accounting period of twelve (12) months commencing upon the payment of a business tax and every twelve (12) month period thereafter.~~

(gi) "Number of employees" means the number of persons employed in the business as

anticipated, or the number of employees including owner(s) at time of renewal.

(h) “Person” means all domestic and foreign corporations, limited liability company, firms, associations, syndicates, joint stock corporations, partnerships of every kind, joint ventures, clubs or common law trusts, societies, individuals, estates, business trusts, receivers, retirement plans, trustees, or any other group or combination acting as a unit engaged in any business in the city other than as an employee.

**3.40.050 Other licenses, permits, taxes, fees or charges authorized when.**

Nothing contained in this Chapter 3.40 shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit required by, under or by virtue of any provision of any other title or chapter of this Code or any other ordinance or resolution of the city or of its council, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this Code or any other ordinance or resolution of the city or of its council.

**3.40.060 Imposition of tax.**

The City does hereby tax, as provided in this chapter, each and every kind of business transacted, conducted, exhibited or carried on in the city, at the rates named and prescribed in this chapter. If more than one business shares a business location, each business is required to apply and pay the prescribed tax.

**3.40.070 Business tax certificate required.**

It shall be unlawful for any person to transact or carry on any business in the city without first having paid the business tax to the City and having obtained a valid business tax certificate or renewal, in compliance with all applicable provisions of the City Code. Notwithstanding any language in this chapter to the contrary, each branch establishment or location at or from which a person carries on the same business shall not be deemed a separate business, but all such branches and locations shall be treated as one business. If a business opens a new location

during the term of the existing business license, an amended business tax certificate application must be submitted to include the new location in the business tax certificate.

**3.40.080 Business tax certificate application.**

(a) Any person applying for a tax certificate shall make application upon a form provided by the Director, which form shall provide such information as may be required to show compliance with all City, State and Federal laws, and as may be necessary to determine ownership, the nature of the business, occupancy requirements, location, and the classification and amount of tax due.

(b) All applicants shall pay a tax computed on the number of employees or rental units as provided in this chapter upon submitting the application.

(c) When necessary, the Director or designee shall refer an application or a notice of changed or new addresses to the appropriate City officers or staff for determination as to whether the proposed business activity and the premises in which it is to be conducted comply with applicable laws and ordinances. In the event it is determined that the proposed activity may not be maintained in compliance with the law, the Director or designee shall so inform the applicant and no new or renewed tax certificate may issue.

(d) Failure of the City to approve, deny, or act upon the application within one hundred eighty (180) days shall be deemed a denial of the application.

**3.40.090 Appeal process.**

An appeal from denial of issuance of a business tax certificate may be made under the procedures set forth in Chapter 2.115 SCCC.

**3.40.100 Business location.**

Business tax fees are based on the actual physical location of the business within the jurisdictional limits of the City of Santa Clara. A mail stop, post office box or other such mail address is not considered a valid business location for the purpose of fire and safety inspection. All business not physically located within the jurisdictional limits of the City of Santa Clara are

considered out-of-town and must pay taxes as established for out-of-town businesses regardless of whether they have a mailing address in the City of Santa Clara.

**3.40.110 Branch establishments.**

A separate business tax certificate for each branch establishment or location of the business will not be required but all business locations must be included on the application for a business tax certificate. When any person conducts, at one location, businesses classified separately by this chapter, such person shall pay the higher of the taxes.

**3.40.120 Notice not required by City.**

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

**3.40.130 When annual tax due and payable.**

The annual business tax imposed under the provision of this chapter shall be due and payable on the first day of January of each year, unless otherwise established by resolution of the city council or at the time of commencement of business activity or upon occupying space in the business community for newly established businesses. Business taxes which are paid on an annual basis, which would be due on the first day of the year, shall be deemed timely if payment is made on or before seven (7) days after the due date. All business tax certificates shall expire on December 31<sup>st</sup> of each calendar year. The tax for the renewal of such certificate shall be due and payable upon expiration of the prior certificate.

**3.40.140 Refunds and proration.**

(a) All business tax certificates shall be issued from the date set forth in the certificate and no business shall be entitled to the refund of any portion of the tax paid by reason of the termination of such business activity before the certificate expires.

(b) Any business required to cease activity within the city as the result of public acquisition of the premises by any governmental agency shall be entitled to a refund of an amount

prorated as to the time remaining under the certificate when the business activity ceases. Such licensee shall file a verified claim with the Director stating the date of and reason for cessation of business activity.

(c) The business tax may be prorated in accordance with the administrative guidelines promulgated by the Director.

#### **3.40.150 Penalty for delinquent or nonpayment.**

The penalty for noncompliance shall be:

(a) Any person who fails to apply for a tax certificate and fails to pay the tax as determined on or within thirty (30) days after opening, engaging in business, or occupying space in the business community, shall be subject to a penalty of twenty-five percent (25%) of the tax due.

(b) Every annual tax which is not received and paid within a period of thirty (30) days after the tax became due is hereby declared to be delinquent, and a penalty of twenty-five percent (25%) of the tax will be added to the tax due.

(c) Whenever a check is submitted in payment of a business tax and said check is subsequently returned unpaid by the bank upon which said check is drawn for any reason, the taxpayer shall be liable to pay a nonsufficient funds charge, the correct tax amount due, and a penalty, if applicable.

(d) If any person fails to pay the annual renewal tax within ninety (90) days after the tax becomes due, his or her business tax certificate is considered revoked. The City is not required to send a notice of revocation for the revocation to be valid. Following revocation, the person must reapply for a new business tax certificate, pursuant to SCCC 3.40.080, and pay all associated penalties. Failure to reapply for a new business tax certificate shall constitute a violation, pursuant to SCCC 3.40.310.

#### **3.40.160 Annual adjustments for inflation.**



Subject to approval of the city council, the business certificate tax, the additional tax based on number of employees or rental units, and the cap referred in SCCC 3.40.360 below, may be adjusted annually, commencing on January 1, 2024 and every year thereafter, if the cost of living in the city has increased over the preceding base period as shown by the CPI Index but in no event shall the adjustment exceed five percent (5%) per year. The CPI Index will be set in October of each year or as established in the administrative guidelines promulgated by the Director in accordance with this chapter.

#### **3.40.170 Exemptions from tax.**

No tax prescribed in this chapter shall be deemed or construed to apply to any of the following persons who are exempt from payment thereof upon submission of proof of exemption:

(a) Charitable and Nonprofit Organizations. Any church, school, charitable, benevolent or social organizations having exempt status under Federal tax law.

(b) Conflict With Federal and State Law. Any person conducting any business exempt by virtue of the Constitution, or applicable statutes of the United States or of the State of California from the payment to municipal corporations of such taxes as are herein prescribed.

(c) Disabled Veterans. Disabled veterans exemption pursuant to the requirements of Section 16001 or 16001.5 of the California Business and Professions Code.

(d) Employees. No person who is an employee shall be required to pay a tax for doing any part of the work of such business for which a tax certificate has been issued.

(e) Interstate Commerce. Every peddler, solicitor or other person claiming to be entitled to exemption from the payment of any tax provided for in this chapter upon the ground that such tax casts a burden upon his/her right to engage in commerce with foreign nations or among the several states or conflicts with the regulations of the United States Congress respecting interstate commerce, shall file an affidavit or a declaration under penalty of perjury with the Director describing the interstate or other character of his/her business which entitled him to such exemption.

(f) Business operators whose annual gross receipts from such business operations in the city are five thousand dollars (\$5,000) or less. Acceptable documentation must be provided to support the claimed exemption.

(g) Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or the State of California for payment of such taxes as are herein prescribed.

**3.40.180 Business tax constitutes debt to City – Collection of unpaid taxes.**

The amount of any business tax imposed by this chapter shall be deemed a debt to the city, and any business operating without having a certificate from the city so to do shall be liable to an action in the name of the city in any court of competent jurisdiction for the amount of the business tax imposed on such business, together with all penalties and interest then due thereon in any such action, and any cost the city reasonably incurs to collect the tax, including attorneys' fees which, if judgment is recovered, shall be included and assessed as recoverable costs in such action.

**3.40.190 Transferability – Changes to affidavit.**

A certificate issued pursuant to this chapter shall not be transferable. When a certificate has been issued authorizing a specifically named person to transact and carry on a specific type of business at a specific location, the business shall, upon application in writing, and the payment of the prescribed fee, have such certificate records amended to include any change of name, type of business, or address. Any business for which such a change must be made shall pay a fee as fixed by resolution of the City Council for the handling and processing of such change.

**3.40.200 Issuance of business tax certificate.**

All certificates issued under the provisions of this chapter shall be issued by the Director or authorized employees and shall state the name of the business, the location of the business, the mailing address, the type of business being conducted at the listed location, the amount of the tax

paid, the expiration date of the certificate and additional information that may be required. A business tax certificate will be issued upon the determination by the Director and any other necessary City departments that the business tax has been paid and that the business tax certificate affidavit information is accurate, that the business applicant is operating legally pursuant to all applicable Federal, State and local laws, and there are no business operations that endanger the public.

**3.40.210 Duplicate tax certificate.**

A duplicate business tax certificate may be issued by the Director to replace a previously issued certificate that has been lost or destroyed upon the owner filing a written request attesting to such fact, and paying a fee as fixed by the resolution of City Council for handling and processing of such request.

**3.40.220 Business tax certificate record.**

The Director shall maintain a "public business tax certificate record," which shall contain the name of the business, the location of the business, the type of business and the time period for which the certificate is issued.

**3.40.230 Confidential documents.**

Except as provided for under Section 6254 of the Public Records Act, the affidavit, statements and any other documents required by this chapter to be filed, shall be deemed confidential in character and shall not be subject to public inspection, and shall be kept so that the contents thereof, shall not become known except to:

- (a) The persons charged with administration of this chapter;
- (b) City employees for the sole purpose of administering or enforcing any provisions of this article;
- (c) Federal or State officials, or to a grand jury or court of law, upon subpoena.

**3.40.240 Display of certificate.**

Every person to whom a certificate is issued, shall keep the same conspicuously posted in

or about the place where the business is located or conducted.

**3.40.250 Administrative rules and regulations.**

The Director may make rules and regulations not inconsistent with the provisions of this Code for the purpose of administering the provisions of this chapter. The Director shall further have the power to compromise any claims as to the amount of any tax due and paid.

**3.40.260 Affidavit to be submitted where business tax based on number of employees – Information required.**

(a) Upon making application for a certificate to be issued under this chapter where the amount of the tax is measured by the number of employees, the applicant shall furnish to the Director, for guidance in ascertaining the amount of such tax, a signed affidavit under penalty of perjury, upon a form provided by the Director, setting forth such information as may be necessary to determine the amount of the tax.

(b) The amount of the tax is determined by the average number of persons engaged in the business over the last four quarters immediately preceding application, and shall be determined as follows:

(1) Based upon the employment data as reported to the State Department of California Employment Development Department, if the applicant files with the State Department of California Employment Development Department the forms and reports hereinafter mentioned, and if the applicant reports therein all applicant's employees as defined in this chapter, the applicant may calculate the average number of employees by taking the number of employees employed in applicant's business in the city in each month of the preceding year as shown and reported on all DE3 forms, and by dividing the sum thus obtained by twelve. The DE3 and other forms hereinabove referred to are those certain forms entitled "DE3 Contribution Return and Report of Wages Under the Unemployment Insurance Code," which employers are required to file with the state department of employment, under the Unemployment Insurance Code of the state for the purpose of reporting contributions due under such code, and any other form or forms now

or hereafter required by the state for such purposes; or

(2) For a business with multiple locations located in and outside of the city, the applicant may self-report the total number of employees. The report shall include all employees that perform services in the city which include any of the following: i) an employee where all or most of the employee's services are performed in the city; or ii) where an employee's base of operations is located in the city; or iii) the place from which the business exercises basic and general direction and control over all the employee's services is in the city.

(3) The average number of employees of the business may also be disclosed in a manner as approved by the Director.

#### **3.40.270 Renewal generally – Affidavit and information required.**

In all cases, the applicant for renewal of a certificate shall submit to the Director, for guidance in ascertaining the amount of the tax to be paid by the applicant, a written affidavit under penalty of perjury upon a form provided by the Director, setting forth such information concerning the applicant's business as may be required by the Director to ascertain the amount of tax to be paid by such applicant pursuant to the provision of this chapter.

#### **3.40.280 Statements not conclusive.**

No statement set forth in any affidavit required by this chapter shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the City from collecting by appropriate action such sum as is actually due and payable under this chapter. Such affidavit and each of the several items therein contained shall be subject to review and verification by the Director, or authorized employees of the City.

#### **3.40.290 Extensions of time for filing sworn declarations.**

The Director shall have the power, for good cause shown, to extend the time for filing any sworn statement required under this chapter and in such case to waive any penalty that would otherwise have accrued.

#### **3.40.300 Director duties.**

The Director shall make diligent effort to discover all persons conducting any business in the city for which a certificate is required by the provisions of this chapter.

#### **3.40.310 Violations.**

The issuance of a certificate under this chapter shall not entitle the person(s) to engage in any business which for any reason is in violation of any law or provision of this Code.

(a) Separate Violation. The conducting of business in the city or occupying space in the business community, without first having procured a business tax certificate from the City to do so, or without complying with any and all regulations of such business contained in this chapter shall be a separate violation hereof for each and every day that such business is so carried on.

(b) Violations. Pursuant to SCCC 1.05.070, the City, in its prosecutorial discretion, may enforce violation(s) of the provisions of this chapter as a criminal, civil, and/or administrative action.

#### **3.40.320 City Attorney's duties.**

The Director may at any time request the City Attorney to bring a civil suit in the name of the City for the recovery of any tax from any person who conducts a business without procuring the certificate required by this chapter, or not paying the prescribed tax, and the recovery of such tax and penalties due thereon.

#### **3.40.330 Enforcement.**

The Director is hereby directed to enforce each and all of the provisions of this chapter, and the Chief of Police shall render such assistance in the enforcement hereof as may from time to time be required by the Director. The Director, in the exercise of the duties imposed hereunder, and acting through deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this chapter have been complied with.

The Director, all duly authorized assistants and any police officers shall have the following powers:

(a) To enter free of charge, and at any reasonable time during business hours, any place of business required to be certified herein, and demand an exhibition of its certificate. Any person to whom a certificate is issued shall exhibit the same on demand.

(b) To issue citations for any violations of this chapter.

#### **3.40.340 Effect of annexation.**

All existing businesses brought under the jurisdiction of the City by annexation procedures shall conform to the provisions of this chapter within thirty (30) days of the effective date of such annexation.

#### **3.40.350 Businesses taxed.**

Every person having a fixed place of business within the city and who engages in any business shall pay a tax based on the number of employees as defined and set forth in this chapter, according to the following rate schedules, unless the basis of the tax is otherwise prescribed in Section 3.40.380 or the business is exempted from the tax as prescribed in Section 3.40.170 of this chapter.

#### **3.40.360 General schedule for person having fixed place of business within City.**

From and after January 1, 2024, every person engaged in business in the City, whether or not at a fixed place of business in the City, shall annually pay to the Director the following prescribed tax:

(a) A minimum business tax of seventy-five dollars (\$75.00) per year, plus an additional per employee tax per year in the amounts set forth below in Subsection B., not to exceed a cap of three hundred fifty thousand dollars (\$350,000.00) per year, subject to annual adjustments set forth in SCCC 3.40.160.

(b) Per Employee Tax shall be as follows:

| Number of Employees | Authorized Maximum Business Registration and Certificate Tax |
|---------------------|--|
| 1 - 4               | \$75 plus \$15 for each employee                             |
| 5 – 9               | \$135+ \$30/employee for each employee over 4                |
| 10 – 19             | \$285 + \$45/employee for each employee over 9               |

|           |  |
|-----------|--|
| 20 – 49   | \$735 + \$60/employee for each employee over 19 employees  |
| 50 – 99   | \$2,535+ \$75/employee for each employee over 49 employees |
| 100 – 249 | \$6,285 + \$90/employee for each employee over 99          |
| 250 – 499 | \$19,785 + \$105/employee for each employee over 249       |
| 500 – 999 | \$46,035+ \$120/employee for each employee over 499        |
| 1000+     | \$106,035 + \$135/employee for each employee over 999      |

### **3.40.370 Business without a fixed place of business in city.**

Unless such business is otherwise specifically taxed by other provisions of this chapter, every person who does not have a fixed place of business in the city, but whose employees come into the city for the purpose of conducting a business or rendering services, when such employees come into the city for these purposes six (6) or more days during any calendar year, shall pay a minimum base tax of \$75 and a tax based on the number of employees as defined and set forth in this chapter, according to the following rate schedule:

| Out-of-Town Businesses Business Registration and Certificate Tax |                   |
|--|-------------------|
| Number of Days   | Percentage of Tax |
| 6 – 64   | 25%               |
| 65 – 129   | 50%               |
| 130+   | 100%              |

For purposes of this section "operating a business in the city" shall include every person entering into a contract with the city, including, without limitation, contracts for public works, consultant services and franchise agreements.

Out of town business shall, as required on the application form and in compliance with



procedures and methodologies adopted by the Finance Department, estimate the number of

employees who will be conducting business within the City and the estimated number of days that business will be conducted within the city.

#### **3.40.380 Rental units.**

(a) Every person engaged in the business of renting rooms, apartments, single-family houses, or other accommodations for dwelling, sleeping or lodging purposes, in the city shall pay the following tax:

(1) A base rate of \$75.00 plus \$15.00 per annum for each rental unit, subject to annual adjustments set forth in SCCC 3.40.160.

(2) Provided, however, that no tax shall be payable under this section, unless the person engaged in such business operates three or more rental units in the city.

(b) As used in this section, unit means a room or suite of two or more rooms (including, but not limited to single-family houses) designed for or used as separate accommodations for dwelling, sleeping or lodging purposes by a person living alone or two or more persons living together.

#### **3.40.390 Rental unit – Surcharge.**

(a) It is contemplated that the City Council will from time to time adjust the amount of the surcharge fee by resolution to cover the changing cost of the mediation services involved with these businesses and to insure that the surcharge fee amount prorated to the rental units shall not exceed the cost of the program services made available.

(b) Any and all fees collected pursuant to this section are dedicated to and shall be used exclusively to pay the costs of the above services rendered in response to needs generated by the subject type of rental businesses.

(c) Those businesses covered under Chapter 3.25 SCCC, and paying the business tax under SCCC 3.40.310, Schedule No. 100, are exempt from paying the rental unit surcharge.

#### **3.40.400 Cumulative remedies.**

This chapter provides for administrative enforcement of its provisions, which are in addition to all other legal remedies, administrative, criminal or civil, which may be pursued by the city to address any violation of this chapter provided only that the city may not recover any sum due under this chapter more than once.

#### **3.40.450 Audit.**

The Director shall have the right to audit records of the businesses subject to the business license tax to ensure compliance with this chapter. Businesses shall retain records pertaining the business license tax for a period of three (3) years from the end of each calendar year, and shall allow the city access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this chapter. Where a business does not maintain or retain adequate records documenting the number of its employees or does not allow the city reasonable access to such records, the city's calculation of the number of employees of the business shall be presumed to be accurate, absent clear and convincing evidence otherwise.

#### **3.40.460 Constitutionality and legality; Gann limit.**

(a) This tax is intended to be applied consistently with the United States and California Constitutions, state law and the City Charter. The tax shall not be applied so as to cause an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California, to constitute a special tax, or to cause a violation of any other provision of applicable law.

(b) Pursuant to California Constitution, Article XIII B, the appropriation limit for the city is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax.

#### **3.40.470 Severability.**

Should any provision of this chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this chapter or the application of

this chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 2: Implementation.**

- (a) The new tax imposed by this ordinance will go into effect on January 1, 2024.
- (b) Each business will be required to make annual payments on the first day of January in accordance with SCCC 3.40.130 with the initial tax payment due on January 1, 2024.
- (c) The Director of Finance is charged with the implementation and transition of the new business tax. Any tax payments due between January 1, 2023 and December 31, 2023 may be prorated or credited in accordance with the administrative guidelines promulgated by the Director.

**SECTION 3: General Tax.** Proceeds of the tax imposed by this Ordinance shall be deposited in the general fund of the City and shall be available for any legal purpose.

**SECTION 4: Ordinances Repealed.** With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

**SECTION 5: Savings clause.** The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

**SECTION 6: Effective date.** Subject to passage by the voters and the vote declared by the City Council, pursuant to Elections Code Section 9217, this ordinance shall take effect on January 1, 2024.

Attachments incorporated by reference: None

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA ORDERING THE SUBMISSION OF A BALLOT MEASURE — KNOWN AS THE ‘CITY OF SANTA CLARA BUSINESS LICENSE UPDATE / TAX EQUITY MEASURE’ TO THE QUALIFIED ELECTORS OF THE CITY AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2022, REGARDING A BALLOT MEASURE TO AMEND CITY CODE CHAPTER 3.40 TO MODERNIZE AND INCREASE THE BUSINESS LICENSE TAX; CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF SANTA CLARA ON TUESDAY, NOVEMBER 8, 2022, FOR AVOTE ON SAID BALLOT MEASURE ; REQUESTING CONSOLIDATION WITH THE GUBERNATORIAL GENERAL ELECTION AND ELECTION SERVICES FROM SANTA CLARA COUNTY; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS; AND SETTING PRIORITIES FOR BALLOT ARGUMENTS

**BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, Santa Clara’s Business License Tax has not been updated in 30 years;

**WHEREAS**, the current tax does not reflect the way business operates in the City today;

**WHEREAS**, the measure as written will allow the City of Santa Clara to treat all businesses equitably;

**WHEREAS**, this measure will allow the city to maintain the essential priorities upon which local businesses and residents rely, including public safety, clean and safe streets, COVID-19 response, street and sidewalk repair, and flood protection;

**WHEREAS**, the measure as written requires strict oversight, financial audits and disclosures, and must be spent locally, without being taken by the state;

**WHEREAS**, the next Gubernatorial General Election will be held November 8, 2022;

**WHEREAS**, the California Constitution Article XIII C, Section 2(b) requires a proposed tax to be submitted to voters at a general municipal election;

**WHEREAS**, the City Council intends to submit a ballot measure and ballot question, concerning an increase in the Business License Tax rate, as described in this Resolution, to the qualified electors of the City of Santa Clara at such election;

**WHEREAS**, pursuant to the requirements of the City Charter there is called and ordered to be held in the City of Santa Clara, California, on Tuesday, November 8, 2022, a special municipal election placing on the ballot one measure that, if passed, would amend City Code Chapter 3.40; and,

**WHEREAS**, in the course of conducting a special municipal election on November 8, 2022, it is desirable that such special municipal election be consolidated with the general election, pursuant to Santa Clara City Charter section 600.02, to be held on the same date as if there were only one election. It is also necessary for the City to request services of the County as set forth in this resolution.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. SPECIAL ELECTION. That pursuant to the requirements of the City Charter, there is called and ordered to be held in the City of Santa Clara, California, on Tuesday, November 8, 2022, a special municipal election placing one measure on the ballot that, if passed, would amend City Code Chapter 3.40 to increase business license tax rates.
2. BALLOT QUESTION. That the ballot question shall read as follows:

| CITY OF SANTA CLARA BUSINESS LICENSE UPDATE / TAX EQUITY MEASURE   |     |
|--|-----|
| <b>CITY OF SANTA CLARA BUSINESS LICENSE UPDATE / TAX EQUITY MEASURE</b> To protect Santa Clara's financial stability and maintain essential services including 911 emergency/public safety/crime reduction services, safe/clean public areas, pothole repair, parks and libraries, shall an ordinance to update Santa Clara's 1992 business license tax on businesses to \$45 per employee and on landlords to \$15 per rental unit, generating approximately \$6,000,000 annually, until ended by voters, with independent financial audits, all funds staying local, be adopted? | Yes |
|  | No  |

3. MEASURE. That the measure read as set forth on Exhibit A (attached hereto and incorporated herein by reference, with additions to and deletions from the current text indicated thereon) which, if passed by the voters, shall amend the Municipal Code of the City of Santa Clara.

4. NOTICE OF ELECTION. That in accordance with the City Charter and applicable state law, the City Clerk is hereby authorized and directed on behalf of the City Council to

cause notice of the time and place of the holding of the election to be published once in a newspaper of general circulation, printed, published, and circulated in the City of Santa Clara, and hereby designated for that purpose by the City Council of Santa Clara. Furthermore, the City Clerk hereby is authorized, instructed and directed to coordinate with the County of Santa Clara Registrar of Voters to procure and furnish any and all official ballot, notices, printer matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

5.       CONSOLIDATION REQUEST. Pursuant to the requirement of Part 3 (Consolidation of Elections; Section 10400 et seq) of Division 10 of the Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to consolidate the special municipal election with the Gubernatorial general election on November 8, 2022, and to further provide that, upon consolidation, the consolidated election shall be held and conducted in all respects as if there were only one election, and only one form of ballot shall be used, election officers appointed, voting precincts designated, ballot printed, pools opened and closed, ballots opened and returned, returns canvassed, and all other proceedings in connection with the election shall be regulated and done by the Registrar of Voters of the County of Santa Clara in accordance with the provisions of applicable laws regulating consolidating elections. This City Council requests and consents to such consolidation.

6.       REQUEST FOR COUNTY SERVICES. Pursuant to Section 10002 of the California Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to permit the Registrar of Voters to render services to the City of Santa Clara relating to the conduct of Santa Clara's special municipal election to be held on Tuesday, November 8, 2022. Services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections.

7.       ELECTION COSTS. Subject to the approval of the Board of Supervisors of the foregoing requests, the City Clerk is hereby authorized to engage the services of the Registrar

of Voters of the County of Santa Clara to aid in the conduct of the election. The City Director of Finance is authorized and directed to pay the costs of services, provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.

8. BALLOT AND REBUTTAL ARGUMENTS FOR MEASURE. Primary and rebuttal arguments for the measure may be filed consistent with Elections Code Section 9282, et seq.

9. BALLOT ARGUMENT (IN FAVOR) OR (AGAINST) MEASURE. The Council hereby selects the following course of action regarding argument (in favor) or (against) the measure:

(Council to select one of the following concurrent with the adoption of resolution):

A. Authorizes the City Council as a body to submit a written argument (in favor) or (against) the measure and in the event an argument is filed for the measure, a rebuttal argument.

B. Authorizes (#) of member(s) of the City Council to submit a written argument (in favor) or (against) the measure: (one or more name(s)): at (Name(s) discretion, the argument may also be signed by other members of the City Council, bona fide associations or individual voters who are eligible to vote on the measure. In the event that an argument is filed for the measure, (Name(s) is also authorized to submit a rebuttal argument on behalf of the City Council, which, at (Name(s) discretion, may also be signed by members of the City Council, bona fide associations, or individual voters who are eligible to vote on the measure. Signatures on the rebuttal argument may be different from those who signed the primary argument. OR

C. Takes no action with regard to authorizing the Council or member of the Council to submit a written argument (in favor) or (against) the measure, in which case the City Clerk shall select an argument against the measure in accordance with the priority order set forth in Elections Code section 9287.

10. IMPARTIAL ANALYSIS. Pursuant to Elections Code Section 9280, the City Council hereby directs the City Attorney to prepare an impartial analysis of the measure.



11. TRANSMITTAL OF RESOLUTION. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters.

12. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15378(b)(4) and 15378(b)(5) that this resolution is exempt from the requirements of the California Environmental QUALITY Act (CEQA) in that it involves fiscal and administrative activities that will not result in a potentially significant impact on the environment.

13. That in all particulars not recited in this resolution, the special municipal election shall be held and conducted as provided by law for holding municipal elections.

14. That this resolution provides notice of the time and place for holding the general municipal election and the City Clerk is authorized, instructed and directed to give further or additional notice of the general municipal election in time, form and manner as required by law.

15. That the proposed measure shall not take effect unless and until approved by a vote of at least 50% plus one of the voters voting on the question at the election.

16. Effective date: This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE     DAY OF                      , 2022, BY THE FOLLOWING VOTE:

AYES:                      COUNCILORS:

NOES:                      COUNCILORS:

ABSENT:                      COUNCILORS:

ABSTAINED:                      COUNCILORS:

ATTEST: \_\_\_\_\_  
HOSAM HAGGAG  
CITY CLERK  
CITY OF SANTA CLARA

Attachment: Exhibit A Ordinance Amending and Restating Santa Clara City Code Chapter 3.40

**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF SANTA CLARA,  
CALIFORNIA, AMENDING AND RESTATING CHAPTER 3.40  
("BUSINESS LICENSE") OF TITLE 3 ("REVENUE AND  
FINANCE") OF "THE CODE OF THE CITY OF SANTA CLARA,  
CALIFORNIA" TO MODERNIZE AND INCREASE THE TAX RATE**

**BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SANTA CLARA**

**SECTION 1:** That Chapter 3.40 (entitled "Business License") of Title 3 (entitled "Revenue and Finance") of "The Code of the City of Santa Clara, California" ("SCCC") is amended and restated in its entirety to be numbered, entitled, and to read as follows:

**Chapter 3.40**

**BUSINESS TAX**

**3.40.010 Purpose.**

This chapter is enacted to raise revenue for municipal purposes and not for the purpose of regulation. The payment of a business tax required by this chapter, and its acceptance by the City, and the issuance of a business tax certificate to any person shall not entitle the holder thereof to carry on any business unless he or she has complied with all of the requirements of the City Code and all other applicable laws, nor to carry on any business in any building, on any premises, or in any location designated in such business tax certificate in the event that such building, premises or location is situated in a zone or locality in which the conduct of such business is in violation of any law.

**3.40.020 Effect on other fees and charges.**

Persons required to pay a business tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any other charge, fee, or tax as may be imposed by the City for the privilege of doing business within the city, or for the cost of regulating a business, and such persons shall remain subject to the regulatory provisions of all other ordinances, codes, and resolutions of the City, including but not exclusive to regulations for

zoning, building, fire, and safety.

**3.40.030 Chapter controlling.**

To the extent that the provisions of this chapter are inconsistent with the provisions of any other chapter of the City Code or parts thereof, the provisions of this chapter shall be deemed controlling.

**3.40.040 Definitions.**

The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(a) "Business tax certificate" means the document issued as a result of a completed tax affidavit and taxes paid.

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

(c) "Business community" means any and all areas of the City not zoned as residential.

(d) "CPI Index" The Consumer Price Index—All Urban Consumers for All Items for the San Francisco-Oakland-Hayward Area or any successor to that index designated by the Federal Bureau of Labor Statistics or the city council.

(e) "Director" means the Director of Finance or his or her designee.

(f) "Employee" means any or all persons engaged in the operation or activity of any business, whether as owner, a corporate officer, a partner, agent, manager, solicitor or any and all persons employed or working in such business either full time, part-time, permanent or temporary.

(g) "Number of employees" means the number of persons employed in the business as

anticipated, or the number of employees including owner(s) at time of renewal.

(h) "Person" means all domestic and foreign corporations, limited liability company, firms, associations, syndicates, joint stock corporations, partnerships of every kind, joint ventures, clubs or common law trusts, societies, individuals, estates, business trusts, receivers, retirement plans, trustees, or any other group or combination acting as a unit engaged in any business in the city other than as an employee.

**3.40.050 Other licenses, permits, taxes, fees or charges authorized when.**

Nothing contained in this Chapter 3.40 shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit required by, under or by virtue of any provision of any other title or chapter of this Code or any other ordinance or resolution of the city or of its council, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this Code or any other ordinance or resolution of the city or of its council.

**3.40.060 Imposition of tax.**

The City does hereby tax, as provided in this chapter, each and every kind of business transacted, conducted, exhibited or carried on in the city, at the rates named and prescribed in this chapter. If more than one business shares a business location, each business is required to apply and pay the prescribed tax.

**3.40.070 Business tax certificate required.**

It shall be unlawful for any person to transact or carry on any business in the city without first having paid the business tax to the City and having obtained a valid business tax certificate or renewal, in compliance with all applicable provisions of the City Code. Notwithstanding any language in this chapter to the contrary, each branch establishment or location at or from which a person carries on the same business shall not be deemed a separate business, but all such branches and locations shall be treated as one business. If a business opens a new location

during the term of the existing business license, an amended business tax certificate application must be submitted to include the new location in the business tax certificate.

**3.40.080 Business tax certificate application.**

(a) Any person applying for a tax certificate shall make application upon a form provided by the Director, which form shall provide such information as may be required to show compliance with all City, State and Federal laws, and as may be necessary to determine ownership, the nature of the business, occupancy requirements, location, and the classification and amount of tax due.

(b) All applicants shall pay a tax computed on the number of employees or rental units as provided in this chapter upon submitting the application.

(c) When necessary, the Director or designee shall refer an application or a notice of changed or new addresses to the appropriate City officers or staff for determination as to whether the proposed business activity and the premises in which it is to be conducted comply with applicable laws and ordinances. In the event it is determined that the proposed activity may not be maintained in compliance with the law, the Director or designee shall so inform the applicant and no new or renewed tax certificate may issue.

(d) Failure of the City to approve, deny, or act upon the application within one hundred eighty (180) days shall be deemed a denial of the application.

**3.40.090 Appeal process.**

An appeal from denial of issuance of a business tax certificate may be made under the procedures set forth in Chapter 2.115 SCCC.

**3.40.100 Business location.**

Business tax fees are based on the actual physical location of the business within the jurisdictional limits of the City of Santa Clara. A mail stop, post office box or other such mail address is not considered a valid business location for the purpose of fire and safety inspection. All business not physically located within the jurisdictional limits of the City of Santa Clara are

considered out-of-town and must pay taxes as established for out-of-town businesses regardless of whether they have a mailing address in the City of Santa Clara.

**3.40.110 Branch establishments.**

A separate business tax certificate for each branch establishment or location of the business will not be required but all business locations must be included on the application for a business tax certificate. When any person conducts, at one location, businesses classified separately by this chapter, such person shall pay the higher of the taxes.

**3.40.120 Notice not required by City.**

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

**3.40.130 When annual tax due and payable.**

The annual business tax imposed under the provision of this chapter shall be due and payable at the time of commencement of business activity or upon occupying space in the business community and such certificate shall expire twelve (12) months after the date of application. The tax for the renewal of such certificate shall be due and payable upon expiration of the prior certificate.

**3.40.140 Refunds and proration.**

(a) All business tax certificates shall be issued from the date set forth in the certificate and no business shall be entitled to the refund of any portion of the tax paid by reason of the termination of such business activity before the certificate expires.

(b) Any business required to cease activity within the city as the result of public acquisition of the premises by any governmental agency shall be entitled to a refund of an amount

prorated as to the time remaining under the certificate when the business activity ceases. Such licensee shall file a verified claim with the Director stating the date of and reason for cessation of business activity.

(c) The business tax may be prorated in accordance with the administrative guidelines promulgated by the Director.

#### **3.40.150 Penalty for delinquent or nonpayment.**

The penalty for noncompliance shall be:

(a) Any person who fails to apply for a tax certificate and fails to pay the tax as determined on or within thirty (30) days after opening, engaging in business, or occupying space in the business community, shall be subject to a penalty of twenty-five percent (25%) of the tax due.

(b) Every annual tax which is not received and paid within a period of thirty (30) days after the tax became due is hereby declared to be delinquent, and a penalty of twenty-five percent (25%) of the tax will be added to the tax due.

(c) Whenever a check is submitted in payment of a business tax and said check is subsequently returned unpaid by the bank upon which said check is drawn for any reason, the taxpayer shall be liable to pay a nonsufficient funds charge, the correct tax amount due, and a penalty, if applicable.

(d) If any person fails to pay the annual renewal tax within ninety (90) days after the tax becomes due, his or her business tax certificate is considered revoked. The City is not required to send a notice of revocation for the revocation to be valid. Following revocation, the person must reapply for a new business tax certificate, pursuant to SCCC 3.40.080, and pay all associated penalties. Failure to reapply for a new business tax certificate shall constitute a violation, pursuant to SCCC 3.40.310.

#### **3.40.160 Annual adjustments for inflation.**

Subject to approval of the city council, the business certificate tax, the additional tax based on number of employees or rental units, and the cap referred in SCCC 3.40.360 below, may be adjusted annually, commencing on July 1, 2023 and every year thereafter, if the cost of living in the city has increased over the preceding base period as shown by the CPI Index but in no event shall the adjustment exceed five percent (5%) per year. The CPI Index will be set in February of each year or as established in the administrative guidelines promulgated by the Director in accordance with this chapter.

#### **3.40.170 Exemptions from tax.**

No tax prescribed in this chapter shall be deemed or construed to apply to any of the following persons who are exempt from payment thereof upon submission of proof of exemption:

(a) Charitable and Nonprofit Organizations. Any church, school, charitable, benevolent or social organizations having exempt status under Federal tax law.

(b) Conflict With Federal and State Law. Any person conducting any business exempt by virtue of the Constitution, or applicable statutes of the United States or of the State of California from the payment to municipal corporations of such taxes as are herein prescribed.

(c) Disabled Veterans. Disabled veterans exemption pursuant to the requirements of Section 16001 or 16001.5 of the California Business and Professions Code.

(d) Employees. No person who is an employee shall be required to pay a tax for doing any part of the work of such business for which a tax certificate has been issued.

(e) Interstate Commerce. Every peddler, solicitor or other person claiming to be entitled to exemption from the payment of any tax provided for in this chapter upon the ground that such tax casts a burden upon his/her right to engage in commerce with foreign nations or among the several states or conflicts with the regulations of the United States Congress respecting interstate commerce, shall file an affidavit or a declaration under penalty of perjury with the Director describing the interstate or other character of his/her business which entitled him to such exemption.



(f) Business operators whose annual gross receipts from such business operations in the city are five thousand dollars (\$5,000) or less. Acceptable documentation must be provided to support the claimed exemption.

(g) Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or the State of California for payment of such taxes as are herein prescribed.

**3.40.180 Business tax constitutes debt to City – Collection of unpaid taxes.**

The amount of any business tax imposed by this chapter shall be deemed a debt to the city, and any business operating without having a certificate from the city so to do shall be liable to an action in the name of the city in any court of competent jurisdiction for the amount of the business tax imposed on such business, together with all penalties and interest then due thereon in any such action, and any cost the city reasonably incurs to collect the tax, including attorneys' fees which, if judgment is recovered, shall be included and assessed as recoverable costs in such action.

**3.40.190 Transferability – Changes to affidavit.**

A certificate issued pursuant to this chapter shall not be transferable. When a certificate has been issued authorizing a specifically named person to transact and carry on a specific type of business at a specific location, the business shall, upon application in writing, and the payment of the prescribed fee, have such certificate records amended to include any change of name, type of business, or address. Any business for which such a change must be made shall pay a fee as fixed by resolution of the City Council for the handling and processing of such change.

**3.40.200 Issuance of business tax certificate.**

All certificates issued under the provisions of this chapter shall be issued by the Director or authorized employees and shall state the name of the business, the location of the business, the mailing address, the type of business being conducted at the listed location, the amount of the tax

paid, the expiration date of the certificate and additional information that may be required. A business tax certificate will be issued upon the determination by the Director and any other necessary City departments that the business tax has been paid and that the business tax certificate affidavit information is accurate, that the business applicant is operating legally pursuant to all applicable Federal, State and local laws, and there are no business operations that endanger the public.

**3.40.210 Duplicate tax certificate.**

A duplicate business tax certificate may be issued by the Director to replace a previously issued certificate that has been lost or destroyed upon the owner filing a written request attesting to such fact, and paying a fee as fixed by the resolution of City Council for handling and processing of such request.

**3.40.220 Business tax certificate record.**

The Director shall maintain a "public business tax certificate record," which shall contain the name of the business, the location of the business, the type of business and the time period for which the certificate is issued.

**3.40.230 Confidential documents.**

Except as provided for under Section 6254 of the Public Records Act, the affidavit, statements and any other documents required by this chapter to be filed, shall be deemed confidential in character and shall not be subject to public inspection, and shall be kept so that the contents thereof, shall not become known except to:

- (a) The persons charged with administration of this chapter;
- (b) City employees for the sole purpose of administering or enforcing any provisions of this article;
- (c) Federal or State officials, or to a grand jury or court of law, upon subpoena.

**3.40.240 Display of certificate.**

Every person to whom a certificate is issued, shall keep the same conspicuously posted in

or about the place where the business is located or conducted.

**3.40.250 Administrative rules and regulations.**

The Director may make rules and regulations not inconsistent with the provisions of this Code for the purpose of administering the provisions of this chapter. The Director shall further have the power to compromise any claims as to the amount of any tax due and paid.

**3.40.260 Affidavit to be submitted where business tax based on number of employees – Information required.**

(a) Upon making application for a certificate to be issued under this chapter where the amount of the tax is measured by the number of employees, the applicant shall furnish to the Director, for guidance in ascertaining the amount of such tax, a signed affidavit under penalty of perjury, upon a form provided by the Director, setting forth such information as may be necessary to determine the amount of the tax.

(b) The amount of the tax is determined by the average number of persons engaged in the business over the last four quarters immediately preceding application, and shall be determined as follows:

(1) Based upon the employment data as reported to the State Department of California Employment Development Department, if the applicant files with the State Department of California Employment Development Department the forms and reports hereinafter mentioned, and if the applicant reports therein all applicant's employees as defined in this chapter, the applicant may calculate the average number of employees by taking the number of employees employed in applicant's business in the city in each month of the preceding year as shown and reported on all DE3 forms, and by dividing the sum thus obtained by twelve. The DE3 and other forms hereinabove referred to are those certain forms entitled "DE3 Contribution Return and Report of Wages Under the Unemployment Insurance Code," which employers are required to file with the state department of employment, under the Unemployment Insurance Code of the state for the purpose of reporting contributions due under such code, and any other form or forms now

or hereafter required by the state for such purposes; or

(2) For a business with multiple locations located in and outside of the city, the applicant may self-report the total number of employees. The report shall include all employees that perform services in the city which include any of the following: i) an employee where all or most of the employee's services are performed in the city; or ii) where an employee's base of operations is located in the city; or iii) the place from which the business exercises basic and general direction and control over all the employee's services is in the city.

(3) The average number of employees of the business may also be disclosed in a manner as approved by the Director.

#### **3.40.270 Renewal generally – Affidavit and information required.**

In all cases, the applicant for renewal of a certificate shall submit to the Director, for guidance in ascertaining the amount of the tax to be paid by the applicant, a written affidavit under penalty of perjury upon a form provided by the Director, setting forth such information concerning the applicant's business as may be required by the Director to ascertain the amount of tax to be paid by such applicant pursuant to the provision of this chapter.

#### **3.40.280 Statements not conclusive.**

No statement set forth in any affidavit required by this chapter shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the City from collecting by appropriate action such sum as is actually due and payable under this chapter. Such affidavit and each of the several items therein contained shall be subject to review and verification by the Director, or authorized employees of the City.

#### **3.40.290 Extensions of time for filing sworn declarations.**

The Director shall have the power, for good cause shown, to extend the time for filing any sworn statement required under this chapter and in such case to waive any penalty that would otherwise have accrued.

#### **3.40.300 Director duties.**

The Director shall make diligent effort to discover all persons conducting any business in the city for which a certificate is required by the provisions of this chapter.

#### **3.40.310 Violations.**

The issuance of a certificate under this chapter shall not entitle the person(s) to engage in any business which for any reason is in violation of any law or provision of this Code.

(a) Separate Violation. The conducting of business in the city or occupying space in the business community, without first having procured a business tax certificate from the City to do so, or without complying with any and all regulations of such business contained in this chapter shall be a separate violation hereof for each and every day that such business is so carried on.

(b) Violations. Pursuant to SCCC 1.05.070, the City, in its prosecutorial discretion, may enforce violation(s) of the provisions of this chapter as a criminal, civil, and/or administrative action.

#### **3.40.320 City Attorney's duties.**

The Director may at any time request the City Attorney to bring a civil suit in the name of the City for the recovery of any tax from any person who conducts a business without procuring the certificate required by this chapter, or not paying the prescribed tax, and the recovery of such tax and penalties due thereon.

#### **3.40.330 Enforcement.**

The Director is hereby directed to enforce each and all of the provisions of this chapter, and the Chief of Police shall render such assistance in the enforcement hereof as may from time to time be required by the Director. The Director, in the exercise of the duties imposed hereunder, and acting through deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this chapter have been complied with.

The Director, all duly authorized assistants and any police officers shall have the following powers:

(a) To enter free of charge, and at any reasonable time during business hours, any place of business required to be certified herein, and demand an exhibition of its certificate. Any person to whom a certificate is issued shall exhibit the same on demand.

(b) To issue citations for any violations of this chapter.

#### **3.40.340 Effect of annexation.**

All existing businesses brought under the jurisdiction of the City by annexation procedures shall conform to the provisions of this chapter within thirty (30) days of the effective date of such annexation.

#### **3.40.350 Businesses taxed.**

Every person having a fixed place of business within the city and who engages in any business shall pay a tax based on the number of employees as defined and set forth in this chapter, according to the following rate schedules, unless the basis of the tax is otherwise prescribed in Section 3.40.380 or the business is exempted from the tax as prescribed in Section 3.40.170 of this chapter.

#### **3.40.360 General schedule for person having fixed place of business within City.**

From and after July 1, 2023, every person engaged in business in the City, whether or not at a fixed place of business in the City, shall annually pay to the Director a minimum business tax of forty-five dollars (\$45.00) per employee, not to exceed a cap of three hundred and fifty thousand dollars (\$350,000.00) per year, subject to annual adjustments set forth in SCCC 3.40.160.

#### **3.40.370 Business without a fixed place of business in city.**

Unless such business is otherwise specifically taxed by other provisions of this chapter, every person who does not have a fixed place of business in the city, but whose employees come into the city for the purpose of conducting a business or rendering services, when such employees come into the city for these purposes six (6) or more days during any calendar year, shall pay a tax based on the number of employees as defined and set forth in this chapter, according to the following rate schedule:

| Out-of-Town Businesses Business Registration and Certificate Tax |                   |
|--|-------------------|
| Number of Days   | Percentage of Tax |
| 6 – 64   | 25%               |
| 65 – 129   | 50%               |
| 130+   | 100%              |

For purposes of this section "operating a business in the city" shall include every person entering into a contract with the city, including, without limitation, contracts for public works, consultant services and franchise agreements.

Out of town business shall, as required on the application form and in compliance with procedures and methodologies adopted by the Finance Department, estimate the number of employees who will be conducting business within the City and the estimated number of days that business will be conducted within the city.

#### **3.40.380 Rental units.**

(a) Every person engaged in the business of renting rooms, apartments, single-family houses, or other accommodations for dwelling, sleeping or lodging purposes, in the city shall pay the following tax:

(1) \$15.00 per annum for each rental unit, subject to annual adjustments set forth in SCCC 3.40.160.

(2) Provided, however, that no tax shall be payable under this section, unless the person engaged in such business operates three or more rental units in the city.

(b) As used in this section, unit means a room or suite of two or more rooms (including, but not limited to single-family houses) designed for or used as separate accommodations for dwelling, sleeping or lodging purposes by a person living alone or two or more persons living together.

#### **3.40.390 Rental unit – Surcharge.**

(a) It is contemplated that the City Council will from time to time adjust the amount of the surcharge fee by resolution to cover the changing cost of the mediation services involved with these businesses and to insure that the surcharge fee amount prorated to the rental units shall not exceed the cost of the program services made available.

(b) Any and all fees collected pursuant to this section are dedicated to and shall be used exclusively to pay the costs of the above services rendered in response to needs generated by the subject type of rental businesses.

(c) Those businesses covered under Chapter 3.25 SCCC, and paying the business tax under SCCC 3.40.310, Schedule No. 100, are exempt from paying the rental unit surcharge.

#### **3.40.400 Cumulative remedies.**

This chapter provides for administrative enforcement of its provisions, which are in addition to all other legal remedies, administrative, criminal or civil, which may be pursued by the city to address any violation of this chapter provided only that the city may not recover any sum due under this chapter more than once.

#### **3.40.450 Audit.**

The Director shall have the right to audit records of the businesses subject to the business license tax to ensure compliance with this chapter. Businesses shall retain records pertaining the business license tax for a period of three (3) years from the end of each calendar year, and shall allow the city access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this chapter. Where a business does not maintain or retain adequate records documenting the number of its employees or does not allow the city reasonable access to such records, the city's calculation of the number of employees of the business shall be presumed to be accurate, absent clear and convincing evidence otherwise.

#### **3.40.460 Constitutionality and legality; Gann limit.**

(a) This tax is intended to be applied consistently with the United States and California



Constitutions, state law and the City Charter. The tax shall not be applied so as to cause an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California, to constitute a special tax, or to cause a violation of any other provision of applicable law.

(b) Pursuant to California Constitution, Article XIII B, the appropriation limit for the city is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax.

**3.40.470 Severability.**

Should any provision of this chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this chapter or the application of

this chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 2: Implementation.**

- (a) The new tax imposed by this ordinance will go into effect on July 1, 2023.
- (b) Commencing July 1, 2023, each currently registered business will be required to begin making payments on the new tax when the renewal of the business tax certificate is due and payable upon expiration of the prior certificate.
- (c) Consolidation: In accordance with SCCC 3.40.070, each business with additional branch establishments or locations within the City shall be treated as one business and shall begin paying for the new tax for all branch establishments or locations when the first renewal of any business tax certificate becomes due after July 1, 2023.
- (d) The Director of Finance is charged with the implementation and transition of the new business tax. Any tax payments due between July 1, 2023 and June 30, 2024 may be prorated or credited in accordance with the administrative guidelines promulgated by the Director.

**SECTION 3: General Tax.** Proceeds of the tax imposed by this Ordinance shall be deposited in the general fund of the City and shall be available for any legal purpose.

**SECTION 4: Ordinances Repealed.** With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

**SECTION 5: Savings clause.** The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

**SECTION 6: Effective date.** Subject to passage by the voters and the vote declared by the City

Council, pursuant to Elections Code Section 9217, this ordinance shall take effect on July 1 , 2023.

Attachments incorporated by reference: None

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA ORDERING THE SUBMISSION OF A BALLOT MEASURE — KNOWN AS THE ‘CITY OF SANTA CLARA BUSINESS LICENSE UPDATE / TAX EQUITY MEASURE’ TO THE QUALIFIED ELECTORS OF THE CITY AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2022, REGARDING A BALLOT MEASURE TO AMEND CITY CODE CHAPTER 3.40 TO MODERNIZE AND INCREASE THE BUSINESS LICENSE TAX; CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF SANTA CLARA ON TUESDAY, NOVEMBER 8, 2022, FOR AVOTE ON SAID BALLOT MEASURE ; REQUESTING CONSOLIDATION WITH THE GUBERNATORIAL GENERAL ELECTION AND ELECTION SERVICES FROM SANTA CLARA COUNTY; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS; AND SETTING PRIORITIES FOR BALLOT ARGUMENTS

**BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, Santa Clara’s Business License Tax has not been updated in 30 years;

**WHEREAS**, the current tax does not reflect the way business operates in the City today;

**WHEREAS**, the measure as written will allow the City of Santa Clara to treat all businesses equitably;

**WHEREAS**, this measure will allow the city to maintain the essential priorities upon which local businesses and residents rely, including public safety, clean and safe streets, COVID-19 response, street and sidewalk repair, and flood protection;

**WHEREAS**, the measure as written requires strict oversight, financial audits and disclosures, and must be spent locally, without being taken by the state;

**WHEREAS**, the next Gubernatorial General Election will be held November 8, 2022;

**WHEREAS**, the California Constitution Article XIII C, Section 2(b) requires a proposed tax to be submitted to voters at a general municipal election;

**WHEREAS**, the City Council intends to submit a ballot measure and ballot question, concerning an increase in the Business License Tax rate, as described in this Resolution, to the qualified electors of the City of Santa Clara at such election;

**WHEREAS**, pursuant to the requirements of the City Charter there is called and ordered to be held in the City of Santa Clara, California, on Tuesday, November 8, 2022, a special municipal election placing on the ballot one measure that, if passed, would amend City Code Chapter 3.40; and,

**WHEREAS**, in the course of conducting a special municipal election on November 8, 2022, it is desirable that such special municipal election be consolidated with the general election, pursuant to Santa Clara City Charter section 600.02, to be held on the same date as if there were only one election. It is also necessary for the City to request services of the County as set forth in this resolution.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. SPECIAL ELECTION. That pursuant to the requirements of the City Charter, there is called and ordered to be held in the City of Santa Clara, California, on Tuesday, November 8, 2022, a special municipal election placing one measure on the ballot that, if passed, would amend City Code Chapter 3.40 to increase business license tax rates.
2. BALLOT QUESTION. That the ballot question shall read as follows:

| CITY OF SANTA CLARA BUSINESS LICENSE UPDATE / TAX EQUITY MEASURE   |     |
|--|-----|
| To protect Santa Clara's financial stability and maintain essential services including 911 emergency/public safety/crime reduction services, safe/clean public areas, pothole repair, parks and libraries, shall an ordinance to update Santa Clara's 1992 license tax on businesses to \$45 per employee, increasing to \$60, with larger businesses paying more, and on landlords to \$15 per rental unit, generating approximately \$6,500,000 annually, until ended by voters, with independent financial audits, all funds staying local, be adopted? | Yes |
|  | No  |

3. MEASURE. That the measure read as set forth on Exhibit A (attached hereto and incorporated herein by reference, with additions to and deletions from the current text indicated thereon) which, if passed by the voters, shall amend the Municipal Code of the City of Santa Clara.

4. NOTICE OF ELECTION. That in accordance with the City Charter and applicable state law, the City Clerk is hereby authorized and directed on behalf of the City Council to

cause notice of the time and place of the holding of the election to be published once in a newspaper of general circulation, printed, published, and circulated in the City of Santa Clara, and hereby designated for that purpose by the City Council of Santa Clara. Furthermore, the City Clerk hereby is authorized, instructed and directed to coordinate with the County of Santa Clara Registrar of Voters to procure and furnish any and all official ballot, notices, printer matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

5.        **CONSOLIDATION REQUEST.** Pursuant to the requirement of Part 3 (Consolidation of Elections; Section 10400 et seq) of Division 10 of the Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to consolidate the special municipal election with the Gubernatorial general election on November 8, 2022, and to further provide that, upon consolidation, the consolidated election shall be held and conducted in all respects as if there were only one election, and only one form of ballot shall be used, election officers appointed, voting precincts designated, ballot printed, pools opened and closed, ballots opened and returned, returns canvassed, and all other proceedings in connection with the election shall be regulated and done by the Registrar of Voters of the County of Santa Clara in accordance with the provisions of applicable laws regulating consolidating elections. This City Council requests and consents to such consolidation.

6.        **REQUEST FOR COUNTY SERVICES.** Pursuant to Section 10002 of the California Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to permit the Registrar of Voters to render services to the City of Santa Clara relating to the conduct of Santa Clara's special municipal election to be held on Tuesday, November 8, 2022. Services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections.

7.        **ELECTION COSTS.** Subject to the approval of the Board of Supervisors of the foregoing requests, the City Clerk is hereby authorized to engage the services of the Registrar

of Voters of the County of Santa Clara to aid in the conduct of the election. The City Director of Finance is authorized and directed to pay the costs of services, provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.

8. BALLOT AND REBUTTAL ARGUMENTS FOR MEASURE. Primary and rebuttal arguments for the measure may be filed consistent with Elections Code Section 9282, et seq.

9. BALLOT ARGUMENT (IN FAVOR) OR (AGAINST) MEASURE. The Council hereby selects the following course of action regarding argument (in favor) or (against) the measure:

(Council to select one of the following concurrent with the adoption of resolution):

A. Authorizes the City Council as a body to submit a written argument (in favor) or (against) the measure and in the event an argument is filed for the measure, a rebuttal argument.

B. Authorizes (#) of member(s) of the City Council to submit a written argument (in favor) or (against) the measure: (one or more name(s)): at (Name(s) discretion, the argument may also be signed by other members of the City Council, bona fide associations or individual voters who are eligible to vote on the measure. In the event that an argument is filed for the measure, (Name(s) is also authorized to submit a rebuttal argument on behalf of the City Council, which, at (Name(s) discretion, may also be signed by members of the City Council, bona fide associations, or individual voters who are eligible to vote on the measure. Signatures on the rebuttal argument may be different from those who signed the primary argument. OR

C. Takes no action with regard to authorizing the Council or member of the Council to submit a written argument (in favor) or (against) the measure, in which case the City Clerk shall select an argument against the measure in accordance with the priority order set forth in Elections Code section 9287.

10. IMPARTIAL ANALYSIS. Pursuant to Elections Code Section 9280, the City Council hereby directs the City Attorney to prepare an impartial analysis of the measure.

11. TRANSMITTAL OF RESOLUTION. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters.

12. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15378(b)(4) and 15378(b)(5) that this resolution is exempt from the requirements of the California Environmental QUALITY Act (CEQA) in that it involves fiscal and administrative activities that will not result in a potentially significant impact on the environment.

13. That in all particulars not recited in this resolution, the special municipal election shall be held and conducted as provided by law for holding municipal elections.

14. That this resolution provides notice of the time and place for holding the general municipal election and the City Clerk is authorized, instructed and directed to give further or additional notice of the general municipal election in time, form and manner as required by law.

15. That the proposed measure shall not take effect unless and until approved by a vote of at least 50% plus one of the voters voting on the question at the election.

16. Effective date: This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE    DAY OF                      , 2022, BY THE FOLLOWING VOTE:

AYES:                      COUNCILORS:

NOES:                      COUNCILORS:

ABSENT:                      COUNCILORS:

ABSTAINED:                      COUNCILORS:

ATTEST: \_\_\_\_\_  
HOSAM HAGGAG  
CITY CLERK  
CITY OF SANTA CLARA

Attachment: Exhibit A Ordinance Amending and Restating Santa Clara City Code Chapter 3.40



**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF SANTA CLARA,  
CALIFORNIA, AMENDING AND RESTATING CHAPTER 3.40  
("BUSINESS LICENSE") OF TITLE 3 ("REVENUE AND  
FINANCE") OF "THE CODE OF THE CITY OF SANTA CLARA,  
CALIFORNIA" TO MODERNIZE AND INCREASE THE TAX RATE**

**BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SANTA CLARA**

**SECTION 1:** That Chapter 3.40 (entitled "Business License") of Title 3 (entitled "Revenue and Finance") of "The Code of the City of Santa Clara, California" ("SCCC") is amended and restated in its entirety to be numbered, entitled, and to read as follows:

**Chapter 3.40**

**BUSINESS TAX**

**3.40.010 Purpose.**

This chapter is enacted to raise revenue for municipal purposes and not for the purpose of regulation. The payment of a business tax required by this chapter, and its acceptance by the City, and the issuance of a business tax certificate to any person shall not entitle the holder thereof to carry on any business unless he or she has complied with all of the requirements of the City Code and all other applicable laws, nor to carry on any business in any building, on any premises, or in any location designated in such business tax certificate in the event that such building, premises or location is situated in a zone or locality in which the conduct of such business is in violation of any law.

**3.40.020 Effect on other fees and charges.**

Persons required to pay a business tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any other charge, fee, or tax as may be imposed by the City for the privilege of doing business within the city, or for the cost of regulating a business, and such persons shall remain subject to the regulatory provisions of all other ordinances, codes, and resolutions of the City, including but not exclusive to regulations for

zoning, building, fire, and safety.

**3.40.030 Chapter controlling.**

To the extent that the provisions of this chapter are inconsistent with the provisions of any other chapter of the City Code or parts thereof, the provisions of this chapter shall be deemed controlling.

**3.40.040 Definitions.**

The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(a) "Business tax certificate" means the document issued as a result of a completed tax affidavit and taxes paid.

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

(c) "Business community" means any and all areas of the City not zoned as residential.

(d) "CPI Index" The Consumer Price Index—All Urban Consumers for All Items for the San Francisco-Oakland-Hayward Area or any successor to that index designated by the Federal Bureau of Labor Statistics or the city council.

(e) "Director" means the Director of Finance or his or her designee.

(f) "Employee" means any or all persons engaged in the operation or activity of any business, whether as owner, a corporate officer, a partner, agent, manager, solicitor or any and all persons employed or working in such business either full time, part-time, permanent or temporary.

(g) "Number of employees" means the number of persons employed in the business as

anticipated, or the number of employees including owner(s) at time of renewal.

(h) "Person" means all domestic and foreign corporations, limited liability company, firms, associations, syndicates, joint stock corporations, partnerships of every kind, joint ventures, clubs or common law trusts, societies, individuals, estates, business trusts, receivers, retirement plans, trustees, or any other group or combination acting as a unit engaged in any business in the city other than as an employee.

**3.40.050 Other licenses, permits, taxes, fees or charges authorized when.**

Nothing contained in this Chapter 3.40 shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit required by, under or by virtue of any provision of any other title or chapter of this Code or any other ordinance or resolution of the city or of its council, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this Code or any other ordinance or resolution of the city or of its council.

**3.40.060 Imposition of tax.**

The City does hereby tax, as provided in this chapter, each and every kind of business transacted, conducted, exhibited or carried on in the city, at the rates named and prescribed in this chapter. If more than one business shares a business location, each business is required to apply and pay the prescribed tax.

**3.40.070 Business tax certificate required.**

It shall be unlawful for any person to transact or carry on any business in the city without first having paid the business tax to the City and having obtained a valid business tax certificate or renewal, in compliance with all applicable provisions of the City Code. Notwithstanding any language in this chapter to the contrary, each branch establishment or location at or from which a person carries on the same business shall not be deemed a separate business, but all such branches and locations shall be treated as one business. If a business opens a new location

during the term of the existing business license, an amended business tax certificate application must be submitted to include the new location in the business tax certificate.

**3.40.080 Business tax certificate application.**

(a) Any person applying for a tax certificate shall make application upon a form provided by the Director, which form shall provide such information as may be required to show compliance with all City, State and Federal laws, and as may be necessary to determine ownership, the nature of the business, occupancy requirements, location, and the classification and amount of tax due.

(b) All applicants shall pay a tax computed on the number of employees or rental units as provided in this chapter upon submitting the application.

(c) When necessary, the Director or designee shall refer an application or a notice of changed or new addresses to the appropriate City officers or staff for determination as to whether the proposed business activity and the premises in which it is to be conducted comply with applicable laws and ordinances. In the event it is determined that the proposed activity may not be maintained in compliance with the law, the Director or designee shall so inform the applicant and no new or renewed tax certificate may issue.

(d) Failure of the City to approve, deny, or act upon the application within one hundred eighty (180) days shall be deemed a denial of the application.

**3.40.090 Appeal process.**

An appeal from denial of issuance of a business tax certificate may be made under the procedures set forth in Chapter 2.115 SCCC.

**3.40.100 Business location.**

Business tax fees are based on the actual physical location of the business within the jurisdictional limits of the City of Santa Clara. A mail stop, post office box or other such mail address is not considered a valid business location for the purpose of fire and safety inspection. All business not physically located within the jurisdictional limits of the City of Santa Clara are

considered out-of-town and must pay taxes as established for out-of-town businesses regardless of whether they have a mailing address in the City of Santa Clara.

**3.40.110 Branch establishments.**

A separate business tax certificate for each branch establishment or location of the business will not be required but all business locations must be included on the application for a business tax certificate. When any person conducts, at one location, businesses classified separately by this chapter, such person shall pay the higher of the taxes.

**3.40.120 Notice not required by City.**

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

**3.40.130 When annual tax due and payable.**

The annual business tax imposed under the provision of this chapter shall be due and payable at the time of commencement of business activity or upon occupying space in the business community and such certificate shall expire twelve (12) months after the date of application. The tax for the renewal of such certificate shall be due and payable upon expiration of the prior certificate.

**3.40.140 Refunds and proration.**

(a) All business tax certificates shall be issued from the date set forth in the certificate and no business shall be entitled to the refund of any portion of the tax paid by reason of the termination of such business activity before the certificate expires.

(b) Any business required to cease activity within the city as the result of public acquisition of the premises by any governmental agency shall be entitled to a refund of an amount

prorated as to the time remaining under the certificate when the business activity ceases. Such licensee shall file a verified claim with the Director stating the date of and reason for cessation of business activity.

(c) The business tax may be prorated in accordance with the administrative guidelines promulgated by the Director.

#### **3.40.150 Penalty for delinquent or nonpayment.**

The penalty for noncompliance shall be:

(a) Any person who fails to apply for a tax certificate and fails to pay the tax as determined on or within thirty (30) days after opening, engaging in business, or occupying space in the business community, shall be subject to a penalty of twenty-five percent (25%) of the tax due.

(b) Every annual tax which is not received and paid within a period of thirty (30) days after the tax became due is hereby declared to be delinquent, and a penalty of twenty-five percent (25%) of the tax will be added to the tax due.

(c) Whenever a check is submitted in payment of a business tax and said check is subsequently returned unpaid by the bank upon which said check is drawn for any reason, the taxpayer shall be liable to pay a nonsufficient funds charge, the correct tax amount due, and a penalty, if applicable.

(d) If any person fails to pay the annual renewal tax within ninety (90) days after the tax becomes due, his or her business tax certificate is considered revoked. The City is not required to send a notice of revocation for the revocation to be valid. Following revocation, the person must reapply for a new business tax certificate, pursuant to SCCC 3.40.080, and pay all associated penalties. Failure to reapply for a new business tax certificate shall constitute a violation, pursuant to SCCC 3.40.310.

#### **3.40.160 Annual adjustments for inflation.**

Subject to approval of the city council, the business certificate tax, the additional tax based on number of employees or rental units, and the cap referred in SCCC 3.40.360 below, may be adjusted annually, commencing on July 1, 2023 and every year thereafter, if the cost of living in the city has increased over the preceding base period as shown by the CPI Index but in no event shall the adjustment exceed five percent (5%) per year. The CPI Index will be set in February of each year or as established in the administrative guidelines promulgated by the Director in accordance with this chapter.

#### **3.40.170 Exemptions from tax.**

No tax prescribed in this chapter shall be deemed or construed to apply to any of the following persons who are exempt from payment thereof upon submission of proof of exemption:

(a) Charitable and Nonprofit Organizations. Any church, school, charitable, benevolent or social organizations having exempt status under Federal tax law.

(b) Conflict With Federal and State Law. Any person conducting any business exempt by virtue of the Constitution, or applicable statutes of the United States or of the State of California from the payment to municipal corporations of such taxes as are herein prescribed.

(c) Disabled Veterans. Disabled veterans exemption pursuant to the requirements of Section 16001 or 16001.5 of the California Business and Professions Code.

(d) Employees. No person who is an employee shall be required to pay a tax for doing any part of the work of such business for which a tax certificate has been issued.

(e) Interstate Commerce. Every peddler, solicitor or other person claiming to be entitled to exemption from the payment of any tax provided for in this chapter upon the ground that such tax casts a burden upon his/her right to engage in commerce with foreign nations or among the several states or conflicts with the regulations of the United States Congress respecting interstate commerce, shall file an affidavit or a declaration under penalty of perjury with the Director describing the interstate or other character of his/her business which entitled him to such exemption.

(f) Business operators whose annual gross receipts from such business operations in the city are five thousand dollars (\$5,000) or less. Acceptable documentation must be provided to support the claimed exemption.

(g) Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or the State of California for payment of such taxes as are herein prescribed.

**3.40.180 Business tax constitutes debt to City – Collection of unpaid taxes.**

The amount of any business tax imposed by this chapter shall be deemed a debt to the city, and any business operating without having a certificate from the city so to do shall be liable to an action in the name of the city in any court of competent jurisdiction for the amount of the business tax imposed on such business, together with all penalties and interest then due thereon in any such action, and any cost the city reasonably incurs to collect the tax, including attorneys' fees which, if judgment is recovered, shall be included and assessed as recoverable costs in such action.

**3.40.190 Transferability – Changes to affidavit.**

A certificate issued pursuant to this chapter shall not be transferable. When a certificate has been issued authorizing a specifically named person to transact and carry on a specific type of business at a specific location, the business shall, upon application in writing, and the payment of the prescribed fee, have such certificate records amended to include any change of name, type of business, or address. Any business for which such a change must be made shall pay a fee as fixed by resolution of the City Council for the handling and processing of such change.

**3.40.200 Issuance of business tax certificate.**

All certificates issued under the provisions of this chapter shall be issued by the Director or authorized employees and shall state the name of the business, the location of the business, the mailing address, the type of business being conducted at the listed location, the amount of the tax



paid, the expiration date of the certificate and additional information that may be required. A business tax certificate will be issued upon the determination by the Director and any other necessary City departments that the business tax has been paid and that the business tax certificate affidavit information is accurate, that the business applicant is operating legally pursuant to all applicable Federal, State and local laws, and there are no business operations that endanger the public.

**3.40.210 Duplicate tax certificate.**

A duplicate business tax certificate may be issued by the Director to replace a previously issued certificate that has been lost or destroyed upon the owner filing a written request attesting to such fact, and paying a fee as fixed by the resolution of City Council for handling and processing of such request.

**3.40.220 Business tax certificate record.**

The Director shall maintain a "public business tax certificate record," which shall contain the name of the business, the location of the business, the type of business and the time period for which the certificate is issued.

**3.40.230 Confidential documents.**

Except as provided for under Section 6254 of the Public Records Act, the affidavit, statements and any other documents required by this chapter to be filed, shall be deemed confidential in character and shall not be subject to public inspection, and shall be kept so that the contents thereof, shall not become known except to:

- (a) The persons charged with administration of this chapter;
- (b) City employees for the sole purpose of administering or enforcing any provisions of this article;
- (c) Federal or State officials, or to a grand jury or court of law, upon subpoena.

**3.40.240 Display of certificate.**

Every person to whom a certificate is issued, shall keep the same conspicuously posted in

or about the place where the business is located or conducted.

**3.40.250 Administrative rules and regulations.**

The Director may make rules and regulations not inconsistent with the provisions of this Code for the purpose of administering the provisions of this chapter. The Director shall further have the power to compromise any claims as to the amount of any tax due and paid.

**3.40.260 Affidavit to be submitted where business tax based on number of employees – Information required.**

(a) Upon making application for a certificate to be issued under this chapter where the amount of the tax is measured by the number of employees, the applicant shall furnish to the Director, for guidance in ascertaining the amount of such tax, a signed affidavit under penalty of perjury, upon a form provided by the Director, setting forth such information as may be necessary to determine the amount of the tax.

(b) The amount of the tax is determined by the average number of persons engaged in the business over the last four quarters immediately preceding application, and shall be determined as follows:

(1) Based upon the employment data as reported to the State Department of California Employment Development Department, if the applicant files with the State Department of California Employment Development Department the forms and reports hereinafter mentioned, and if the applicant reports therein all applicant's employees as defined in this chapter, the applicant may calculate the average number of employees by taking the number of employees employed in applicant's business in the city in each month of the preceding year as shown and reported on all DE3 forms, and by dividing the sum thus obtained by twelve. The DE3 and other forms hereinabove referred to are those certain forms entitled "DE3 Contribution Return and Report of Wages Under the Unemployment Insurance Code," which employers are required to file with the state department of employment, under the Unemployment Insurance Code of the state for the purpose of reporting contributions due under such code, and any other form or forms now

or hereafter required by the state for such purposes; or

(2) For a business with multiple locations located in and outside of the city, the applicant may self-report the total number of employees. The report shall include all employees that perform services in the city which include any of the following: i) an employee where all or most of the employee's services are performed in the city; or ii) where an employee's base of operations is located in the city; or iii) the place from which the business exercises basic and general direction and control over all the employee's services is in the city.

(3) The average number of employees of the business may also be disclosed in a manner as approved by the Director.

#### **3.40.270 Renewal generally – Affidavit and information required.**

In all cases, the applicant for renewal of a certificate shall submit to the Director, for guidance in ascertaining the amount of the tax to be paid by the applicant, a written affidavit under penalty of perjury upon a form provided by the Director, setting forth such information concerning the applicant's business as may be required by the Director to ascertain the amount of tax to be paid by such applicant pursuant to the provision of this chapter.

#### **3.40.280 Statements not conclusive.**

No statement set forth in any affidavit required by this chapter shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the City from collecting by appropriate action such sum as is actually due and payable under this chapter. Such affidavit and each of the several items therein contained shall be subject to review and verification by the Director, or authorized employees of the City.

#### **3.40.290 Extensions of time for filing sworn declarations.**

The Director shall have the power, for good cause shown, to extend the time for filing any sworn statement required under this chapter and in such case to waive any penalty that would otherwise have accrued.

#### **3.40.300 Director duties.**

The Director shall make diligent effort to discover all persons conducting any business in the city for which a certificate is required by the provisions of this chapter.

#### **3.40.310 Violations.**

The issuance of a certificate under this chapter shall not entitle the person(s) to engage in any business which for any reason is in violation of any law or provision of this Code.

(a) Separate Violation. The conducting of business in the city or occupying space in the business community, without first having procured a business tax certificate from the City to do so, or without complying with any and all regulations of such business contained in this chapter shall be a separate violation hereof for each and every day that such business is so carried on.

(b) Violations. Pursuant to SCCC 1.05.070, the City, in its prosecutorial discretion, may enforce violation(s) of the provisions of this chapter as a criminal, civil, and/or administrative action.

#### **3.40.320 City Attorney's duties.**

The Director may at any time request the City Attorney to bring a civil suit in the name of the City for the recovery of any tax from any person who conducts a business without procuring the certificate required by this chapter, or not paying the prescribed tax, and the recovery of such tax and penalties due thereon.

#### **3.40.330 Enforcement.**

The Director is hereby directed to enforce each and all of the provisions of this chapter, and the Chief of Police shall render such assistance in the enforcement hereof as may from time to time be required by the Director. The Director, in the exercise of the duties imposed hereunder, and acting through deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this chapter have been complied with.

The Director, all duly authorized assistants and any police officers shall have the following powers:

(a) To enter free of charge, and at any reasonable time during business hours, any place of business required to be certified herein, and demand an exhibition of its certificate. Any person to whom a certificate is issued shall exhibit the same on demand.

(b) To issue citations for any violations of this chapter.

#### **3.40.340 Effect of annexation.**

All existing businesses brought under the jurisdiction of the City by annexation procedures shall conform to the provisions of this chapter within thirty (30) days of the effective date of such annexation.

#### **3.40.350 Businesses taxed.**

Every person having a fixed place of business within the city and who engages in any business shall pay a tax based on the number of employees as defined and set forth in this chapter, according to the following rate schedules, unless the basis of the tax is otherwise prescribed in Section 3.40.380 or the business is exempted from the tax as prescribed in Section 3.40.170 of this chapter.

#### **3.40.360 General schedule for person having fixed place of business within City.**

From and after July 1, 2023, every person engaged in business in the City, whether or not at a fixed place of business in the City, shall annually pay to the Director the following prescribed tax:

(a) A per employee tax per year in the amounts set forth below in Subsection b., not to exceed a cap of three hundred and fifty thousand dollars (\$350,000.00) per year, subject to annual adjustments set forth in SCCC 3.40.160.

(a) Per Employee Tax shall be as follows:

| Number of Employees | Authorized Maximum Business Registration and Certificate Tax |
|---------------------|--|
| 1 – 499             | \$45 for each employee                                       |
| 500 and over        | \$22,455 + \$60/employee for each employee over 499          |

#### **3.40.370 Business without a fixed place of business in city.**

Unless such business is otherwise specifically taxed by other provisions of this chapter, every person who does not have a fixed place of business in the city, but whose employees come into the city for the purpose of conducting a business or rendering services, when such employees come into the city for these purposes six (6) or more days during any calendar year, shall pay a tax based on the number of employees as defined and set forth in this chapter, according to the following rate schedule:

| Out-of-Town Businesses Business Registration and Certificate Tax |                   |
|--|-------------------|
| Number of Days   | Percentage of Tax |
| 6 – 64   | 25%               |
| 65 – 129   | 50%               |
| 130+   | 100%              |

For purposes of this section "operating a business in the city" shall include every person entering into a contract with the city, including, without limitation, contracts for public works, consultant services and franchise agreements.

Out of town business shall, as required on the application form and in compliance with procedures and methodologies adopted by the Finance Department, estimate the number of employees who will be conducting business within the City and the estimated number of days that business will be conducted within the city.

#### **3.40.380 Rental units.**

(a) Every person engaged in the business of renting rooms, apartments, single-family houses, or other accommodations for dwelling, sleeping or lodging purposes, in the city shall pay the following tax:

- (1) \$15.00 per annum for each rental unit, subject to annual adjustments set forth in

SCCC 3.40.160.

(2) Provided, however, that no tax shall be payable under this section, unless the person engaged in such business operates three or more rental units in the city.

(b) As used in this section, unit means a room or suite of two or more rooms (including, but not limited to single-family houses) designed for or used as separate accommodations for dwelling, sleeping or lodging purposes by a person living alone or two or more persons living together.

#### **3.40.390 Rental unit – Surcharge.**

(a) It is contemplated that the City Council will from time to time adjust the amount of the surcharge fee by resolution to cover the changing cost of the mediation services involved with these businesses and to insure that the surcharge fee amount prorated to the rental units shall not exceed the cost of the program services made available.

(b) Any and all fees collected pursuant to this section are dedicated to and shall be used exclusively to pay the costs of the above services rendered in response to needs generated by the subject type of rental businesses.

(c) Those businesses covered under Chapter 3.25 SCCC, and paying the business tax under SCCC 3.40.310, Schedule No. 100, are exempt from paying the rental unit surcharge.

#### **3.40.400 Cumulative remedies.**

This chapter provides for administrative enforcement of its provisions, which are in addition to all other legal remedies, administrative, criminal or civil, which may be pursued by the city to address any violation of this chapter provided only that the city may not recover any sum due under this chapter more than once.

#### **3.40.450 Audit.**

The Director shall have the right to audit records of the businesses subject to the business license tax to ensure compliance with this chapter. Businesses shall retain records pertaining the business license tax for a period of three (3) years from the end of each calendar year, and shall

allow the city access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this chapter. Where a business does not maintain or retain adequate records documenting the number of its employees or does not allow the city reasonable access to such records, the city's calculation of the number of employees of the business shall be presumed to be accurate, absent clear and convincing evidence otherwise.

**3.40.460 Constitutionality and legality; Gann limit.**

(a) This tax is intended to be applied consistently with the United States and California Constitutions, state law and the City Charter. The tax shall not be applied so as to cause an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California, to constitute a special tax, or to cause a violation of any other provision of applicable law.

(b) Pursuant to California Constitution, Article XIII B, the appropriation limit for the city is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax.

**3.40.470 Severability.**

Should any provision of this chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this chapter or the application of



this chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 2: Implementation.**

- (a) The new tax imposed by this ordinance will go into effect on July 1, 2023.
- (b) Commencing July 1, 2023, each currently registered business will be required to begin making payments on the new tax when the renewal of the business tax certificate is due and payable upon expiration of the prior certificate.
- (c) Consolidation: In accordance with SCCC 3.40.070, each business with additional branch establishments or locations within the City shall be treated as one business and shall begin paying for the new tax for all branch establishments or locations when the first renewal of any business tax certificate becomes due after July 1, 2023.
- (d) The Director of Finance is charged with the implementation and transition of the new business tax. Any tax payments due between July 1, 2023 and June 30, 2024 may be prorated or credited in accordance with the administrative guidelines promulgated by the Director.

**SECTION 3: General Tax.** Proceeds of the tax imposed by this Ordinance shall be deposited in the general fund of the City and shall be available for any legal purpose.

**SECTION 4: Ordinances Repealed.** With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

**SECTION 5: Savings clause.** The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

**SECTION 6: Effective date.** Subject to passage by the voters and the vote declared by the City

Council, pursuant to Elections Code Section 9217, this ordinance shall take effect on July 1 , 2023.

Attachments incorporated by reference: None