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Palo Alto Potential Business Tax Ordinance Outline

(As of May 17, 2022)

Uncodified provisions

This section will have guidance regarding implementation such as effective date.

010 Title

This chapter is the “City of Palo Alto Business Tax Ordinance.”

020 Definitions

The definitions in this section apply to the words and phrases used in this chapter unless the context clearly indicates otherwise.

- “Business” means any commercial enterprise, trade, calling, art, vocation, profession, occupation, or means of livelihood, whether or not carried on for gain or profit.
- “Business operator” means a person who transacts, maintains, manages, operates, controls, engages in, conducts, carries on, or owns a business in the city. It does not include the employee of a business who is not an owner or proprietor of the business.
- “CPI Index” means 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.
- “Fixed place of business” means a place of business located in the city boundaries and occupied for the particular purpose of operating a business.
- “Grocery store” means a business that exists for the primary purpose of selling a range of food items to consumers for consumption off site, such as canned foods; dry goods; fresh produce; fresh meats, fish, and poultry; and any area that is not separately owned within the store where food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(3). Stores that combine grocery items with other retail products or services must have a minimum of two-thirds of occupied space designated to the sale of grocery items.
- “Hotel” has the meaning provided in section 2.33.010.
- “Operate” means to conduct a business and includes all stages of conducting a business from initial planning to the wind-down of a business, whether or not a profit is being made.
- “Square footage” means the rentable square footage used by a business as specified in a business’s lease or, if the business floor space is owned by the taxpayer, as calculated in the same manner as if the area was rented using commonly accepted standards of measurement for leasing purposes such as the Standard Methods of Measurement

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published by the Building Owners and Managers Association. Any method of measurement used must meet the following minimum standards:

- Measuring to the inside finish of permanent outer building walls and shall include space used by columns and projections necessary to the building.
 - Includes area used by the business and a proportionate share of the building service areas such as lobbies, corridors, and other common areas in a building unless assigned to another business for tax calculation purposes.
 - Includes vertical penetrations through the building such as stairs, elevators, or heating, ventilation, air conditioning, utility, or telephone systems, except on the lowest floor of stairs and elevators.
 - Multiple locations to be measured and tax assessed based the total business, not separate locations in the City.
- “Tax Administrator” means the Director of Administrative Services, or successor position, or their designee.
 - “Tax year” means the year that begins on the date of a business’s first day of operation as a business in the city.
 - “Transient” has the meaning provided in section 2.33.010.
 - “Transient Occupancy Tax” means the tax imposed under section 2.33.020.
 - “Transitory business” means a business that operates in the city for less than 90 days in the course of the business’s tax year (such as seasonal sale lots, special events, concerts/performances/circuses, filming, and party rentals).

030 Obligation to Pay Business Tax

- It is unlawful for any business operator to operate in the city any business taxed under this chapter without paying all business tax required by this chapter.
- If a business has more than one business operator, then the payment of the business tax by one business operator excuses any other business operators from the obligation to pay the business tax for that period for which the tax has been paid.
- The requirement to pay business tax is in addition to and separate from the requirement to obtain a business registration certificate under section 4.60.030.

040 Imposition of Business Tax

Any business operator operating a business at a fixed place of business in the city must pay an annual business tax at the following rates:

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- Beginning ____, the tax shall be imposed at the rate of \$0.__ per square foot occupied or used by the business at the beginning of the business’s tax year, with no tax being imposed for the first 5,000 square feet.
- Beginning _____, the tax shall be imposed at the rate of \$0.__ per square foot occupied or used by the business at the beginning of the business’s tax year, with no tax being imposed for the first 5,000 square feet. This rate shall be adjusted annually by the CPI Index as provided in section 050.

050 Annual CPI Adjustment of Tax Rate

- Beginning with the 2026 calendar year, and each year thereafter, the tax rate shall be automatically increased by a percentage equal to the percentage increase in the CPI Index in the previous calendar year (“the CPI Increase”).
- Notwithstanding subdivision (a) of this section, in any year in which the CPI Increase is more than 5%, the increase in the tax rate will be limited to 5%, and the amount of the CPI Increase that exceeds 5% (“the Excess CPI Increase”) shall be added to the following year’s CPI Increase under subdivision (a) of this section.
- If the addition of a previous year’s Excess CPI Increase to a current year’s CPI Increase exceeds 5%, then the increase in the tax rate will again be limited to 5%, and the amount that the combination of the CPI Increase and the previous year’s Excess CPI Increase exceeds % will create a new “Excess CPI Increase” to be added to the following year’s CPI Increase under subdivision (a) of this section.

060 Disposition of Tax Revenue

The tax imposed by this chapter is for the purpose of raising revenue for the general governmental purposes of the city. All of the proceeds from the tax imposed by this chapter shall be placed in the city’s general fund.

070 Exemptions from Tax

The following businesses are exempt from the tax imposed by this chapter:

- Any business exempt from the tax by the laws of the United States or the State of California;
- Grocery stores;
- Businesses that occupy or use 5,000 square feet or less in the city; and
- Transitory businesses.

080 Business Tax Offsets (credits)

Qualifying businesses may apply annually to the Tax Administrator to offset up ____% of the business’s Business Tax obligation as follows:

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- A business operator that operates a hotel in the city may deduct from the business tax owed for the business of operating the hotel an amount equal to ____% of the total transient occupancy tax collected and remitted to the city in the previous calendar year from transients staying at the hotel.
- A business operator of a business that is a marketplace facilitator that designates the city as the point of sale for sales tax purposes may deduct from the business tax owed for the business an amount equal to ____% of to the total sales tax received by the city in the calendar year for the retail sales of the marketplace facilitator. *This remains under development and is intended to reflect the Council direction to explore offsets for businesses based on remittance of sales & use tax where the place of sales has discretion and is designated in Palo Alto (where discretion exists).*
- A business operator of a business that is a retailer that has discretion to designate the city as the point of sale for sales tax purposes, as determined by the Tax Administrator, may deduct from the business tax owed for the business an amount equal to ____% of to the total sales tax received by the city in the previous calendar year for which the retailer had the discretion to designate the city as the point of sale. *This is intended to include businesses that are purchasers and enter into POS designation agreements such as for construction as well as possibly other purchases (where discretion exists).*

090 When Tax Is Due

- Tax will be due on the first day of business in the city for the following tax year and is delinquent thirty (30) days after the first day of operation if not paid.
- After the first tax year of operation and for all subsequent tax years, the tax is due on the first day of the tax year for the following tax year and is delinquent thirty (30) days after the first day of the tax year if not paid.

100 Business Tax Submittal for a New Business

When a business begins operating in the city for the first time, the business operator must provide the Tax Administrator verified by the business operator as true and correct under penalty of perjury of the laws of the State of California, before beginning the operation of the business in the city. Likely submittals to include:

- name and address of business.
- business's activities.
- square footage in the city;
- Identify claims for offset under section 080, sufficient information and documentation to establish the business's right to the offset and the amount of the offset;
- The amount of tax due based on the square footage of the business.

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110 Annual Business Tax Renewal

After the first tax year of operating a business in the city and for all subsequent tax years, a business operator must submit a business tax verified by the business operator as true and correct under penalty of perjury of the laws of the State of California. Likely submittals to include:

- name and address of business.
- business's activities.
- square footage in the city;
- Identify claims for offset under section 080, sufficient information and documentation to establish the business's right to the offset and the amount of the offset;
- The amount of tax due based on the square footage of the business.

120 Agreements for Installment Payments

The Tax Collector may enter into an agreement with a business operator to allow a business operator to pay the tax on a more frequent basis, such as semi-annually, quarterly, or monthly.

130 Initial Implementation of Tax

This section will outline how the tax will first be implemented, a core characteristic includes:

- The rolling basis on which businesses will have to submit tax information and pay the tax

140 Delinquent Taxes (Penalties and Interest)

This section will outline how penalties and interest are calculated and applied to the tax.

- Unpaid after 30 - 60 days, penalties and interest assessed

150 Administrative Procedure to Assess or Correct Tax

This section will outline administrative steps for assessment or corrections.

- An Initial Determination must be issued within five (5) years of the last day of the tax and once received request a hearing within 15 days. A hearing, if requested, shall be set within thirty (30) days.
- Within sixty (60) day after the close of the hearing, the Tax Administrator shall serve a Final Determination.

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160 General Administrative Remedy

This section will outline administrative steps for remedy.

- Typical processes are expected to include anywhere between 15 day and 30-day period for filing of objections and decision procedures. Anticipate challenges will move through Tax Administrator.

170 Appeals

This section will outline appeals process.

190 Constitutional Apportionment

No tax imposed by this chapter shall be applied to a business operator so as to constitute an undue burden on interstate commerce or intercity commerce or be violative of the equal protection or due process clauses of the United States or California constitutions.

200 Refunds

- The claim must be filed with the Tax Administrator and signed under penalty of perjury by the business operator. Claim includes: legal and factual basis for the refund claim; amount of tax, penalty, or interest allegedly improperly paid; date(s) of payment; and address of the claimant
- The claim must be filed with the Tax Administrator within one (1) year of the date of the allegedly improper payment to the city

210 Audits

This section will outline procedures that allow for audits by the Tax Administrator.

- The Tax Administrator may conduct an audit of any business operator to ensure proper compliance with the requirements of this chapter.
- Notice of the initiation of an audit for receipts submitted under section 100 or section 110 must be served within five (5) years.
- Notice of the initiation of an audit for which receipts not submitted under section 100 or section 110, and is registered business under section 4.60.030, must be served within seven (7) years.
- Notice of the initiation of an audit for which receipts not submitted under section 100 or section 110, and is not registered business under section 4.60.030, must be served within ten (10) years.

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220 Maintenance and Review of Records

This section will outline maintenance of records schedules

- Maintain for six (6) years records of square footage and information necessary to calculate the tax

230 Confidentiality of Records

- All documents submitted to the city by a business operator under this chapter and all documents of a business operator inspected by the Tax Administrator in the conduct of an audit are presumed to be confidential and will not be subject to public inspection to the fullest extent allowed by law and must be maintained so that the contents of the documents will not become known except to persons charged with the administration of this chapter.
- Confidential documents may be shared with consultants retained by the city to aid in the administration of this chapter, provided the consultants agree to maintain the confidentiality of the documents.
- Nothing in this section precludes the city from aggregating information and releasing it in a manner that does not identify any particular business or connect any information with a particular business.

240 Action to Collect Delinquent Taxes

Actions for collection procedures on delinquent taxes

250 Errors Not Binding on the City

No errors by the Tax administrator are binding and do not prevent the collection of the tax.

260 Dates

If the last day for the performance of any act under this chapter is a Saturday, Sunday, or holiday recognized by the city, then the date for the performance of that act is extended to the next day that is not a Saturday, Sunday, or holiday recognized by the city.

270 Rules and Regulations

The Tax Administrator may adopt rules and regulations that are not inconsistent with the provisions of this chapter.

280 City Council Amendments

- The city council may amend this chapter in any way it deems necessary without the approval of the electorate, provided the amendment does not increase the amount of tax that any person would pay.
- Any amendment to this chapter that would reduce the amount of tax any taxpayer would pay, either temporarily or permanently, must be approved by two-thirds of the members of the city council.

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