

ORDINANCE NO. _____

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF CUPERTINO
AMENDING CHAPTER 5.04 OF THE CUPERTINO MUNICIPAL
CODE REGARDING BUSINESS LICENSE TAXES, FEES, AND
CHARGES**

The People of the City of Cupertino do ordain as follows:

SECTION 1. Chapter 5.04 of the Cupertino Municipal Code is hereby amended to read as follows:

Chapter 5.04: Business Licenses Generally.

Section 5.04.010. Citation of Chapter.

The ordinance codified in this chapter may be referred to and cited as the “Business License Tax Ordinance.”

Section 5.04.020 Definitions.

For purposes of this chapter, unless it is plainly evident from the context that different meaning is intended, the following terms and phrases are defined as follows:

“**Administrative Services Director**” means the Administrative Services Director or his or her designee.

“**Appeals hearing board**” means the City Manager or any person or body he or she appoints to hear one or more appeals under this chapter.

“**Applicant**” means a person applying for a business license.

“**Business**” means any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, but not including the services rendered by an employee for his employer. Independent contractors and the self-employed are also engaged in a “business.”

“**Business license**” means a form issued by the City to evidence the City’s permission to exercise the privilege of engaging in a particular business, as defined herein, subject to the conditions hereinafter set forth.

“Business license application fee” means the fee imposed under this chapter to recover the City’s costs to process an application for a license under this chapter.

“Business license renewal application fee” means the fee imposed under this chapter to recover the City’s costs to processing an application for renewal of a license under this chapter.

“Business operator” means a person who maintains, manages, operates, controls, engages in, conducts, carries on and/or owns a business regulated under this chapter.

“City” means either the City of Cupertino, a municipal corporation of the State of California, in its present incorporated form or as in any later reorganized, consolidated, enlarged or reincorporated form, or the territory of the City, as the context requires.

“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.

“City Council” means the City Council of the City of Cupertino.

“Employee” means any of the following:

A. Any person who works for or under the direction of, or on behalf of, or as an agent of, a business operator; or

B. Any independent contractor who uses a vehicle to sell or vend any goods, wares, merchandise, products, or any other thing or representation of value furnished or supplied either by or on behalf of a peddler business.

“Fixed place of business” means the premises occupied for the particular purpose of conducting business, and regularly kept open for such purpose. Such term shall also include a telephone answering service; provided, that the applicant has a contract or agreement for services for six months or more. Applicants with such agreement or contract shall pay tax and be licensed as are applicants having a fixed place of business.

“Licensee” means a person granted a license under this Chapter and in whose name the business license is issued.

“Manager” means any person who is in charge of the operation of a business as agent of the business operator.

“Owner” means every person having more than a 10 percent interest — legal, equitable, or otherwise — in any business.

Section 5.04.030 Common Meanings of Terms.

The various businesses, trades, professions, industries, occupations, callings and activities herein provided to be licensed shall be defined in accordance with the meanings and connotations generally given them by those engaged in such activities and as recognized generally by the public.

Section 5.04.040 Application Procedures.

A. All licenses required by this chapter shall be subject to the procedures of this chapter unless different procedures are specified for a license under another provision of this Code.

B. All applications shall be accompanied by the applicable fee as set forth in the schedule of fees established from time to time by City Council resolution.

Section 5.04.050 Separate license.

Every person shall be required to secure separate licenses under this chapter for each and every separate place of business used by such person to conduct business in the City.

Section 5.04.060 Exemptions.

Except as may be otherwise specifically provided in this chapter, the terms hereof shall not be deemed or construed to apply to non-profit organizations, institutions, corporations, or associations; persons or entities exempt from city taxation under state or federal law; persons whose annual gross receipts from any and all business are one thousand dollars or less; persons or entities whose sole business contact within the City is the sale of goods or services to the City itself; public utilities operating under the grant of a franchise and required to make franchise tax payments to the City; or any person when imposition of the tax upon that person would violate the Constitution of the United States or that of the State of California. The burden of proof of exempt status is on the person claiming the exemption. Acceptable documentation must be provided to support the claimed exemption on a form provided by the Administrative Services Director for that purpose.

Section 5.04.070 Application.

A. Every person required to have a license under the provisions of this chapter shall submit an application to the Administrative Services Director on a form he or she shall establish that reports:

1. The type of ownership of the business, i.e., whether individual, partnership, a corporation or otherwise. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation and the names and addresses of each of its current officers and directors, and the name and address of its agent for service of process;
2. The name under which the business is to be conducted;
3. The complete address and all telephone numbers of the business;
4. The name and address of the manager of the business;
5. The number of employees of the business;
6. The following personal information concerning the applicant, if an individual; and concerning the manager or other person in charge of the operation of the business:
 - a. Name, complete current residence address and residence telephone numbers; and
 - b. The business history experience, including but not limited to, whether or not the applicant in previously operating in this or another city, county or state under a permit or license has had a permit or license denied, revoked or suspended and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;
7. Such other information and identification of the person as the Administrative Services Director considers necessary to administer this chapter; and
8. Authorization for the Administrative Services Director to seek other information that the Administrative Services Director considers necessary for a

complete investigation and to conduct an investigation into the truth of the statements set forth in the application, including, but not limited to, a criminal history investigation with the California Department of Justice and other law enforcement agencies.

B. Each applicant for a license shall properly complete an application, sign the same and certify, under penalty of perjury, that the contents thereof are true and correct; or sign and swear to the same before the Administrative Services Director. The Administrative Services Director is hereby authorized to administer oaths in all matters pertaining to the duties of their respective offices. The completed application shall be submitted to the Administrative Services Director, who shall compute the license tax due and issue the license on payment of that amount.

C. An application shall not be deemed complete until all the information required by this section has been provided to the Administrative Services Director and the prescribed fees and license tax have been paid.

Section 5.04.080 Investigation and determination.

A. Upon receiving the completed license application, the Administrative Services Director shall investigate the applicant and application to determine whether a license may issue under this chapter.

B. The Administrative Services Director shall also investigate the premises of the business to ensure they comply with the requirements of this chapter and applicable law.

C. The Administrative Services Director shall make a determination to approve or deny the license within a reasonable period of time after the applicant has submitted a completed application and paid the prescribed fees and tax. If the business is engaged in expressive activities protected by the First Amendment to the U.S. Constitution, the Administrative Services Director shall make his or her determination within three business days of receipt of a complete application.

D. The Administrative Services Director may direct the Chief of Police to conduct a criminal background investigation on any person applying for a license under this chapter if there is probable cause to believe such person may have a criminal history relevant to the business to be conducted or if other applicable law requires such an investigation for the conduct of a particular business.

Section 5.04.090 Denial, suspension or revocation.

A. An application for a license may be denied and a license issued pursuant to this chapter may be suspended or revoked by the Administrative Services Director upon any of the following grounds as to any of the persons identified in section 5.04.070:

1. Conviction of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business, profession or trade for which the license is sought or issued;
2. Conviction for commission of acts involving dishonesty, fraud, or deceit;
3. Commission of acts which (i) would constitute a felony or (ii) would constitute a crime if the crime is substantially related to the qualifications, functions, or duties of the business, profession or trade for which the license will be/was issued;
4. Knowingly making a false statement of fact or omitting a fact required to be revealed in an application for the license, or in any amendment or report or other information required to be made thereunder;
5. The premises in which the licensed activity will occur or the proposed use for which the license is sought is in violation (i) of any building, zoning, health, safety, fire, police or other provision of this Code or (ii) of county, state or federal law which substantially affects the public health, welfare or safety;
6. Violation of the terms and conditions of the license or other requirements of this Code;
7. The applicant or licensee has owned or leased premises that have been the subject of an administrative, civil or criminal nuisance abatement action and court judgment or administrative determination finding the premises to be a nuisance within the past five years and the applicant or licensee has not fully discharged any obligations arising from that action or determination;
8. Failure to pay any disturbance response charge imposed pursuant to section 5.04.450 (Disturbance response charge);
9. A license application has been previously denied by the city or any state, county or local agency on one or more of the grounds provided in this section within five years before the date of the current application;
10. A permit or license issued by the city or any state, county or local agency has been revoked or suspended within the past five years;
11. The licensee has conducted or proposes to conduct the licensed business in a manner that creates a public nuisance, as defined in this Code or in sections 3479 and 3480 of the California Civil Code, on or within 150 feet of the licensed premises; or

12. The licensee fails to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or living and prevailing wage requirements. For purposes of this section, a final court order or administrative action is one as to which there is either no pending appeal or the time for filing an appeal has passed and no appeal was filed.

Section 5.04.100 Notice of intended decision.

A. Upon determining the existence of any of the grounds for denial, suspension, or revocation of a license in accordance with section 5.04.090, the Administrative Services Director may give the licensee a notice of intended decision to deny, suspend or revoke the license.

B. The notice of intended decision shall state the grounds on which the denial, suspension or revocation is based.

C. The notice of intended decision shall advise that the denial, suspension or revocation shall become final unless the applicant or licensee files a written request for hearing before the Administrative Services Director within the time period specified in section 5.04.490 (Procedure for hearing before the Administrative Services Director).

D. The notice shall specify the effective date of intended decision.

Section 5.04.110 Issuance; contents.

The Administrative Services Director shall issue a license under this chapter for every person liable for such license tax, and to state in each license the amount thereof, the person to whom issued, the business licensed and the place where such business is to be conducted. Unless otherwise proscribed in this chapter, a business license shall be issued for a twelve-month period.

Section 5.04.120 Expiration Date.

Unless otherwise established by resolution of the City Council, all licenses shall automatically expire at the end of the twelve-month for which they were issued.

Section 5.04.130 Time and Manner of payment.

Business license taxes shall be due and payable at the time of the commencement of business activity by the licensee. Taxes for renewal of a business license shall be due and

payable upon expiration of the prior license. All license fees and taxes under this chapter shall be paid in advance in the legal currency of the United States at the office of the Administrative Services Director.

Section 5.04.140 Renewal of license.

No license may be renewed unless:

- A. An application for renewal of the license, together with the payment of the prescribed license renewal fees and tax, is filed with the Administrative Services Director before expiration of the current license; and
- B. The licensee meets all of the requirements of this chapter.
- C. If such application for renewal is not filed, or the license renewal fees or tax are not paid, before expiration of a license, the license shall be deemed suspended until such time as the application for renewal is filed, the renewal fees and tax, and if applicable, penalties, paid and a new license has been issued.

Section 5.04.150 Penalty for late renewal.

Any person who fails for more than 30 calendar days after the expiration of any license issued under this chapter to apply for renewal shall be required, during the first year of delinquency, to pay a penalty of twenty (20) percent of the amount of the license tax plus one (1) percent interest each month the renewal fee is not remitted until reaching one-hundred (100) percent. During the second and third year of delinquency, no penalties shall be applied; however, a one (1) percent interest will be charged monthly until the renewal fee is remitted. Such penalty shall be collected by the Administrative Services Director before issuance of a new license.

Section 5.04.160 Posting and exhibition of license.

- A. Every licensee shall exhibit any license issued under this chapter in a conspicuous public place on the premises named in the license, or on a vehicle described in the license, while engaged in the subject business in the city.
- B. Any license issued pursuant to this chapter shall be kept in a readily accessible place and shown to any police officer, city inspector or other person upon request while business is conducted in the city under that license.

Section 5.04.170 Transferability.

A. No license under this chapter shall be valid except for the location/s for which application was made and for which the license is issued. If a licensed business moves to another location, the original license shall be presented to the Administrative Services Director, together with a statement of such proposed relocation. The Administrative Services Director may approve the transfer of the license to the new location under the standards of this chapter for an initial license at that location.

B. No license under this chapter shall be transferred or assigned or authorize any person other than the person named on the license. Rather, an application for license in the name of the proposed transferee shall be presented to the Administrative Services Director, who shall consider the application as provided in this chapter.

Section 5.04.180 Issuance of duplicates; mistakes by Administrative Services Director.

A. The Administrative Services Director shall make a charge for each duplicate license issued to replace a license which has been lost or destroyed. Such charge shall be in an amount set from time to time by resolution of the City Council.

B. In no case shall any mistake made by the Administrative Services Director in stating the amount of the license tax prevent or prejudice the collection by the City of what shall be actually due from anyone carrying on a business subject to a license under this chapter.

Section 5.04.190 Imposition of tax—Business generally.

Unless otherwise specifically provided for in this chapter, every person carrying on a business in the City shall pay an annual license tax based on the average number of employees of the business in the City reported to the Employment Development Department on form DE-9C ("Quarterly Contribution Return and Report of Wages"), or any successor form designated by the Collector, in the four quarters before the date the payment is due as follows:

A. A minimum base tax per year, plus an additional per employee tax per year, in the amounts set forth below in paragraph B., subject to annual inflation adjustments set forth in section 5.04.370. Part-time employees count as one-half of an employee. Calculations resulting in a fraction shall be rounded up to the next largest whole number. Notwithstanding the obligation to obtain a separate license for each location at which the taxpayer does business, the tax shall be calculated on each taxpayer's citywide workforce.

B. The tax shall be calculated as follows:

Employee Range	Base Rate	Employee Rate
0–9 employees	\$150.00	\$0.00
10–99 employees	\$500.00	\$0.00
100–249 employees	\$500.00	\$50.00
250–499 employees	\$500.00	\$100.00
500–999 employees	\$500.00	\$200.00
1,000–4,999 employees	\$500.00	\$300.00
5,000+ employees	\$500.00	\$425.00

C. For persons with a fixed place of business outside the City who send employees into the City, the tax shall be apportioned to the fraction of the workforce located within the City during the licensing period (i.e., number of employees x number of days / 365 days).

Section 5.04.200 Agents, solicitors and salespersons.

Each agent, solicitor, and salesperson selling or soliciting, or taking orders for the sale or furnishing of any paintings, pictures, portraits, photographs, orders for advertising or for any goods, wares, merchandise or service at retail, not otherwise provided herein when not in connection with any fixed place of business within the City licensed under this chapter, shall pay a business license tax of \$140 per year subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.210 Amusement centers.

As used herein, the term “amusement center” means any place to which the public is admitted or invited, where eight or more coin-or token-operated amusement machines are maintained, operated or available for operation. Every person operating an amusement center shall pay an annual business license tax of \$278 dollars and \$9.30 per machine subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.220 Amusements generally.

Every person operating a business where admission, fares, or a fee is charged or made, or a collection or contribution is received (and which are not otherwise provided for in this chapter) for entrance to amusements, such as exhibitions, shows, games, rides, tent performances, ball games, dart games, illusions and other amusements or concessions similar in character to those, or any of those herein before named, shall pay a business license tax of \$140 per day subject to annual inflation adjustments set forth in section 5.04.370. This section shall apply only to businesses whose operations and presence in the City are temporary or itinerant.

Section 5.04.230 Apartment houses and apartment complexes.

A. For purposes of this section, apartment house complex means two or more individual buildings containing dwelling units located upon the same property, or on contiguous property under the same ownership which are leased for occupancy by separate households.

B. Every person owning apartment houses, or apartment house complexes, shall pay an annual business license tax of \$178 per year for up to four dwelling units, and \$12.95 for each additional dwelling unit subject to annual inflation adjustments set forth in section 5.04.370; provided, however, that the dwelling units used in computing the tax shall be dwelling units rented or leased for occupancy by someone other than the owner.

Section 5.04.240 Seasonal lot sales.

Every person engaged in the business of seasonal lot sales shall pay an annual business license tax of \$278 subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.250 Concerts, circuses and performances.

Every person operating a concert, circus or other performance shall pay a business license tax for the first day of \$279 and \$45.53 cents for each additional day subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.260 Lumberyard, building material yard, junkyard–Plant nurseries.

Every person owning or operating a business engaged in the sale of lumber, building material, secondhand building material, junkyard, or outdoor yard of similar character, or wholesale or retail nursery, shall pay a business license tax in accordance with the following schedule:

A. A base annual tax of \$140 dollars.

B. In addition each person shall pay an annual tax of \$9.30 per acre of space used for the purposes set forth above.

C. These amounts are subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.270 Coin-operated device (persons engaged in the business of renting, leasing or operating the same).

Every person engaged in the business of renting, leasing or operating coin-operated vending machines, shall pay an annual tax of \$140 per year and \$9.30 per machine subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.280 Contractors.

Every person engaged within the City of Cupertino in the business of contracting as a general building contractor, electrical contractor, plumbing contractor, lathing and plastering contractor, subcontractor, or specialty contractor, as those terms are defined by state law, shall pay an annual tax of \$140 per year subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.290 Home occupations.

Every person engaged in a home occupation, as defined by the zoning ordinance of the City, shall pay an annual tax of \$140 subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.300 Hotels, motels, auto courts, and lodging houses.

Every person engaged in the business of operating a hotel, motel, or lodging house, shall pay an annual tax of \$140 per year, plus \$9.30 per room subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.310 Peddling.

Every person peddling any goods, food, wares, magazines, or merchandise not otherwise provided for in this chapter, shall pay an annual tax of \$278 subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.320 Rest, convalescent, guest and family care homes.

Unless otherwise exempted by state or federal law, every person operating a rest, convalescent or guest home, or child care service, shall pay an annual tax of \$278, subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.330 Private schools.

Every person operating a private school shall pay an annual tax of \$278, subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.340 Taxicabs or automobiles for hire.

Every person engaged in the business of providing taxicabs or automobiles for hire shall pay an annual tax of \$140 per year for each vehicle operated in the City subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.350 Theaters and shows.

Every person engaged in the business of operating a theater, motion picture show, playhouse, event, and all other shows or exhibitions (except those conducted in the open or under canvas) not otherwise provided for in this chapter shall pay an annual tax of \$278 per year plus \$3.77 per seat subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.360 Small-Income Businesses.

Upon filing of an application for a small-income business license and an affidavit stating, among other things, that the gross dollar volume of contemplated business would be greater than one thousand dollars but less than five thousand dollars; and upon the finding and determination by the Administrative Services Director that the representations are true and correct, the Administrative Services Director may order the issuance of a small-income business license that shall be for the current calendar year and shall be issued upon a payment of seventy-four dollars ninety-nine cents, subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.370 Annual adjustments for inflation.

Every tax stated in this chapter in a fixed sum shall be annually adjusted for inflation, commencing with taxes due on January 1, 2020, and every year thereafter by the increase in CPI Index over the most recent 12-month period for which the Index has been published. The Administrative Services Director shall calculate the adjusted tax amounts, maintain them on file and available for public examination in his or her office and post them to the City's website sufficiently in advance of the tax due date to allow efficient administration of the tax

Section 5.04.380 No refunds for cessation of business

A. All licenses shall be issued from the date set forth in the license and no licensee shall be entitled to the refund of any portion of the tax paid by reason of cessation of such licensed activity before the license 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 license when the business activity ceases. Such licensee shall file a verified claim with the Administrative Services Director stating the date of and reason for cessation of business activity.

Section 5.04.390 Tax and fee obligations.

In addition to all other legal penalties, any person who engages in any business for which a license is required, without such license, whether or not such person would have qualified for such license, shall be liable for the amount of all taxes and fees, penalties and interest, applicable to a licensee.

Section 5.04.400 Collection of taxes by court action.

The amount of any license tax imposed by this chapter shall be deemed a debt to the City, and any person carrying on any business under this chapter without having a license 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 license 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.

Section 5.04.410 Powers and duties of Administrative Services Director.

A. The Administrative Services Director shall have the power and duty, and is hereby directed, to enforce this chapter.

B. The Administrative Services Director shall have the power to adopt rules and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out and enforcing the provisions of this chapter. A copy of any such rules and regulations shall be on file and available for public examination in the Administrative Services Director's office and posted to the City's website.

Section 5.04.420 Enforcement of chapter.

The Administrative Services Director shall appoint inspectors of licenses who are hereby authorized to examine all places of business and persons in the City liable to pay a license tax to see that such licenses are taken out; and shall have and exercise the following powers and duties:

A. To citations or other notices of a violation of this chapter.

B. To enter free of charge, at any time, any place of business for which a license is required by this chapter and to demand the exhibition of such license for the current term by any person engaged or employed in the transaction of such business, and if such person shall fail to do so, he or she shall be liable for the penalties provided by this code and other applicable law for a violation of this chapter.

Section 5.04.430 Liability of licensee.

A. The licensee shall be liable for every violation of this chapter committed by the licensee or the licensee's manager or employee.

B. Upon a violation of this chapter by an employee, the Administrative Services Director may take enforcement action against the licensee, the employee of the licensee, the manager who was present when the employee committed the violation, or any or all of them.

C. Upon a violation of this chapter by a manager, the City may take enforcement action against either or both the licensee and the manager.

Section 5.04.440 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.

Section 5.04.450 Disturbance response charge.

A. A disturbance response charge shall be imposed on the licensee of any business premises operated pursuant to any license issued by an Administrative Services Director, whenever the police department responds to any disturbance which is directly or indirectly caused by a violation of the license.

B. The disturbance response charge shall be the actual cost of police services, including but not limited to, personnel and equipment, incurred.

C. The bill of charges shall be served by the chief of police upon the licensee at the licensed business premises within 30 calendar days after the response to a disturbance which is directly or indirectly caused by a violation of the license.

D. The bill of charges shall include a notice of the right of the person being charged to request a hearing before the Administrative Services Director within 10 calendar days of the date of service of the bill to dispute the imposition or amount of the charge.

E. Failure to timely request a hearing shall waive the right to a hearing.

Section 5.04.460 Informal procedure for resolution of an imminent threat.

A. When the Administrative Services Director determines that there is an imminent threat to the public health, safety or welfare requiring immediate action, the Administrative Services Director will attempt to informally contact the licensee by telephone, in-person meeting, or by such other means of communication as the Administrative Services Director deems appropriate, to discuss the threat. The Administrative Services Director will further attempt to obtain the licensee's commitment to implement immediate voluntary compliance measures that will, in the judgment of the Administrative Services Director, effectively abate the threat.

B. The requirements set out in paragraph A shall not prohibit the Administrative Services Director from summarily suspending a license if:

1. The attempt to contact the licensee fails; or
2. The licensee fails or refuses to immediately implement voluntary compliance measures that the Administrative Services Director deems will effectively abate the threat; or
3. The Administrative Services Director determines that the compliance measures the licensee implements are insufficient to effectively abate the threat; or
4. The Administrative Services Director determines that the threat is so urgent that compliance with this section will further jeopardize the public health, safety, or welfare.

Section 5.04.470 Summary suspension.

A. If the Administrative Services Director determines there is an imminent threat to the health, safety or welfare of the public as set out in Paragraph B below, a license may be summarily suspended for up to 30 days.

B. The Administrative Services Director's determination that there is an imminent threat to the public health, safety or welfare shall be based on one or more of the following:

1. There is an urgent need to take immediate action to protect the public from a substantial threat of serious bodily injury or death existing on or within 150 feet of the licensed premises; or

2. There has been a violation of a license condition or other requirement of this chapter that creates an imminent danger to the public health, safety or welfare on or within 150 of the licensed premises; or

3. The licensee has conducted the licensed business in a manner that creates or results in a public nuisance, as defined in this Code or in Sections 3479 and 3480 of the California Civil Code, and that public nuisance creates an imminent danger to the public health, safety or welfare on or within 150 of the licensed premises.

C. The summary suspension shall take effect immediately upon service of a written notice of suspension by the Administrative Services Director including substantially the following:

1. The effective date and duration of the suspension;
2. The grounds for the suspension;
3. The licensee may request a hearing on the suspension before the Administrative Services Director;
4. The method to request a hearing before the Administrative Services Director; and
5. The notice of summary suspension shall become final unless the Administrative Services Director receives a written request for a hearing from the licensee within the time period specified in Paragraph E.

D. The summary suspension shall remain in effect unless and until the Administrative Services Director either:

1. Amends the notice of summary suspension to shorten its duration; or
2. Issues a decision after holding a hearing pursuant to the requirements of this section that modifies or overrules the summary suspension.

E. To challenge a summary suspension, the licensee shall file a written request for a hearing before the Administrative Services Director within three business days after service of the notice of summary suspension. If the Administrative Services Director does

not receive a request for a hearing from the licensee within this time period, the notice of summary suspension shall be final.

F. The Administrative Services Director shall respond to the licensee's request for a hearing by holding a hearing to affirm, modify or overrule the summary suspension within five business days of the licensee's request for a hearing, unless the licensee requests an extension of the time within which the Administrative Services Director can hold the hearing. If the business is engaged in expressive activities protected by the First Amendment to the U.S. Constitution, the Administrative Services Director shall respond within one business day of receipt of a complete application.

G. The Administrative Services Director shall serve a written notice of hearing on the licensee not later than two (2) business days after receiving the licensee's written request for a hearing. The notice of hearing shall contain the date, time and place at which the hearing shall be conducted.

H. At the hearing before the Administrative Services Director, the licensee shall be given the opportunity to present evidence that either rebuts the ground(s) for which the summary suspension was issued or demonstrates that the reason or reasons leading to the summary suspension have been mitigated or corrected.

I. The hearing will be conducted informally and technical rules of evidence shall not apply. Any evidence the Administrative Services Director deems reliable, relevant and not unduly repetitious may be considered.

J. The Administrative Services Director shall issue a decision which affirms, modifies or overrules the summary suspension, as specified in Paragraph K. If the Administrative Services Director affirms or modifies the summary suspension, he or she may impose additional conditions upon the license to protect the health, safety or welfare of the public, to prevent the conduct or condition that led to the summary suspension, or otherwise to achieve compliance with this chapter.

K. The Administrative Services Director shall issue an oral decision upon the close of the hearing or may communicate the decision by telephone, within 24 hours of the close of the hearing. The Administrative Services Director shall also serve the licensee with a written decision within 3 business days of the close of the hearing.

L. Following the service of a written decision, a licensee who is dissatisfied with the Administrative Services Director's decision shall have a choice of either filing an appeal

with the appeals hearing board under the terms set out in section 5.04.510 (Appeal to appeals hearing board) or accepting the decision as final and seeking judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California. If the licensee is dissatisfied with the decision by the Administrative Services Director and chooses to have an appeal hearing with the appeals hearing board, the decision by the appeals hearing board shall be final for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California.

Section 5.04.480 Method of service.

A. All written notices and decisions required by this section shall be served either by personal delivery or by deposit in the United States Mail, in a sealed envelope postage prepaid, to the address of such person last known to the Administrative Services Director. Service by mail shall be deemed to have been completed upon mailing. Alternatively, any written notice required by this section may be served by conspicuously posting a copy of the written notice at the licensed premises.

B. The failure of any licensee to receive any notice required under this part shall not affect the validity of any proceedings taken under this part provided notice is given as provided in this chapter.

Section 5.04.490 Procedure for hearing before the Administrative Services Director.

A. The written request for a hearing before the Administrative Services Director must be received by the Administrative Services Director within 10 calendar days of the date of service of a notice of intended decision to deny, suspend or revoke the license.

B. The Administrative Services Director shall schedule a hearing which shall be held no later than 30 calendar days after receipt of a timely request for hearing. If the business is engaged in expressive activities protected by the First Amendment to the U.S. Constitution, the Administrative Services Director shall set the hearing within five business days of a timely request for a hearing.

C. The Administrative Services Director shall serve a notice of hearing on the applicant or licensee not later than 10 calendar days before the hearing date. If the business is engaged in expressive activities protected by the First Amendment to the U.S. Constitution, the Administrative Services Director shall serve that notice not later than two business days before the hearing date.

D. The appellant shall have opportunity to present witnesses and documentary evidence at the hearing.

E. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any evidence the Administrative Services Director deems reliable, relevant and not unduly repetitious may be considered.

F. Issuance of a written notice of cancellation of an insurance policy by its issuer shall be conclusive proof of that cancellation.

Section 5.04.500 Decision of the Administrative Services Director.

A. Within 20 calendar days after the hearing, the Administrative Services Director shall serve a written decision sustaining, reversing or modifying his or her intended decision on the applicant or licensee. If the licensed business involves expressive conduct protected by the First Amendment to the U.S. Constitution and comparable provisions of state law, the decision shall be rendered within five business days of the hearing.

B. The decision by the Administrative Services Director after hearing shall become final unless the applicant or licensee files an appeal with the appeals hearing board within the time period specified in paragraph B of Section 5.04.510.

Section 5.04.510 Appeal to appeals hearing board.

A. If an applicant or licensee is dissatisfied with the written decision of the Administrative Services Director, he or she may appeal to the appeals hearing board.

B. The appeal must be in writing on a form provided by the appeals hearing board and received by the secretary of the appeals hearing board within 15 calendar days of the date of the Administrative Services Director's decision.

C. The appeal hearing shall be conducted in accordance with any rules and regulations of the appeals hearing board or, in the absence of such rules, in accordance with section 5.04.490 of this chapter.

D. The written decision of the appeals hearing board shall be final when served on the appellant and shall be the final decision of the City, subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

Section 5.04.520 Constitutionality and Legality; Gann Limit.

A. This tax is intended to be applied consistently with the United States and California Constitutions, and state law. 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.

SECTION 2. Amendment of Ordinance.

This Ordinance may be repealed or amended by the City Council without a vote of the People in any manner which does not constitute a tax “increase” as that term is defined in Government Code section 53750. In particular, and without limitation, the City Council may lower a tax rate or amount under this Ordinance and raise it again to the level authorized by this Ordinance without further voter approval.

SECTION 3. Severability.

If any section, sentence, clause, phrase, or portion of this Ordinance is held to be invalid or unenforceable by a court of competent jurisdiction for any reason, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The People of the City of Cupertino hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

SECTION 4. General Tax; Majority Approval; Effective Date

The tax imposed by this Ordinance is a general tax for general governmental purposes. The proceeds from the tax imposed by this Ordinance shall be for unrestricted general revenue purposes of the City and shall be accounted in the general fund of the City. Nothing in this Ordinance shall constitute the tax imposed under this Ordinance as a special tax, or bind the City to use the proceeds for any specific purpose or function; the City Council shall retain discretion to expend the proceeds of the tax for any lawful purpose of the City.

If a majority of voters casting votes on the question are in favor of the ballot measure regarding this Ordinance, this Ordinance shall be adopted upon the date the vote therefor

is declared by the City Council and shall go into effect 10 days thereafter in accordance with California Elections Code Section 9217.

SECTION 5. Audit and Review. The proceeds of the tax imposed by this Ordinance, as well as the expenditure thereof, shall be audited annually by an independent accounting firm. The City Council shall discuss the results of such audit at a meeting of the City Council that is open to the public. The report of such audit shall be posted on the City's website.

SECTION 6. California Environmental Quality Act Requirements.

This Ordinance is exempt from the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., because it can be seen with certainty that there is no possibility that the enactment of this Ordinance would have a significant effect on the environment (Pub. Resources Code § 21065; CEQA Guidelines §§ 15378, subd. (b)(4) and 15061, subd. (b)(3)), and because the Ordinance involves the approval of government revenues to fund existing services (Pub. Resources Code § 21080, subd. (b)(8); CEQA Guidelines § 15273, subd. (a)(4)).

SECTION 7. Execution of Ordinance.

The People of the City of Cupertino hereby authorize the Mayor and City Clerk of the City to execute this Ordinance to reflect its adoption at the November 6, 2018 election.

I hereby certify that the foregoing ordinance was duly adopted by a majority of the voters of the City casting votes on the question on [Date].

Darcy Paul
Mayor

(date)

ATTEST:

Grace Schmidt
City Clerk

(date)