

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 Scope of Chapter–Effect on Other Regulations.

This chapter is enacted pursuant to the authority granted to the City Council under Section 37101 of the California Government Code, to license for revenue, every kind of lawful business, profession or trade in the City. This chapter is enacted solely to raise revenue for municipal purposes and is not intended to license or tax for regulation. Except as provided otherwise in this chapter, any person required to pay a business license tax for transacting and carrying any business under this chapter shall not be relieved from the payment of such business license tax, notwithstanding that such business is not in compliance with zoning, health, safety and other regulations of this code or other regulatory provisions of law. Compliance with the provisions of this chapter shall not constitute evidence that such business is in compliance with any other such regulation or provision of law.

Section 5.04.030 Definitions.

For purposes of this chapter, unless it is plainly evident from the context that different meaning is intended, certain terms and phrases used herein 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 ~~who is in the process of~~ applying for a business license ~~which is yet to be issued.~~

“Business” ~~includes professions, trades and occupations, and all and every kind of calling whether or not carried on for gain or profit, but shall not include the services rendered by an employee for his employer.~~ 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 the officially signed form issued as evidence of the City’s having granted permission to exercise the privilege of engaging in a particular business, as defined herein, subject to the conditions hereinafter set forth.~~ 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 license tax” means the revenue raised or to be raised from the issuance of a business license pursuant to this chapter. “Business license tax” shall be deemed synonymous with the term “privilege tax,” and shall not supplant any other tax, levy or fee imposed or which may be imposed by the City.

“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 duly elected members of 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 ~~that a person who makes application for a business license which is subsequently approved~~ granted a license under this Chapter and in whose name the business license is issued.

“Manager” means that 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.

“Person” means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, foreign or domestic.

“Sworn statement” means an affidavit sworn to before a person authorized to take oaths, or a declaration or certification made under penalty of perjury.

5.04.040 Terminology.

~~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.~~

5.04.050 Interpretations by the Collector.

~~For the purpose of this chapter, certain words and phrases are defined and certain provisions shall be construed as herein set forth, unless it is apparent from their context that a different meaning is intended. Interpretations, meanings and decisions shall be those of the Collector, subject only to rights of appeal to the City Council as afforded by this chapter.~~

~~5.04.060 City Council Powers and duties.~~

~~All powers and duties inherent to a City Council of a general law city rest with the City Council. Such powers and duties include but are not limited to the hearing of appeals from persons aggrieved by any decision of the Collector, the establishment of equitable tax rates for the various businesses and activities, and the amendment of this chapter by due process of law.~~

~~5.04.070 Collector Powers and Duties.~~

~~There is conferred upon the Collector those powers and duties necessary for the administration of this chapter. In addition, there is also conferred upon the Collector the authority and power to designate such City officers and employees as may be required to carry out the intent and purposes of this chapter, and to promulgate and adopt rules and regulations not inconsistent with the provisions contained herein.~~

~~5.04.080 License Required.~~

~~There is imposed upon all businesses conducted within the City, excepting those as may be exempted under Section 5.04.110 of this chapter, a business license tax in an amount hereinafter prescribed. It is unlawful for any person to transact or carry on business within the City without first having procured a business license from the City and paying the tax hereinafter prescribed or without complying with any and all applicable provisions of this chapter. This section shall not be construed to require any person to pay a business license tax prior to doing business within the City if such requirement conflicts with applicable statutes of the United States or of the State of California. No license shall be issued hereunder until all applicable regulations and ordinances of the City have been complied with.~~

~~5.04.090 Evidence of Doing Business.~~

~~When any person, by the use of signs, circulars, cards, a telephone book, newspapers, radio, television or handouts advertises or represents that s/he is in business in the City, or when any person holds an active license or permit issued by any governmental agency indicating that s/he is in business in the City, or when any person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, then these facts shall be considered prima facie evidence that the person is conducting a business in the City.~~

~~5.04.100 Adjustments for Businesses Acting in Interstate Commerce.~~

~~None of the business license taxes provided for by this chapter shall be applied as to occasion an undue burden upon interstate commerce. In any case where a business~~

~~license tax is believed by an applicant or licensee to place an undue burden upon such commerce, he may apply to the Collector for an adjustment of the tax so that it shall not be discriminatory or unreasonable as to such commerce. Such application may be made before, at, or within six months after payment of the prescribed tax. The applicant shall, by sworn statement and supporting evidence, show such information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall conduct an investigation and after having first obtained the written approval of the City Attorney, may fix as the license tax for the applicant or licensee an amount that is reasonable and nondiscriminatory, or, if the tax has already been paid, may order a refund of the amount over and above the prescribed tax. In adjusting the prescribed tax, the Collector shall assess an amount which is uniform with that which is assessed on businesses of like nature, provided that the amount assessed does not exceed the prescribed tax. Any adjustment or determination by the Collector under this section is subject only to rights of appeal to the City Council as afforded by this chapter.~~

~~5.04.110 Exemptions.~~

~~The following persons or activities shall be exempt from business license tax prescribed by this chapter.~~

- ~~—A. Any person transacting or carrying on any business which is exempt by virtue of the Constitution or applicable statutes of the United States or of the State of California;~~
- ~~—B. Any person who is himself exempt from this chapter by virtue of the Constitution or applicable statutes of the United States or of the State of California;~~
- ~~—C. Any public utility making franchise payments to the City;~~
- ~~—D. Any person conducting any business, which is carried on wholly for charitable, educational, fraternal, political, recreational or religious purposes and from which profit is not derived directly or indirectly, by any individual, firm or corporation; provided, that nothing in this section shall be deemed to exempt any person from complying with any other provisions of this code or any other ordinance of the City requiring a permit to be issued by the City Council, any commission or officer of the City;~~
- ~~—E. Any person whose sole business contact within the City is the sale of goods or services to the City itself;~~
- ~~—F. Every natural person whose annual gross receipts from any and all business are one thousand dollars or less. The amount above described shall be modified concurrently with any changes made by the Social Security Administrator regulating allowable earnings not affecting payment of social security retirement benefits.~~

~~(Ord. 1612, § 1 (part), 1992)~~

~~5.04.120 Application for Exemption—Revocation.~~

~~—A. Any person claiming an exemption pursuant to this chapter shall file a sworn statement with the Collector stating the facts upon which exemption is claimed. The Collector shall, upon a proper showing contained in the verified statement, issue a license to such person claiming exemption under this chapter without payment to the City of the business license tax required by this chapter.~~

~~—B. The Collector, after giving notice and a reasonable opportunity for hearing to a licensee, may revoke any license granted pursuant to the provisions of this chapter upon information that the licensee is not entitled to the exemption as provided herein.~~

~~—C. The determination of the Collector as to whether a business license should be granted or revoked under this section is subject only to rights of appeal to the City Council as afforded by this chapter.~~

~~5.04.130 Business Type Separate Licenses Required.~~

~~—A separate license must be obtained for each separate type of business at the same location. Each license shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in such license, provided that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this chapter shall not be deemed to be a separate business.~~

~~5.04.140 Posting, Display Required.~~

~~—All business licenses issued by the City pursuant to this chapter shall be posted by a licensee with a fixed place of business in a conspicuous place upon the premises where such business is conducted. Any licensee who does not have a fixed place of business shall keep the license upon his person at all times while transacting or carrying on the business for which it was issued.~~

~~5.04.150 License Nontransferable.~~

~~—No business license issued pursuant to this chapter shall be transferable when a license has been issued authorizing a specifically named person to transact or carry on a business at a specific location. The license may, upon application in writing and the payment of a prescribed processing fee, have such license amended to include any change of name, type of business, or address.~~

~~5.04.160 Renewal License.~~

~~—The Collector may issue a renewal of a license without requiring the licensee to submit a new application; provided, however, the licensee has paid the tax imposed by this chapter and there has been no change in the conditions upon which the license is based.~~

~~5.04.170 Duplicate License.~~

~~—A duplicate business license may be issued by the Collector to replace any license previously issued hereunder which has been lost or destroyed upon licensee's filing a statement of such fact and the payment of a prescribed processing fee.~~

~~5.04.180 Statements and Records.~~

~~—No statements filed with the Collector 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 hereunder. Such statement and each of the several items therein contained shall be subject to audit and verification by the Collector, who is authorized to examine, audit and inspect such books and records of any licensee or applicant as may be necessary in his judgment to verify or ascertain the amount of license tax or fee due.~~

~~5.04.190 Failure to File Statements or Corrected Statement Effect.~~

~~—A. If any person fails to file any required statement within the time prescribed, or if after demand therefor made by the Collector s/he fails to file a corrected statement, or if any person subject to the tax or fee imposed by this chapter fails to apply for a license, the Collector may determine the amount of license tax due from such person by means of such information as s/he may be able to obtain.~~

~~—B. If the Collector is not satisfied with the information supplied in statements or applications filed, he may determine the amount of any license tax or fee due by means of any information he may be able to obtain.~~

~~—C. If such a determination is made, the Collector shall give notice of the amount so assessed by serving it personally or by depositing it in the United States Post Office at Cupertino, California, postage prepaid, addressed to the person so assessed at his/her last known address.~~

~~—D. Determinations of the Collector under this section are subject only to rights of appeal to the City Council as afforded by this chapter.~~

~~5.04.200 Time 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. No business license tax shall be refundable by reason of the cessation of business during the license period.~~

~~5.04.210 Issuance Period.~~

~~—Unless otherwise proscribed in this chapter, a business license shall be issued for a twelve-month period and shall automatically expire at the end of said period.~~

~~5.04.230 Overpayment Refund.~~

~~—No refund for an overpayment of taxes imposed by this chapter shall be allowed in whole or in part unless a claim for refund, in writing, is filed with the Collector within a period of six months from the last day of the calendar month following the period for which overpayment was made. Upon the filing of such a claim and when s/he determines that an overpayment has been made, the Collector may refund the amount overpaid.~~

~~5.04.240 Tax Constitutes a Debt to City Collection of Unpaid Taxes.~~

~~—The amount of any license tax imposed by this chapter shall be deemed a debt to the City. Any person carrying on any business covered in this chapter without having lawfully procured a license from the City to do so shall be liable to the City. The Collector is authorized to cause to be filed a civil action in the name of the City in any court of competent jurisdiction for the amount of the required license tax, together with any penalties thereon and costs of suit.~~

~~5.04.250 Interest and Penalties.~~

~~—A. Interest. Any person who fails to pay any tax required to be paid by this chapter shall pay interest at the rate of one percent per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the tax first becomes due and payable until paid. Interest shall run during any period of time for which an extension of time has been granted by the City for payment of the tax. Interest required by any of the provisions of this chapter shall be subject to waiver or compromise by the Collector. The interest shall not be compounded, but shall be on principle only.~~

~~—B. Penalties. All taxes imposed by this chapter shall be subject to the following penalties:~~

~~—1. Delinquency. Any person who fails to pay any tax, or any fraction thereof required to be paid by this chapter within the time required, shall pay a penalty of twenty percent per month of the amount of unpaid tax. Such penalty shall not exceed one hundred percent of the tax for any calendar year for each year that the tax is unpaid. This penalty shall accrue on the first day of each calendar month for which the tax remains unpaid.~~

~~—2. Fraud. If the Collector, after notice to the applicant or licensee and hearing, determines that the nonpayment of any tax due under this chapter is due to fraud, a penalty of ninety percent of the amount of the unpaid tax shall be added thereto, in addition to any other penalties set forth in this section. Where after notice and hearing to the applicant or licensee, the Collector determines that a corporate officer, director or shareholder is responsible for the fraud resulting in the nonpayment of the tax of a~~

corporation, the Collector may designate the tax, interest and penalties unpaid, including the penalty provided for in this subsection due to such fraud, as a personal debt of the officer, director or shareholder.

~~—3. Merger of Interest and Penalties. Such interest as is accrued, and every penalty imposed under the provisions of this section, shall become a part of the tax required to be paid under this chapter.~~

~~—4. Penalties on Principle. All penalties imposed hereunder shall be calculated on principle only, and shall not be compounded.~~

~~5.04.260 Sworn Statements Required by Chapter Not Conclusive Information Confidential.~~

~~—No statements set forth in any sworn statement required or permitted by this chapter shall be conclusive as to the matters set forth therein, nor shall the filing of the statement preclude the City from collecting by appropriate action such sum as is actually due and payable under this chapter. Such statements and each of the several items therein contained shall be subject to review and verification by the Collector. Information furnished or secured pursuant to such statements which relate to the amount of tax to be assessed against the applicant or licensee shall be confidential and shall not be made available to the public.~~

~~5.04.270 Extension of Time for Filing Sworn Statement.~~

~~—The Collector may, for good cause shown, extend the time for filing any sworn statement required or permitted under this chapter for a period not to exceed thirty days, and may waive any penalty that would otherwise have accrued.~~

~~5.04.280 Imposition of Tax Business Generally.~~

~~—Every person engaged in a business not specifically mentioned or classified in this chapter, within the City of Cupertino, shall pay a business license tax in accordance with the following schedule:~~

~~—A. A basic tax of seventy five dollars per year;~~

~~—B. In addition, each such person shall pay a fee as follows:~~

Square Feet	Rate per Square Foot
0-5,000	.0200
5,001-25,000	.0175
25,001-75,000	.0150
75,001-100,000	.0125
100,001-150,000	.0100
150,001 and above	.0025

~~—This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~

~~—For purposes of this section, “floor area” means the total floor space in terms of square footage occupied by an owner, lessee or tenant in a building, less fifteen percent. This adjustment allows for elevator shafts, stairwells, courts or atria (uncovered and open to the sky), and rooms exclusively housing building operating equipment.~~

Section 5.04.040 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 5.04.050 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 5.04.060 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 5.04.070 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 5.04.080 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 5.04.090 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 5.04.100 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 5.04.110 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 5.04.120 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 5.04.130 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 5.04.140 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 5.04.150 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 5.04.160 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 5.04.170 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 5.04.180 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 5.04.190 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 5.04.200 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:

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

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.~~29~~10 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 ~~one hundred fifty dollars, and five dollars per machine per year. This amount shall increase annually from 1992 based on the indexing formula \$140 per year subject to annual inflation adjustments set forth in section 5.04.3705.04.460 of this code.~~

Section 5.04.~~300~~220 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 ~~one hundred fifty dollars, and five dollars per machine per year. This amount shall increase annually from 1992 based on the indexing formula~~ \$278 dollars and \$9.30 per machine subject to annual inflation adjustments set forth in section ~~5.04.370~~ 5.04.460 ~~in this code.~~

Section 5.04.~~310~~230 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 ~~seventy five dollars~~ \$140 per day. ~~This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code. 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.~~320~~240 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 ~~one hundred dollars~~ \$178 per year for up to ~~the first~~ four dwelling units, and ~~seven dollars~~ \$12.95 per year 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 ~~obligation to pay the business license tax shall be dwelling units rented or leased, and the dwelling units held for rent or lease shall not include a dwelling unit occupied by the owner. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~ tax shall be dwelling units rented or leased for occupancy by someone other than the owner.

Section 5.04.250 Seasonal lot sales.

Every person engaged in the business of seasonal lot sales shall pay an annual business license tax of ~~one hundred fifty dollars per year. This amount shall increase annually~~

~~from 1992 based on the indexing formula in Section 5.04.460 of this code.\$278 subject to annual inflation adjustments set forth in section 5.04.370.~~

Section 5.04.260 Concerts, circuses and performances.

Every person operating a concert, circus or other performance shall pay a business license tax for the first day of ~~one hundred fifty dollars and twenty five dollars per day thereafter. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code~~\$279 and \$45.53 for each additional day subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.270 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 basic tax of seventy five dollars per year.~~ A base annual tax of \$140 dollars.
- B. In addition each person shall pay ~~a fee of five dollars per year~~an annual tax of \$9.30 per acre of space ~~owned, leased or rented~~ used for the purposes set forth above.
- C. ~~This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~This amounts are subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.280 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 ~~a business license tax of seventy five dollars per year, and five dollars for each machine. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~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 5.04.290 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 ~~a business license tax of seventy five dollars per year. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~ an annual tax of \$140 per year subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.300 Home occupations.

Every person engaged in a home occupation, as defined by the zoning ordinance of the City, shall pay an annual tax of ~~seventy five dollars per year. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~ \$140 subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.310 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 ~~seventy five dollars per year, plus five dollars per year for each room. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~ \$140 per year, plus \$9.30 per room subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.320 Peddling.

Every person peddling any goods, food, wares, magazines, or merchandise not otherwise provided for in this chapter, shall pay ~~a business license tax of one hundred fifty dollars per year. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~ an annual tax of \$278 subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.330 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 ~~a business license tax of one hundred fifty dollars per year. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~ an annual tax of \$278, subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.340 Private schools.

Every person operating a private school shall pay ~~a business license tax of one hundred fifty dollars per year. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~ an annual tax of \$278, subject to annual inflation adjustments set forth in section 5.04.370.

Section 5.04.350 Taxicabs or automobiles for hire.

Every person engaged in the business of providing taxicabs or automobiles for hire shall pay ~~a business license tax of seventy five dollars, per year for each vehicle operated within the City limits. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~ 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 5.04.360 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 ~~a business license tax of one hundred fifty dollars per year plus two dollars per year per seat. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~ 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 5.04.370 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 ~~Collector's finding and determination that the representations are true and correct, the Collector 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 twenty five dollars. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.~~ 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 5.04.380 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

~~5.04.460 Indexing.~~

~~—Every tax imposed by this chapter shall be automatically increased each year by a percentage which shall be equal to the percentage increase of the consumer price index as shall be reflected in the most recent report of consumer prices for the San Francisco/Bay Area Standard Metropolitan Statistical Area using 1992 as the base year. The annual rate increase shall be calculated by dividing the consumer price index for October of each current year by the base year with the resulting figure representing the percentage increase for the tax due the following January. The formula shall be as follows:~~

~~—A divided by B times C equals D~~

~~—A = current year CPI; B = base year CPI;~~

~~—C = base year tax rate; D = current year tax rate~~

~~5.04.470 Reclassification Collector Authority.~~

~~—A. In any case where a licensee or an applicant for a license believes that his/her individual business is not assigned to the proper classification because of circumstances peculiar to it, as distinguished from other businesses of the same kind, s/he may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual business is properly classified. The Collector shall then conduct an investigation following which s/he shall assign the applicant's individual business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's individual business.~~

~~—B. Any resulting reclassification shall not be retroactive, but shall apply to the time of the next regularly ensuing calculation of the applicant's tax or fee. No business shall be classified more than once in one year. Any determination by the Collector under this section is subject only to rights of appeal to the City Council as afforded by this chapter.~~

~~5.04.480 Appeal Procedure.~~

~~—A. Any person, applicant, or licensee may appeal any decision of the Collector under this chapter to the City Council. Any person so aggrieved may appeal by filing a written notice of appeal with the City Clerk within fourteen days from the date the Collector issues his/her decision in writing.~~

~~—B. An appeal not filed within such time shall be barred. The appeal shall state the grounds thereof.~~

~~—C. Upon receipt of an appeal, a date for hearing before City Council shall be set and will be held within thirty days from the date of filing of the appeal.~~

~~—D. The City Clerk shall give notice to such person who files an appeal of the time and place of hearing by serving it personally or by depositing it in the United States Post~~

~~Office at Cupertino, California, postage prepaid, addressed to such person at her/his last known address.~~

~~—E. The City Council shall have authority to determine all questions raised on appeal; provided, however, that no such determination shall conflict with any substantive provision of the chapter.~~

~~5.04.490 Effect of Business License Code.~~

~~—Neither the adoption of this chapter nor its superseding of any portion of any other ordinance of the City shall in any manner be construed as authorizing the conduct nor continuance of any illegal or unlawful business, or any business in violation of any ordinance of the City.~~

~~5.04.500 Violation Penalty.~~

~~—Any person who violates the provisions of this chapter shall be guilty of an infraction, and upon conviction thereof shall be punished as provided in Chapter 1.12.~~

~~5.04.510 Remedies Cumulative.~~

~~—All remedies prescribed hereunder shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.~~

Section 5.04.390 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 5.04.400 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 5.04.410 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 5.04.420 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 5.04.430 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 5.04.440 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 5.04.450 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 5.04.460 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 5.04.470 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 5.04.480 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 5.04.490 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 5.04.500 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 5.04.510 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 5.04.520 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 5.04.530 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.