

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: July 18, 2022
Reviewed by: NA

SUBJECT: Resolution of the Albany City Council Calling for the Placement of a General Tax Measure on the November 8, 2022 General Municipal Election Ballot for Submitting to the Voters an Ordinance Amending Sections 5-1 and 5-2 of Chapter V of the Albany Municipal Code Increasing the Rate of the Business License Tax; Making Technical Updates; and Authorizing the City Clerk or Their Duly Authorized Officers to Carry Out all the Necessary Procedures for Said Election

REPORT BY: Heather Rowden, Finance Director
Mala Subramanian, City Attorney

SUMMARY

City staff seeks direction on a potential tax measure to change to a graduated rate for the Business License Tax and to make technical changes to Sections 5-1 and 5-2 of Chapter V of the Albany Municipal Code relating to the Business License Tax.

STAFF RECOMMENDATION

That the Council provide direction and adopt, as may be revised Resolution No. 2022-90, calling for the placement of a general tax measure on the November 8, 2022 General Municipal Election ballot for submitting to the voters an ordinance amending Sections 5-1 and 5-2 of Chapter V of the Albany Municipal Code increasing the rate of the Business License Tax; making technical updates; and authorizing the City Clerk or their duly authorized officers to carry out all the necessary procedures for said Election.

BACKGROUND

The current rate structure for the Business License Tax based on employee count or type of business was adopted by the City Council in the late 1980's, and the City is working with NBS regarding a potential update. On April 18, 2022, the City Council discussed the policy direction on a potential ballot measure to update the Business License Tax. The City Council discussed switching to a gross receipts tax, which would spread the tax burden based on the ability to pay instead of employee count or type of business. Council expressed support for a graduated tax rate.

On June 6, 2022, the City Attorney presented the business license tax with the graduated tax rate discussed on April 18, 2022 and also made technical changes to Sections 5-1 and 5-2 of

Chapter V of the Albany Municipal Code relating to the Business License Tax. The Ordinance would also allow the City Manager to waive penalties and with the City Council's consent, compromise any claim as to amount of license tax due. At that meeting, the City Council requested the municipal code provisions be updated to be gender neutral, that staff prepare additional rate structures for consideration, and update the ballot language to reflect that the tax may increase for some and decrease for others. The Council also requested that the Economic Development Committee review the tax.

On July 7, 2022, the Economic Development Committee reviewed the tax and while generally in favor of an update to the Business License Tax structure, the committee expressed two primary concerns about the ballot measure. The first concern revolved around the data used to model the anticipated tax revenue. As explained at prior Council meetings, a complete listing of gross receipts from business revenue earned in Albany is not available. Staff worked closely with NBS to create a model that was as accurate as possible using both known sales tax data and industry standards for professional services in the Bay Area. Staff is confident that the data presented is as complete as possible for this type of change.

The second concern expressed by the Economic Development Committee was the single tax approach. The Committee expressed interest in having multiple tax structures focused on different industries, grouped by assumed profit margin. It was indicated that a single structure would adversely affect businesses that have a lower profit margin. However, deviation from the single tax structure would require additional resources as staff does not have the capacity to audit these returns and if the process were to be outsourced, any complexity would increase the cost of administration of the tax. In addition, more time would be needed to do additional research on industry averages, update the model, and draft definitions that make the categories clear. This work would not be completed in the timeframe needed for the 2022 election.

DISCUSSION

The accompanying resolution would place the Business License Tax measure on the ballot for the November 8, 2022 election. The City Attorney's office has prepared the tax measure with the requested revisions.

The revised ballot language reads as follows:

“To support emergency response services, environmental programs, community services and ~~local~~ business programs, shall a measure ~~increasing~~ adjusting the City's business license tax rates to between \$25 and 0.3% of gross receipts, increasing the tax for some businesses and lowering it for others, based upon gross receipts, and making certain technical updates to the ~~business~~ license tax ordinance, providing an additional \$300,000 annually for general government use, until ended by voters, with all funds remaining local, be adopted?”

Potential Rate Structures

The Council requested additional rate structures for consideration. Staff reviewed the model and determined that the following potential rate structures could bring in approximately \$1 million in tax revenue.

Original Proposal

Gross Receipts	Tax Rate	Total Tax
\$0 to \$50,000	0.00%	\$25
\$50,001 to \$500,000	0.1%	\$75 + 0.1% over \$50,000
\$500,001 to \$1,000,000	0.2%	\$525 + 0.2% over \$500,000
\$1,000,001 and above	0.3%	\$1,525 + 0.3% over \$1,000,000

Option A

Gross Receipts	Tax Rate	Total Tax
\$0 to \$50,000	0.00%	\$100
\$50,001 to \$500,000	0.1%	\$100 + 0.1% over \$50,000
\$500,001 to \$1,000,000	0.15%	\$550 + 0.15% over \$500,000
\$1,000,001 and above	0.2%	\$1,300 + 0.2% over \$1,000,000

Option B

Gross Receipts	Tax Rate	Total Tax
\$0 to \$50,000	0.00%	\$25
\$50,001 to \$100,000	0.1%	\$200 + 0.1% over \$50,000
\$100,001 to \$500,000	0.15%	\$250 + 0.15% over \$100,000
\$500,001 and above	0.2%	\$850 + 0.2% over \$500,000

Option C

Gross Receipts	Tax Rate	Total Tax
\$0 to \$50,000	0.00%	\$50
\$50,001 to \$500,000	0.2%	\$100 + 0.2% over \$50,000
\$500,001 and above	0.25%	\$1,000 + 0.2% over \$500,000

A provision was also added specifying that the proposed rate structure, once determined, would be maximum rates. This provision would allow Council to adjust the rates downward if sufficient revenues are available to balance the City’s budget.

Once the City Council determines the preferred rate structure, the ballot language and ordinance will be revised accordingly.

Attachment

1. Resolution with Business License Tax Ordinance

RESOLUTION NO. 2022-90

1 **A RESOLUTION OF THE ALBANY CITY COUNCIL CALLING FOR THE**
2 **PLACEMENT OF A GENERAL TAX MEASURE ON THE NOVEMBER 8, 2022**
3 **GENERAL MUNICIPAL ELECTION BALLOT FOR SUBMITTING TO**
4 **THE VOTERS AN ORDINANCE AMENDING SECTIONS 5-1 AND 5-2 OF**
5 **CHAPTER V OF THE ALBANY MUNICIPAL CODE INCREASING THE RATE OF**
6 **THE BUSINESS LICENSE TAX; MAKING TECHNICAL UPDATES; AND**
7 **AUTHORIZING THE CITY CLERK OR THEIR DULY AUTHORIZED OFFICERS**
8 **TO CARRY OUT ALL THE NECESSARY PROCEDURES FOR SAID ELECTION**

9 **WHEREAS**, Section 2.01 of the Albany City Charter provides that the City’s General
10 Municipal Election will be held on each even year and shall be consolidated with the Statewide
11 General Election to be held in said City on Tuesday, November 8, 2022; and

12 **WHEREAS**, the City of Albany is a charter city and pursuant to Article XI, Section 7
13 of the California Constitution and Section 1.03 of the Albany City Charter is empowered to
14 exercise all powers necessary and appropriate for a municipal corporation and the general
15 welfare of its inhabitants; and

16 **WHEREAS**, Section 5.01 of the Albany City Charter provides that except as otherwise
17 provided in the Charter or City ordinances, City elections shall be conducted in accordance
18 with the State Elections Code; and

19 **WHEREAS**, pursuant to Section 9222 of the California Elections Code, the City
20 Council has the authority and desires to submit a ballot measure to the voters of the City of
21 Albany for their approval and adoption at the General Municipal Election to be held in the City
22 on November 8, 2022; and

23 **WHEREAS**, the ballot measure is an ordinance amending Sections 5-1 and 5.2 of
24 Chapter V of the Albany Municipal Code to revise the rate of the business license tax
25 (“Business License Tax”) to a graduated tax based on the amount of gross receipts, with revenue
26 from this tax funding general municipal purposes, and to make technical updates to the business
27 license tax provisions within the Albany Municipal Code; and
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1 **WHEREAS**, the specific terms of the Business License Tax measure are provided for
2 in the ordinance to be considered by the qualified voters, attached hereto as Exhibit “A” (the
3 “Business License Ordinance” or “Business License Measure” or “Measure”) and by this
4 reference made an operative part hereof, and in accordance with all applicable laws; and

5 **WHEREAS**, the Business License Tax is a general tax, the proceeds of which are
6 deposited into the City’s general fund and which pay for important general municipal services
7 to the public; and

8 **WHEREAS**, on November 6, 1996, the voters of the State of California approved
9 Proposition 218 (California Constitution, Article XIII C), an amendment to the State
10 Constitution which requires that all general taxes which are imposed, extended or increased
11 must be submitted to the electorate and approved by a majority vote of the qualified electors
12 voting in the election; and

13 **WHEREAS**, the proposed amendments which increase the rate of the Business License
14 Tax constitute a tax “increase” subject to Proposition 218; and

15 **WHEREAS**, pursuant to Proposition 218 (California Constitution Article XIII C,
16 §2(b)), the general rule is that any local election for the approval of an increase to a general tax
17 must be consolidated with a regularly scheduled general election for members of the governing
18 body of the local government; and

19 **WHEREAS**, the next regularly scheduled general election at which City Council
20 members are to be elected is November 8, 2022; and

21 **WHEREAS**, pursuant to Albany City Charter Section 2.05, “[T]he affirmative vote of
22 a majority of the Council shall be necessary to adopt any ordinances, resolutions or claims
23 against the City, which vote shall be taken by ayes and noes and entered upon the record”.

1 **NOW THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY**
2 **RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:**

3 **Section 1** Recitals. The City Council hereby finds and determines that the
4 foregoing recitals are true and correct, are incorporated herein and by this reference made an
5 operative part hereof.

6 **Section 2** Submission of Ballot Measure. Pursuant to Albany City Charter Section
7 2.05, California Elections Code § 9222, and any other applicable requirements of the laws of
8 the State of California relating to the City of Albany, the City Council, by a majority vote of its
9 members, hereby orders the Business License Tax Measure to be submitted to the voters of the
10 City at the General Municipal Election to be held on Tuesday, November 8, 2022.

11 **Section 3** There is hereby called and ordered to be held in the City of Albany,
12 California on November 8, 2022, a General Municipal Election for the purposes of submitting
13 to the voters the Business License Tax Measure as set forth in Exhibit A.

14 **Section 4** The City Council hereby orders that the ballot question for the Measure
15 shall be presented and printed upon the ballot submitted to the qualified voters in the manner
16 and form set forth in this Section 4. On the ballot to be submitted to the qualified voters at the
17 General Municipal Election to be held on November 8, 2022, in addition to any other matters
18 required by law, there shall be printed substantially the following ballot question:
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“To support emergency response services, environmental programs, community services and business programs, shall a measure adjusting the City’s business license tax rates to between \$25 and 0.3% of gross receipts, increasing the tax for some businesses and lowering it for others, based upon gross receipts, and making certain technical updates to the license tax ordinance, providing an additional \$300,000 annually for general government use, until ended by voters, with all funds remaining local, be adopted?”	YES
	NO

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1 **Section 5** The Business License Tax Measure requires the approval of a simple
2 majority of the qualified electors casting votes at the General Municipal Election.

3 **Section 6** Conduct of Election. The City Clerk is authorized, instructed, and
4 directed to coordinate with the Alameda County Registrar of Voters/Elections Official to
5 procure and furnish any and all official ballots, printed matter and all supplies, equipment and
6 paraphernalia that may be necessary in order to properly and lawfully conduct the election.
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8 **Section 7** Impartial Analysis. Pursuant to California Elections Code Section
9 9280, the City Council hereby directs the City Clerk to transmit a copy of the Measure to the
10 City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to
11 exceed 500 words in length, showing the effect of the Measure on the existing law and the
12 operation of the Measure, and transmit such impartial analysis to the City Clerk not later than
13 the deadline set by the County of Alameda. The impartial analysis shall include a statement
14 indicating whether the Measure was placed on the ballot by a petition signed by the requisite
15 number of voters or by the City Council. In the event the entire text of the Measure is not
16 printed on the ballot, nor in the voter information portion of the sample ballot, there shall be
17 printed immediately below the impartial analysis, in no less than 10-font bold type, the
18 following: **“The above statement is an impartial analysis of Ordinance or Measure ____.**
19 **If you desire a copy of the Ordinance or Measure, please call the Office of the City Clerk**
20 **at 510-528-5710 and a copy will be mailed at no cost to you.”**
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22 **Section 8** The City Clerk is hereby directed to cause notice of the Measure to be
23 published in a newspaper of general circulation, or any other newspaper designated as an
24 official newspaper of the City of Albany in accordance with Elections Code § 12111 and
25 Government Code § 6061.
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1 **Section 9** Placement on the Ballot. The full text of the Measure shall be printed
2 in the voter information guide, and a statement shall be printed in the ballot pursuant to
3 Elections Code § 9223 advising voters that they may obtain a copy of this Resolution and the
4 Measure, at no cost, upon request made to the City Clerk.

5 **Section 10** Public Examination. Pursuant to California Elections Code § 9295, the
6 Measure will be available for public examination for no fewer than ten (10) calendar days prior
7 to being submitted for printing in the voter information guide. The City Clerk shall post notice
8 in the Clerk's office of the specific dates that the examination period will run.

9 **Section 11** That in all particulars not recited in this Resolution, said election shall
10 be held and conducted as provided by law for holding Municipal Elections in the City of
11 Albany.

12 **Section 12** That the General Municipal Election, to be held in the City of Albany,
13 shall be canvassed by the Registrar of Voters of the County of Alameda, State of California.

14 **Section 13** That the City Clerk of the City of Albany is hereby authorized, instructed
15 and directed to provide the Alameda County Registrar of Voters with all pertinent information
16 and material as required.

17 **Section 14** That the City Clerk of the City of Albany is hereby authorized and
18 directed to file a copy of this Resolution immediately upon its adoption with the appropriate
19 County agencies. With the concurrence of the City Attorney, the City Clerk is hereby authorized
20 to make such minor, technical and clarifying changes to this Resolution and/or the Exhibits
21 hereto as may be deemed necessary and appropriate.

22 **Section 15** The City Council of the City of Albany shall meet at its usual place of
23 meeting and review the certified statement of results of the election after the County Registrar
24 of Voters/Elections Official has provided said statement to the City Clerk and shall thereafter
25 declare the results at the next scheduled meeting.
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EXHIBIT “A”

**AN ORDINANCE AMENDING SECTIONS 5-1 AND 5-2 OF CHAPTER V OF THE
CITY OF
ALBANY MUNICIPAL CODE TO REVISE THE RATE OF THE BUSINESS
LICENSE TAX AND MAKE TECHNICAL UPDATES TO BUSINESS LICENSE TAX
PROVISIONS**

“To support emergency response services, environmental programs, community services and business programs, shall a measure adjusting the City’s business license tax rates to between \$25 and 0.3% of gross receipts, increasing the tax for some businesses and lowering it for others, based upon gross receipts, and making certain technical updates to the license tax ordinance, providing an additional \$300,000 annually for general government use, until ended by voters, with all funds remaining local, be adopted?”	YES
	NO

ORDINANCE NO. 2022-06

**AN ORDINANCE AMENDING SECTIONS 5-1 AND 5-2 OF CHAPTER V OF
THE CITY OF ALBANY MUNICIPAL CODE TO REVISE THE RATE OF
THE BUSINESS LICENSE TAX AND MAKE TECHNICAL UPDATES
TO BUSINESS LICENSE TAX PROVISIONS**

**NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS
FOLLOWS:**

SECTION 1: AUTHORITY.

This Ordinance is enacted in accordance with the authority granted to cities by Article XI, Section 7, and Article XIII C, Section 2 of the California Constitution and the California Elections Code.

**SECTION 2: AMENDMENT TO SUBSECTION 5-1.1 OF SECTION 5-1 OF
CHAPTER V OF THE ALBANY MUNICIPAL CODE.**

The following definitions in Chapter V, Section 5-1, Subsection 5-1.1 of the City of Albany Municipal Code are hereby amended to read as follows:

1 **AUTOMOBILE FOR HIRE**

2 Shall mean any vehicle kept for hire and used for the transportation of persons or property with
3 or without drivers. This term shall include, but is not limited to taxicabs, sightseeing
4 automobiles, ~~drive your self services~~ *car sharing services, ridesharing services*, limousine
5 services, ambulance services and hearse service.

6 **PERSON**

7 Shall mean all domestic and foreign corporations, associations, syndicates, joint stock
8 corporations, partnerships of every kind, clubs, ~~Massachusetts~~ businesses, or common law
9 trusts, societies and individuals.

10 **VEHICLE**

11 Shall mean every motorized machine in, upon or by which any person or property is or may
12 be transported or drawn upon a public highway *or street*, ~~excepting devices moved by human~~
13 ~~power or used exclusively upon stationary rails or tracks. A trailer shall be treated as a separate~~
14 ~~vehicle.~~

15 **SECTION 3: AMENDMENT TO SUBSECTION 5-1.5 OF SECTION 5-1 OF**
16 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**

17 Chapter V, Section 5-1, Subsection 5-1.5 of the City of Albany Municipal Code is hereby
18 amended to read as follows:

19 **“§ 5-1.5 Prerequisite to Issuance of Permits.**

20 Each *City* department ~~of the City which~~ *that* issues permits for work to be ~~done~~
21 *performed* shall require the *permit applicant to produce* ~~production of~~ a valid ~~unexpired~~
22 license prior to the issuance of such a permit.”

1 **SECTION 4: AMENDMENT TO SUBSECTION 5-1.6 OF SECTION 5-1 OF**
2 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**

3 Chapter V, Section 5-1, Subsection 5-1.6 of the City of Albany Municipal Code is hereby
4 amended to read as follows:

5 “§ 5-1.6 **Application.**

6 Every person required to have a license under ~~the provisions of this chapter shall make~~
7 ~~submit~~ an application ~~for the same~~ to the City Treasurer. ~~Such~~ *The* application shall be
8 ~~an original written statement upon the~~ *on a* form provided by the City Treasurer and
9 signed ~~by the applicant~~ under ~~the penalties~~ *penalty* of perjury ~~by the applicant~~. The
10 application shall ~~set forth such~~ *include* information as ~~may be therein~~ required *by the*
11 *City* and as ~~may be~~ necessary ~~properly~~ to determine the amount of the license tax to be
12 paid by the applicant.

13 If ~~the amount of the license tax to be paid by the applicant is based upon the average~~
14 ~~number of employees of such applicant such application shall set forth the average~~
15 ~~number of employees for the applicable period.”~~

16 **SECTION 5: AMENDMENT TO SUBSECTION 5-1.9 OF SECTION 5-1 OF**
17 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**

18 Chapter V, Section 5-1, Subsection 5-1.9 of the City of Albany Municipal Code is hereby
19 amended to read as follows:

20 “5-1.9 **Term.**

21 ~~Unless otherwise provided, licenses~~ *Licenses* for businesses within the City as required
22 by this chapter shall be for the following terms:

- 23 a. The term of the annual business license shall be for one (1) year beginning
24 January first of each year.

1 b. The term of semi-annual licenses shall be six (6) months, beginning January
2 first, April first, July first and October first of each year.

3 c. The term of quarterly licenses shall be three (3) months, January first, April
4 first, July first and October first of each year.

5 For businesses of an occasional or temporary nature, operating from outside the
6 City, the term of annual, semi-annual or quarterly licenses shall begin on the date the
7 business is first conducted within the City and continue for the duration of the license
8 in question.

9 All licenses shall be valid only for the period issued.”

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11 **SECTION 6: AMENDMENT TO SUBSECTION 5-1.13 OF SECTION 5-1 OF**
12 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**
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14 Chapter V, Section 5-1, Subsection 5-1.13 of the City of Albany Municipal Code is hereby
15 amended to read as follows:

16 “5-1.13 **Transfer.** ~~No license issued pursuant to this chapter shall be transferred,~~
17 ~~except under the following conditions:~~

18 a. ~~When a licensee transfers his business from one (1) location to another in the City, the~~
19 ~~license previously issued may be amended to authorize the conduct of the business at the new~~
20 ~~location.~~

21 b. ~~When a licensee who conducts a business from a fixed place of business in the City~~
22 ~~makes a bona fide sale of the business, an amended license may be issued to authorize the~~
23 ~~purchaser to conduct such business at such location, upon the surrender of the old license.~~

24 c. ~~When a peddling and soliciting license has been issued to and paid for by an employer~~
25 ~~under the provisions of subsection 5-2.2 of this chapter, on behalf of a particular employee,~~
26 ~~and there is a change in the personnel peddling or soliciting in the City for such employer, such~~
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1 license may be amended to authorize peddling and soliciting by such other personnel for the
2 unexpired portion of the license. Before such amended license shall be issued, the employer
3 shall file an affidavit setting forth the change in personnel.

4 ~~d. The license transfers and amendments herein authorized may be obtained upon~~
5 ~~application therefor to the City Treasurer with the payment as set forth in the Master Fee~~
6 ~~Schedule.~~

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8 *a. Unless otherwise specifically provided or authorized by the Council herein, the*
9 *licenses issued pursuant to the provisions of this chapter shall be nontransferable.*

10 *b. If a license is transferred as provided in this Section, no additional business*
11 *license tax shall be due from the license holder/applicant, provided the business's*
12 *license taxes are current for the year when the transfer occurs.*

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14 *c. For purposes of this section, a "license transfer" shall mean a (i) change in*
15 *business name, (ii) change in business ownership, (iii) change of business location, or*
16 *(iv) any combination thereof. Any other changes in a business including, but not*
17 *limited to, changes in type, scope or size, shall require an application for a new*
18 *business license and payment of any applicable business license taxes.*

19
20 *d. For purposes of this section, a "change of ownership" shall mean an*
21 *occurrence where 50% or more of the controlling interest in the business is transferred*
22 *to another person.*

23
24 *e. A license transfer applicant shall file an application with the City Treasurer,*
25 *along with an application fee as set by resolution of the City Council. The application*
26 *fee shall not exceed the City's reasonable costs of processing and reviewing a transfer*
27 *application. Upon receipt of an application, the City Treasurer shall verify that the*
28 *transfer complies with this Municipal Code. In the case of a change of business*

1 location, the review shall include an investigation by the Planning Department to verify
2 that the applicant's business at the new location complies with applicable zoning and
3 development codes.

4 *f. The City Treasurer shall render a written determination within thirty (30) days*
5 *after receipt of a complete license transfer application. The City Treasurer shall either*
6 *approve or deny the transfer. If the City Treasurer denies an application, they shall*
7 *include the reasons for the denial. The decision of the City Treasurer shall be final."*
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9 **SECTION 7: AMENDMENT TO SUBSECTION 5-1.14 OF SECTION 5-1 OF**
10 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**

11 Chapter V, Section 5-1, Subsection 5-1.14 of the City of Albany Municipal Code is hereby
12 amended to read as follows:

13 **"5-1.14 Renewal.**

14 In all cases, the applicant for ~~the a license renewal of a license~~ shall submit to the City
15 Treasurer for ~~his or her~~ *their* guidance in ascertaining the amount of the license tax to
16 be paid by the applicant, a written statement upon a form to be provided by the City
17 Treasurer, signed under penalty of perjury, or sworn to before a person authorized to
18 administer oaths. Such form shall set forth such information concerning the applicant's
19 business during the preceding year as ~~may be required by the City Treasurer to enable~~
20 ~~him/her~~ to ascertain the amount of the license tax to be paid by the applicant pursuant
21 to the provisions of this chapter."
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24 **SECTION 8: AMENDMENT TO SUBSECTION 5-1.16 OF SECTION 5-1 OF**
25 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**

26 Chapter V, Section 5-1, Subsection 5-1.16 of the City of Albany Municipal Code is hereby
27 amended to read as follows:
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1 “5-1.16 **Enforcement of Chapter Generally.**

2 It shall be the duty of the City Treasurer, and ~~he or she~~ is hereby directed, to enforce
3 each and all the provisions of this chapter.”

4 **SECTION 9: AMENDMENT TO SUBSECTION 5-1.17 OF SECTION 5-1 OF**
5 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**

6 Chapter V, Section 5-1, Subsection 5-1.17 of the City of Albany Municipal Code is hereby
7 amended to read as follows:

8 “5-1.17 **Right to Audit Statements and Records.**

9 a. For the purpose of ascertaining the correctness of any affidavit filed, or the
10 amount of any license tax paid, the City Treasurer of the City, or any person designated
11 by ~~him or her~~ *them* for that purpose, is authorized to examine any papers, records and
12 memoranda bearing upon the matter, and may require attendance of any person having
13 knowledge in the premises, and may take their testimony with reference thereto, with
14 power to administer *the* oath to such person or persons.

15 b. In lieu of such an examination, information reported by the licensee for income
16 tax purposes and pertaining to the gross receipts of the licensed business may be
17 accepted by the City Treasurer ~~of the City~~ when substantiated by a true and correct
18 copy of ~~that portion of the~~ *a filed* Federal or State income tax return. ~~This usually means~~
19 ~~Schedule C of the return.~~

20 c. In the event ~~of an appeal by a~~ *the* licensee ~~from appeals~~ a classification assigned
21 to ~~him or her~~, the City Treasurer ~~of the City~~ shall not be required to accept information
22 reported by the licensee ~~to the Collector of Internal Revenue for income tax purposes~~
23 in lieu of an examination ~~authorized in the above paragraph.”~~

1 **SECTION 10: AMENDMENT TO SUBSECTION 5.1.18 OF SECTION 5-1 OF**
2 **CHAPTER V OF THE ALBANY MUNICIPAL CODE**

3 Chapter V, Section 5-1, Subsection 5-1.18 of the City of Albany Municipal Code is hereby
4 amended to read as follows:

5 **“5-1.18 Statements Filed Under Chapter Not Conclusive.**

6 No statement filed under this chapter shall be conclusive as to the matters set forth
7 therein, nor shall the filing of the same preclude the City from collecting, by
8 appropriate action such sum as is actually due and payable under this chapter. Such
9 statement and each of the several items therein contained shall be subject to audit and
10 verification by the City Treasurer, ~~his or her~~ *their* deputies, or authorized employees,
11 or agents of the City, who are hereby authorized to examine, audit and inspect such
12 records of any licensee or applicant for a license, as may be necessary, in their
13 judgment, to verify or ascertain the amount of license tax due.”

16 **SECTION 11: AMENDMENT TO SUBSECTION 5.1.19 OF SECTION 5-1 OF**
17 **CHAPTER V OF THE ALBANY MUNICIPAL CODE**

18 Chapter V, Section 5-1, Subsection 5-1.19 of the City of Albany Municipal Code is hereby
19 amended to read as follows:

21 **“5-1.19 Inspection of Places of Business.**

22 The City Treasurer, in the exercise of the duties imposed upon ~~him or her~~ *them* by this
23 chapter and acting through ~~his or her~~ *their* deputies or duly authorized assistants, shall
24 examine or cause to be examined all places of business in the City to ascertain whether
25 the provisions of this chapter have been complied with.”

1 **SECTION 12: AMENDMENT TO SUBSECTION 5.1.20 OF SECTION 5-1 OF**
2 **CHAPTER V OF THE ALBANY MUNICIPAL CODE**

3 Chapter V, Section 5-1, Subsection 5-1.20 of the City of Albany Municipal Code is hereby
4 amended to read as follows:

5 **“5-1.20 Right of Entry.**

6 The City Treasurer and each and all of ~~his or her~~ *their* assistants and any Police Officer
7 shall have the power and authority to enter, free of charge and at any reasonable time,
8 any place of business required to be licensed by this chapter and demand an exhibition
9 of its license certificate. Any person having such license certificate theretofore issued,
10 in his possession or under his control who willfully fails to exhibit the same on demand
11 shall be guilty of a misdemeanor.”

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14 **SECTION 13: AMENDMENT TO SUBSECTION 5.1.21 OF SECTION 5-1 OF**
15 **CHAPTER V OF THE ALBANY MUNICIPAL CODE**

16 Chapter V, Section 5-1, Subsection 5-1.21 of the City of Albany Municipal Code is hereby
17 amended to read as follows:

18 **“5-1.21 Complaints for Violations of Chapter.**

19 It shall be the duty of the City Treasurer and each of ~~his or her~~ *their* assistants to cause
20 a complaint to be filed against any and all persons found to be violating any provision
21 of this chapter.”

22
23 **SECTION 14: AMENDMENT TO SUBSECTION 5.1.22 OF SECTION 5-1 OF**
24 **CHAPTER V OF THE ALBANY MUNICIPAL CODE**

25 Chapter V, Section 5-1, Subsection 5-1.22 of the City of Albany Municipal Code is hereby
26 amended to read as follows:
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1 **“5-1.22 Collector, Etc., May Administer Oaths.**

2 For the purpose of this chapter, the City Treasurer, ~~his or her~~ *their* deputies and
3 authorized agents are authorized to administer oaths.”

4 **SECTION 15: AMENDMENT TO SUBSECTION 5.1.23 OF SECTION 5-1 OF**
5 **CHAPTER V OF THE ALBANY MUNICIPAL CODE**

6 Chapter V, Section 5-1, Subsection 5-1.23 of the City of Albany Municipal Code is hereby
7 amended to read as follows:

8 **“5-1.23 Powers of City Attorney.**

9 The City Attorney, in the event of the failure, inability or incapacity of the City
10 Treasurer to act under this chapter, or upon ~~his or her~~ *their* own determination, shall
11 have concurrent and contemporaneous jurisdiction and authority with that of the City
12 Treasurer in the investigation and enforcement of the provisions of this chapter.”

13 **SECTION 16: AMENDMENT TO SUBSECTION 5-2.2 OF SECTION 5-2 OF**
14 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**

15 Chapter V, Section 5-2, Subsection 5-2.2 of the City of Albany Municipal Code is hereby
16 amended to read as follows:

17 **“5-2.2 Amount of Tax Generally.**

18 Every person commencing, transacting and carrying on any business herein
19 enumerated shall pay a license tax ~~as is set forth in a resolution duly adopted by the~~
20 ~~City Council, or as set forth by ordinance.~~

21 The provisions of this subsection shall not apply to persons employed as solicitors or
22 peddlers by any person who has a fixed place of business in the City and who holds a
23 valid unexpired license for such business in the City. The employer shall make
24 application to the City Treasurer and shall furnish such information and make such
25 application to the City Treasurer and shall furnish such information and make such
26 application to the City Treasurer and shall furnish such information and make such
27 application to the City Treasurer and shall furnish such information and make such
28 application to the City Treasurer and shall furnish such information and make such

1 affidavits as may be required. Upon the determination being made that such solicitor
2 or peddler is entitled to exemption under the provisions of this subsection and upon
3 their complying with the provisions of all other ordinances relating to peddling or
4 soliciting, the City Treasurer shall issue a free license to such person, which shall show
5 upon its face that the license is exempt.

6 ~~The license amounts established by this subsection shall be adjusted each August for
7 the next calendar year in the following manner: Each of the license amounts as set forth
8 by the City Council by separate resolution or ordinance shall be multiplied by the
9 percent change in the June Consumer Price Index (CPIW), established by the U.S.
10 Bureau of Labor Statistics, All Urban Wage Earners and Clerical Workers San
11 Francisco Bay Area Index from the previous year to the current. The amount of the
12 product shall be rounded down or up to the nearest whole dollar. The product thus
13 produced shall automatically be deemed to be the base amount of any increase to the
14 license amount to be collected during the subsequent year, in addition to any other
15 modifications set by the City Council. Any prorations shall be rounded out (up or
16 down) to the nearest dollar.~~

17 A company, person or utility, not otherwise covered by this chapter, providing a service
18 similar to those services performed by a franchisee, contractor, or utility shall pay as a
19 license tax at least the same fees as the utility, franchisee, or contractor is paying under
20 any already existing agreement with the City.”

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24 **SECTION 17: AMENDMENT TO SUBSECTION 5-2.3 OF SECTION 5-2 OF**
25 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**
26

27 Chapter V, Section 5-2, Subsection 5-2.3 of the City of Albany Municipal Code is hereby
28 amended to read:

“5-2.3 **Business License Tax Rates.**

a. Except as otherwise provided in this Chapter 5 of the Albany Municipal Code and subsection, every person commencing, transacting and carrying on in a fixed place of business in the City any business other than those enumerated in subsections 5-2.2 and 5-2.4 shall pay an annual license tax based upon ~~the average number of employees employed in such business as set forth in the resolution duly adopted by the City Council, or as set forth by ordinance~~ *gross receipts as follows:*

<i>Gross Receipts</i>	<i>Tax Rate</i>	<i>Total Tax</i>
<i>\$0 to \$50,000</i>	<i>0.0%</i>	<i>\$25</i>
<i>\$50,000.01 to \$500,000</i>	<i>0.1%</i>	<i>\$75 + 0.1% over \$50,000</i>
<i>\$500,000.01 to \$1,000,000</i>	<i>0.2%</i>	<i>\$525 + 0.2% over \$500,000</i>
<i>\$1,000,000.01 and above</i>	<i>0.3%</i>	<i>\$1,525 + 0.3% over \$1,000,000</i>

Persons taking out business license for less than one (1) full year shall pay, in addition to the pro rata share of the above license tax, an administrative charge as set forth in the Master Fee Schedule for each license period in excess of one (1) in any calendar year. A business located within Albany may not take out more than two (2) licenses each year.

b. Every person commencing, transacting and carrying on at other than a fixed place of business in the City any business other than those enumerated in subsection 5-2.2 shall pay an annual license tax based ~~upon the average number of employees and~~ upon the annual rates provided for in the preceding paragraphs.”

SECTION 18: AMENDMENT TO SUBSECTION 5-2.6 OF SECTION 5-2 OF CHAPTER V OF THE ALBANY MUNICIPAL CODE.

Chapter V, Section 5-2, Subsection 5-2.6 of the City of Albany Municipal Code is hereby amended to read:

“5-2.6 **License Tax Determination When Required Statements Not Filed.**

1 If any person fails to file any statement required by this chapter within the time
2 prescribed; or, if *licensee fails to file a corrected statement within fifteen (15) days of*
3 *receipt of a written* ~~after demand therefor has been made~~ by the City Treasurer, ~~he or~~
4 ~~she fails to file a corrected statement within fifteen (15) days after notification so to do,~~
5 ~~or it appears to the satisfaction of the City Treasurer that a~~ *the* statement filed does not
6 set forth ~~the true accurate~~ facts of the business for which a license is required, the City
7 Treasurer shall determine the amount of license tax due ~~from such person by means of~~
8 ~~such using other~~ information obtained as ~~he or she may be able to obtain.~~

9
10
11 ~~In case such determination is made, the~~ *The* City Treasurer shall give a notice of the
12 amount so assessed by serving it personally or by depositing it in the United States Post
13 Office at Albany, postage prepaid, addressed to the *address on the license or application*
14 ~~person so assessed at the address appearing on his or her last license or application.~~
15 ~~Such person~~ *The licensee* may, within ten (10) days after the ~~serving or mailing of such~~
16 ~~notice is served or mailed, make application~~ *apply* in writing to the City Treasurer for
17 a hearing on the amount of the license tax. If such application is made, the City
18 Treasurer shall give not less than five (5) days' written notice, in the manner prescribed
19 herein, to the licensee to show cause at a time and place fixed for such license. At such
20 hearing the licensee may appear and offer evidence why such specified tax should not
21 be fixed as the license tax. After such hearing the City Treasurer shall determine the
22 proper tax to be charged and ~~shall forthwith~~ give written notice to the licensee ~~in the~~
23 ~~manner prescribed herein~~ of such determination and the amount of such tax.

1 If ~~application by~~ the licensee *has not timely requested an appeal as set forth above for*
2 ~~a hearing is not made within the time prescribed,~~ the license tax determined by the City
3 Treasurer shall become final ~~and conclusive.~~”

4 *The tax rates imposed by this ordinance are maximum rates and may not be increased*
5 *by the City Council above such maximum rates. The tax imposed by this ordinance may*
6 *be reduced or eliminated by the City Council on or before July 1 in any year in which*
7 *the City Council determines that after such reduction or elimination there will be*
8 *sufficient revenues available to balance the City Council’s Adopted Budget. Such*
9 *reduction or elimination shall be effective for the calendar year following such vote.*

12 **SECTION 19: AMENDMENT TO SUBSECTION 5-2.8 OF SECTION 5-2 OF**
13 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**

14 Chapter V, Section 5-2, Subsection 5-2.8 of the City of Albany Municipal Code is
15 hereby amended to read:

17 **“5-2.8 Powers of City Treasurer – Administrative Regulations.**

18 a. The City Treasurer shall have the power and duty, and is hereby directed, to
19 enforce each and all of the provisions of this chapter.

21 b. The City Treasurer shall determine the eligibility of any person who asserts a
22 right to exemption or a refund of, the tax imposed by this chapter.

23 c. The City Treasurer may adopt administrative rules and regulations not
24 inconsistent with provisions of this chapter for the purpose of interpreting, clarifying,
25 carrying out and enforcing the payment, collection and remittance of the taxes herein
26 imposed. A copy of such administrative rules and regulations shall be on file in the City
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Treasurer’s office. To the extent that the City Treasurer’s determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular business, that determination shall be considered an exercise of the City Treasurer’s discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750 or otherwise. The City Treasurer is not authorized to amend the City’s taxing methodology for purposes of Government Code Section 53750, and the city does not waive or abrogate its ability to impose the business license tax in full as a result of promulgating administrative rulings.”

SECTION 20: AMENDMENT TO SUBSECTION 5-2.9 OF SECTION 5-2 OF CHAPTER V OF THE ALBANY MUNICIPAL CODE.

Chapter V, Section 5-2, Subsection 5-2.9 of the City of Albany Municipal Code is hereby amended to read:

“5-2.9 Proration.

Except for out-of-city businesses, business license taxes shall be prorated as follows: If the first annual license is issued between April 1 and June 30, the business license tax due for the first annual license shall be 75% of the amount provided by this Code. If the first annual license is issued between July 1 and September 30, the business license tax due for the first annual license shall be 50% of the amount provided by this Code. If the first annual license is issued between October 1 and December 31, the business license tax due for the first annual license shall be 25% of the amount provided by this Code. There shall be no proration of business license taxes due for annual renewals or of daily business license taxes.”

1 **SECTION 21: AMENDMENT TO SUBSECTION 5-2.10 OF SECTION 5-2 OF**
2 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**

3 Chapter V, Section 5-2, Subsection 5-2.10 of the City of Albany Municipal Code is
4 hereby amended to read:

5 **“5-2.10 Penalty for Non-Payment of Annual Business Tax.**

6
7 a. Every annual business tax or registration fee renewal which is not paid on or
8 before January 31 of each year is hereby declared delinquent, and the City Treasurer
9 shall thereupon add to the business tax or registration fee and collect a penalty of ten
10 (10%) percent or five (\$5.00) dollars, whichever is greater, of the tax so delinquent; an
11 additional penalty of fifteen (15%) percent of the tax so delinquent shall accrue if the
12 tax remains unpaid on March 1 of the current tax year; if the tax amount still remains
13 unpaid on April 1 of the current tax year, a further penalty of twenty-five (25%) percent
14 of the tax so delinquent will accrue. The aggregate total of all penalties shall be:

15
16
17 February 1 - February 28/29: 10%

18
19 March 1 - March 31: 25%

20
21 April 1 and thereafter: 50%

22 Plus interest at the rate of one and one-half (1-1/2%) percent per month, interest
23 compounded monthly.

24
25 For newly established businesses, taxes and fees are delinquent if not paid within fifteen
26 (15) days of commencement of business, and the aggregate total of all penalties shall
27 be:
28

16 - 45 days delinquent; 20%

46 - 75 days delinquent: 50%

76 days delinquent and thereafter: 75%

In addition to all other powers conferred upon the City Manager, the City Manager shall have the power for good cause shown, to waive any penalty and shall have the further power, with the consent of the city council to compromise any claim as to amount of license tax due.

b. Prior Year Registration Assessments. If any person has failed to apply for and secure a valid Business Tax Certificate, the business tax due shall be that amount due and payable from the first date on which the person was engaged in business in the City, together with applicable penalties and interest.

c. Notice Not Required. The City Treasurer is not required to send a renewal, delinquency or other notice or bill to any person subject to the provisions of this section and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this section.

d. Interest. In addition to the penalties imposed, any person who fails to remit any business tax imposed by the business tax provisions of this chapter shall pay interest at the rate of one and one-half (1-1/2%) percent per month or fraction thereof, compounded monthly, on the amount of the tax and penalties from the date on which the business tax first became delinquent until paid.

1 e. Business Tax a Debt. The amount of any business tax and penalty imposed by
2 this section shall be deemed a debt to the City, and any person carrying on any business
3 without first having procured a Business Tax Certificate from the City shall be liable to
4 an action in the name of the City in any court of competent jurisdiction, for the amount
5 of tax and penalties imposed on such business.

6 The amount of tax, penalty and interest imposed under the provisions of this chapter is
7 hereby assessed against the business property on which the tax is imposed in those
8 instances where the owner of the business and the business property are one and the
9 same. If the taxes are not paid when due, such tax shall constitute an assessment against
10 such business property and shall be a lien on the property for the amount thereof, which
11 lien shall continue until the amount thereof including all penalties and interest are paid,
12 or until it is discharged of record.

13
14
15 f. Notice of Hearing on Lien. The City Treasurer shall file with the City Clerk a
16 written notice of those persons on whom the City will file liens. Upon receipt of such
17 notice the City Clerk shall present same to the City Council, and the City Council shall
18 forthwith, by resolution, fix a time and place for a public hearing on such notice.

19
20 The City Treasurer shall cause a copy of such resolution and notice to be served upon
21 the owner of the business/business property not less than five (5) days prior to the time
22 fixed for such hearing. Such service shall be by mailing a copy of such resolution and
23 notice to the owner of the business/business property at their last known address.
24 Service shall be deemed complete at the time of deposit in the United States mail.

25
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27 g. Collection of Delinquent Taxes by Special Tax Roll. With the confirmation of
28 the report by the City Council, the delinquent tax charges contained therein which

1 remain unpaid by the owner of the business/business property shall constitute a special
2 assessment against the business property and shall be collected at such time as is
3 established by the County Assessor for inclusion in the next property tax assessment.

4 h. The City Treasurer shall turn over to the County Assessor for inclusion in the
5 next property tax assessment the total sum of unpaid delinquent charges consisting of
6 the delinquent business taxes, with penalties and interest (Section 5-2.10a) and interest
7 at the legal rate from the date of recordation to the date of lien, administrative charges
8 as set forth in the Master Fee Schedule for staff time and a release of lien fee as set forth
9 in the Master Fee Schedule. Thereafter, the assessment may be collected at the same
10 time and in the same manner as ordinary municipal taxes are collected.”
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13 **SECTION 22: AMENDMENT TO SUBSECTION 5-2.15 OF SECTION 5-2 OF**
14 **CHAPTER V OF THE ALBANY MUNICIPAL CODE.**
15

16 Chapter V, Section 5-2, Subsection 5-2.15 of the City of Albany Municipal Code is
17 hereby amended to read:

18 “5-2.15 ***Suspension, Revocation and Appeal Processes.***

19
20 a. *Suspension and revocation authority. Subsequent to the issuance of any business*
21 *license under this title, the City shall have the authority to initiate the suspension or*
22 *revocation of any business license, using the procedure provided in subsections 5-1.25*
23 *and 5-2.6 of this chapter, for any of the following reasons:*

24
25 1. *The business conducted on the premises is not substantially similar to*
26 *that for which the business license was approved and issued;*
27
28

1 2. *The business does not comply with the specific requirements of this title,*
2 *or Chapter V, Section 5-13 Massage Establishments, Massage Technicians and*
3 *Massage Services, or Chapter XX, Section 20.12, Zoning Districts and*
4 *Permitted Uses;*

5 3. *The business licensee submitted false or misleading statements or has*
6 *submitted falsified information or certificates as part of the license application;*

7
8 5.. *The business licensee or an employee has been found, by an*
9 *administrative proceeding or other court proceeding, to be in violation of any*
10 *ordinance of this City, any condition of approval imposed by the City on the use*
11 *of the premises where the business is being conducted, or any condition of*
12 *approval imposed by the City or any other agency on the operation of the*
13 *business.”*

14
15
16 **SECTION 23: CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

17 The findings for this Ordinance in compliance with the California Environmental Quality Act
18 (“CEQA”) are the same as those set forth in City Council Resolution No. 2022-___ calling for
19 an election on this Ordinance. The CEQA findings set forth in Resolution No. 2022-___ are
20 incorporated herein by reference.
21

22
23 **SECTION 24: SEVERABILITY.**

24 If any provision of this Ordinance or the application thereof to any person or circumstance is
25 held invalid, the remainder of the Ordinance and the application of such provision to other
26 persons or circumstances shall not be affected thereby.
27
28

1 **SECTION 25: EFFECTIVE DATE.**

2 Pursuant to California Constitution Article XIII C § (2)(b) and California Elections Code §
3 9217, this Ordinance shall take effect only if approved by a majority of the eligible voters of
4 the City of Albany voting at the General Municipal Election to be held on November 8, 2022
5 and shall become effective 10 days after the City Council has declared the results of the
6 Election.
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1 Ordinance No. 2022-06 was submitted to the People of the City of Albany at the November 8,
2 2022 General Municipal Election. It was approved by the following vote of the People:

3 YES:

4 NO:

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6
7
8 Ordinance No. 2022-06 was thereby adopted by the voters at the November 8, 2022 election
9 and shall become effective ten (10) days following adoption of a resolution declaring the
10 results of the election at a meeting of the City Council held on December ____, 2022 by the
11 following vote:

12 AYES:

14 NOES:

15 ABSENT:

16 ABSTAIN:

17
18
19
20 I HEREBY CERTIFY that the foregoing is a true and correct copy of an ordinance duly and
21 regularly adopted by the People of the City of Albany, California.

22
23
24 _____
25 Anne Hsu, City Clerk
26
27
28