

## ORDINANCE 1053B

### AN ORDINANCE TO REPEAL AND RE-ENACT CHAPTER 5.04 – BUSINESS LICENSES AND FINDING THE ORDINANCE IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER CEQA

**WHEREAS**, Lincoln Municipal Code Chapter 5.04 was originally enacted in 1974 and was last amended in 2002; and

**WHEREAS**, significant revisions have been made to Chapter 5.04 – Business Licenses to better meet the needs of the City and the organizations that conduct business within the city limits and to provide a cleaner and easier to understand version of this chapter; to update language to current standards and based on the current social/economic environment.; and

**WHEREAS**, due to the extensive revisions required, staff has proposed Chapter 5.04 – Business Licenses be repealed and re-enacted; and

**WHEREAS**, Council conducted a public hearing on this matter on August 23, 2022.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LINCOLN** does ordain as follows:

**Section 1.** The City Council hereby incorporates by reference the recitals set forth above and attached.

**Section 2.** This Ordinance is not subject to the California Environmental Quality Act (“CEQA”), as codified at Public Resources Code §§ 21000, *et seq.*, and as further governed by 14 California Code of Regulations §§ 15000, *et seq.*, because it is not a project as contemplated by 14 C.C.R. § 15378. In addition, even if this Ordinance were subject to CEQA, the City Council finds this Ordinance would be exempt from the requirements of CEQA pursuant to 14 C.C.R. § 15061(b)(3), because there is no possibility it will have a significant effect on the environment.

**Section 3.** If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. City Council hereby declares that it would have adopted the Ordinance and each section, sub-section, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

**Section 4.** Within fifteen days of passage of this Ordinance, the City Clerk shall cause the full text of the Ordinance, with the names of those City Councilmembers voting for and against the Ordinance, to be published in the Lincoln News Messenger. In lieu of publishing the full text of the Ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the Ordinance, prepared by the City

Attorney and with the names of the City Councilmembers voting for and against the Ordinance, to be published in the Lincoln News Messenger, and shall post in the office of the City Clerk a certified copy of the City Councilmembers voting for and against the Ordinance. The publication of a summary of the Ordinance in lieu of the full text of the Ordinance is authorized only where the requirements of Government Code § 36933(c)(1) are met.

**Section 5. Repeal and Re-enact.** Lincoln Municipal Code Chapter 5.04 – Business Licenses be repealed and re-enacted.

**PASSED AND ADOPTED** this 13<sup>th</sup> day of September, 2022.


AYES: COUNCILMEMBERS: Joiner, Silhi, Karleskint, Lauritsen, Andreatta

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

  
Holly Andreatta, Mayor

ATTEST:

  
Gwen Scanlon, City Clerk

## Chapter 5.04 BUSINESS LICENSES

### 5.04.10 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning given by this section, unless otherwise specifically provided:

“Business” means any business, commercial enterprise, trade, calling, vocation, profession, or any means of livelihood whether or not carried on for gain or profit.

“Business license certificate,” or “certificate,” means the receipt given by the collector which indicates that the rate imposed by this chapter has been paid.

“City” means the city of Lincoln, a municipal corporation, in the state of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

“Collector” means the finance director or designee.

“Engaged in business,” “carrying on business” or “transacting business,” herein used interchangeably, means commencing, conducting, operating, managing, engaging in or carrying on of a business by any person, whether done as owner or by means of an officer, agent, manager, employee, servant or lessee of any of them, whether operating from a fixed location in the city or coming into the city from an outside location to engage in said activities.

When any person shall sell or offer to sell any goods, wares, merchandise, service or other thing of value in the city; or when he shall by use of signs, circulars, cards, telephone book, newspaper, radio or television, advertise, hold out or represent that he is commencing, engaging in, conducting, operating, managing, carrying on, or soliciting any business in the city; or when any person holds an active license or permit issued by a governmental agency indicating he is in business in the city and such person fails to deny by a sworn statement that he is conducting a business in the city, after having been requested to do so by the administrator; then these facts shall be considered prima facie evidence that he is conducting or engaging in business in the city.

“Gross receipts” means the gross receipts of the preceding calendar year or part thereof, and is defined as follows:

The total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commission, dividends or other emoluments, however designated. Included in gross receipts shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as

is refunded either in cash or by credit;

5. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;
6. Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the collector with the names and addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages or other payments retained by the agent or trustee;
7. As to a retail gasoline dealer, the portion of receipts from the sale of motor vehicle fuels equal to the motor vehicle fuel license tax imposed by and previously paid under Part 2 of Division 2 of Revenue and Taxation Code of the state of California;
8. As to a retail gasoline dealer, the special motor fuel tax imposed by Section 4041 of Title 26 of the United states Code if paid by the dealer or collected by him from the customer or purchaser;
9. Cash value of sales, trades or transactions between departments or units of the same business;
10. That portion of the receipts of a general contractor which represents payments to subcontractors; provided, that such subcontractors are licensed under this chapter, and provided the general contractor furnishes the collector with the names and addresses of the subcontractor and the amounts paid each subcontractor;
11. As to a real estate agent or broker, the sales price of real estate sold for the account of others except that portion which represents commission or other income to the agent or broker.

“Person” includes all domestic and foreign corporations, associations, syndicates, joint stock corporation, partnerships of every kind, clubs, or common law trusts, societies and individuals, transacting and carrying on any business in the city, other than strictly as a salaried employee.

“Rate” includes voter approved Business License fee, city imposed fees, administrative fees and any other fees required in the issuance of a valid certificate.

“Sale” or “sell” means, includes and refers to the making of any transfer of title, in any manner or by any means whatsoever, to tangible personal property or other property for a consideration; and to the serving, supplying or furnishing, for a consideration, of any tangible personal property or other property fabricated or made at the special order of consumers who do or do not furnish directly or indirectly the specification therefor. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price shall likewise be deemed a sale. The foregoing definitions shall not be deemed to exclude any transaction which is or which, in effect, results in, a sale within the contemplation of law. “Sale” includes both wholesale and retail sales and sales by vending machines dispensing tangible personal property.

“Sworn statement” means a written statement, declaration or certification made under penalty of perjury.

“Valid certificate” means a certificate which complies with all the requirements of this chapter, and any certificate which does not comply with these requirements shall not be deemed to be a valid certificate for the purposes of this chapter or any other purpose.

#### **5.04.020 Revenue measure only.**

This chapter is enacted solely to raise revenue for municipal purposes and is not intended for regulation. The rates imposed by this chapter shall be in addition to any other tax or fee which may be imposed by any other provision of this code or other ordinance or resolution of the city. The rates imposed by this chapter are not property related and are not imposed as an incident of property ownership.

#### **5.04.030 Effect on other ordinances.**

The payment of the rates imposed by this chapter, and its acceptance by the city, and the issuance of a certificate to any person, shall not entitle that person to carry on the business so licensed unless that person complies with all other applicable laws of the city or to carry on any business in any building or on any premises designated in the certificate if such building or premises is situated in a zone in which the conduct of such business is not allowed. The payment of such rates and its acceptance by the city and the issuance of a certificate shall in no way relieve the payer from compliance with all applicable laws of the city, nor shall it be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner.

#### **5.04.040 Administration of chapter—Powers of collector.**

A. This chapter shall be administered and enforced by the director of finance or designee acting as the collector.

B. The collector may make such rules and regulations not inconsistent with the provisions of this chapter as may be necessary or desirable to supplement or clarify such provisions or aid in their enforcement. When, by reason of the provision of the Constitution of the United States or the Constitution of California, the rates imposed by this chapter cannot be enforced without there being an apportionment according to the amount of business done in the city, or in the state, as the case may be, the collector may make such rules and regulations for the apportionment of the rate as are necessary or desirable to overcome the constitutional objections.

C. The determination of the type or class of business or businesses a payer is engaged in or about to engage in shall be an administrative function of the collector. In cases where a payer believes he or she is placed in the wrong business or class of business or businesses, he or she may apply in writing to the collector for a change in classification setting forth in full the reason for requesting such change. The collector shall conduct an investigation and shall thereupon render a decision in writing as to the proper classification or classifications. If the payer is aggrieved by the collector's decision, he or she shall have the right of appeal under Section 5.04.260.

D. The collector shall have such other powers as are set out in this chapter or as may be prescribed by the city council.

#### **5.04.050 Enforcement—Violation—Remedies.**

A. The collector and the Public Safety Chief and Code Enforcement officers shall have the authority to enforce each and all of the provisions of this chapter. Each department of the city which issues permits or entitlements of use shall require the production of a valid unexpired business license certificate prior to issuance of such permit. The preceding sentence shall not be construed to require any person to obtain a business license certificate prior to doing business within the city if such requirement conflicts with the constitution or applicable statutes of the United States or of the state.

B. A violation of this chapter shall be an administrative violation as defined in Chapter 1.20. In addition to the enforcement by any procedure set forth in Chapter 1.20, inclusive, any violation of the provisions of this chapter or the knowing or intentional misrepresentation of a material fact to any officer or employee of the city in procuring the certificate

herein provided for shall be punishable as a misdemeanor.

C. The conviction and punishment of any person for engaging in any business without a valid certificate shall not relieve such person from paying the rates and penalties due and unpaid at the time of such conviction, nor shall the payment of any rate or penalty prevent a criminal prosecution for the violation of any of the provisions of this chapter. All remedies prescribed in this chapter 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 of this chapter.

D. Any sum required to be paid under the provisions of this chapter shall be deemed a debt owed to the city, and any person who engages in any business without first obtaining and paying for a valid certificate as required by this chapter shall be liable in an action by and in the name of the city in any court of competent jurisdiction for recovery of any such sum.

**5.04.055 Enforcement procedures—Notice to correct.**

A. Prior to the suspension, revocation or denial of any license or permit, or the assessment of any fee, penalty or charge, or the commencement of any other enforcement action pursuant to this chapter, the director of finance shall follow the procedures set forth in Chapter 1.20. The rights to judicial review set forth in Chapter 1.20 shall apply.

B. A notice to correct shall be served in accordance with the provisions of 1.20. The time to correct any violation of a provision of this chapter shall be governed by the provisions of Chapter 1.20.

**5.04.060 Business license certificate required.**

It is unlawful for any person to commence, transact, engage in or carry on any business, trade, profession, calling, occupation or gainful activity within the city without first having obtained a valid business license certificate and having paid the business license rate imposed and prescribed by this chapter, or without complying with any and all applicable provisions of this chapter.

**5.04.070 Business license rate imposed.**

Subject to the provisions of this chapter, there are imposed upon all business, trades, professions, callings, occupations and gainful activities engaged in or carried on in the city, business license rate in the amounts prescribed in this chapter.

**5.04.080 Business without fixed place of business in city.**

Every person not having a fixed place of business within the city who engages in business within the city shall be required to pay the business license rate at the same rate prescribed in this chapter for persons engaged in the same type of business and conducting that business from place of business within the city. Where the application of the business license rate on the proportion of the events occurring in the city produces an amount which is below the minimum rate limit, the matter is “de minimus” and no payment is due, save administrative rate due to produce the valid certificate.

**5.04.090 Branch establishments.**

A separate business license certificate must be obtained for each branch of a business where activities of such business are transacted and carried on and for each separate type of business at the same location, and each certificate shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in such certificate; 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 separate places of business or branch establishments; and provided further, that any person conducting two or more types of businesses who uses a single set or integrated set of books and records, may, at his or her option, pay only one rate which shall be the rate that applies to

the type of business of such person which requires the highest payment, except that a business license rate for duplication of the valid certificate for each additional branch or location shall be paid upon issuance of additional valid certificates.

#### **5.04.100 Constitutional apportionment.**

A. None of the business license rates provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitution of the United States and the state.

B. In any case where a business license rate is believed by a licensee or applicant for a certificate to place an undue burden upon interstate commerce or be violative of such constitutional clauses, he may apply to the collector for an adjustment of the rate. Such application may be made before, at, or within six months after payment of the prescribed business license rate. The applicant shall, by sworn statement and supporting testimony, show the method of business and estimated gross volume of business and such other information as the collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The collector shall then conduct an investigation and, after having first obtained the written approval of the city attorney, shall fix as the rate for the applicant an amount that is reasonable and nondiscriminatory or, if the license rate has already been paid, shall order a refund of the amount over and above the license rate so fixed. In fixing the rate to be charged, the collector shall have the power to base the license rate upon a percentage of gross receipts or any other measure which will assure that the rate assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the rate as prescribed by this chapter. Should the collector determine the gross receipts measure of the rate to be the proper basis, he or she may require the applicant to submit, either at the time of termination of the applicant's business in the city or at the end of each 3-month period, a sworn statement of the gross receipts and pay the amount of license fee therefor; provided, that no additional business license rate during any one calendar year shall be required after the licensee shall have paid an amount equal to the annual business license rate as prescribed in this chapter.

#### **5.04.110 Exemptions.**

A. Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or the state from the payment of such rates as are herein prescribed.

The following persons, organizations and activities are exempt from payment of the business license rate, however, administrative fees may still apply:

1. Business conducted by a charitable, nonprofit or eleemosynary corporation, association or organization if the net proceeds of the business are used exclusively by such corporation, association or organization for a purpose which would qualify as a charitable deduction under the Revenue and Taxation Code of the state if the net proceeds were received as a gift by the organization;
2. The conduct of entertainment, concert, exhibition or lecture on scientific, historical, literary, religious or moral subjects, whenever the receipts are for a religious, educational or charitable purpose;
3. The conduct of entertainment, dance, concert, exhibition or lecture by a religious, charitable, fraternal, educational, amateur theatrical group, military, state, county or municipal organization or association, whenever the receipts are for the purpose and objects for which the organization or association is formed, and from which profit is not derived, directly or indirectly, by any individual;

**5.04.120 Exemptions—Procedure for claiming.**

- A. Any person claiming an exemption pursuant to Section 5.04.110 shall file a sworn statement with the collector stating the facts upon which exemption is claimed. In the absence of such statement substantiating the claim, such person shall be liable for the payment of the rates imposed by this chapter.
- B. The collector shall, upon proper showing contained in the sworn statement, issue a business license certificate to such person claiming exemption under this section without payment to the city of the business license rate required by this chapter, however administrative fees may still apply.
- C. The collector, after issuing a notice to correct as required by Section 5.04.055, may revoke any certificate granted pursuant to the provisions of this section upon information that the licensee is not entitled to the exemption as provided herein.

**5.04.130 Issuance of business license certificate—Contents.**

- A. All business license certificates shall be issued by the collector upon submission of a completed application and payment of the prescribed business license rate.
- B. The certificate shall contain the following information:
  - 1. The name of the person to whom the certificate is issued;
  - 2. The business licensed;
  - 3. The place where such business is to be transacted and carried on;
  - 4. The date of expiration of such certificate;
  - 5. The following statement: "This license is issued without verification that the licensee is subject to or exempt from licensing by the state of California";
  - 6. Such information as may be necessary for the enforcement of the provisions of this chapter; and
  - 7. A copy of the retail sales tax certificate where applicable.
- C. Whenever the rates imposed under the provisions of this chapter is measured by the number of vehicles, devices, machines or other pieces of equipment used, or whenever the business license rate is measured by the gross receipts from the operation of such items, the collector shall issue only one certificate; provided, the collector may issue for each period for which the business license rate has been paid, one sticker, tag, plate or symbol for each item included in the measure of the rate or used in a business where the rate is measured by the gross receipts from such items.

**5.04.140 Application for business license certificate—First certificate.**

- A. A person making application for the first certificate to be issued hereunder, or for a newly established business, or for a new ownership of a previously established business, shall furnish to the collector a sworn statement upon a form provided by the collector, setting forth the following information:
  - 1. The exact nature or kind of business for which a certificate is requested;
  - 2. The place where such business is to be carried on and, if the same is not to be carried on at any permanent place of business, the places of residence of the owners of same;



3. In the event that application is made for the issuance of a certificate to a person doing business under a fictitious name, the application shall set forth the names and places of residence of those owning the business;
4. In the event that the application is made for the issuance of a certificate to a corporation or a partnership, the application shall set forth the names of residences of the officers or partners thereof;
5. In all cases where the amount of the business license rate to be paid is measured by gross receipts, or by the number of machines or vehicles or other devices, the application shall set forth such information as may be required to determine the amount of the license rate to be paid by applicant;
6. Any further information which the collector may require to enable the collector to issue the type of certificate applied for.

B. Applicable fees, including an application fee or other administrative fees as required, shall be submitted at the time of application and in addition to the business license rate.

1. If the amount of the business license rate to be paid by the applicant is measured by gross receipts as required for Classification A businesses in Section 5.04.330, the applicant shall estimate the gross receipts for the period to be covered by the certificate to be issued. Such estimate, if accepted by the collector as reasonable, shall be used in determining the amount of rate to be paid by the applicant; provided, however, the amount of rate so determined shall be tentative only and such person shall, within thirty days after the expiration of the period for which the certificate was issued, furnish the collector with a sworn statement, upon a form furnished by the collector, showing the gross receipts during the period of such certificate and the business license rate for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of renewal rates for other businesses after deducting from the payment found to be due the amount paid at the time such first certificate was issued.
2. If the amount of the business license rate to be paid by the applicant as required in Classification B, C, D, or E businesses in Section 5.04.330, due shall be based on upon the application date for the initial application and annually thereafter.
  - a. Should the application be submitted between January and March, 100% of the business license rate shall be due.
  - b. Should the application be submitted between April and June, 75% of the business license rate shall be due.
  - c. Should the application be submitted between July and September, 50% of the business license rate shall be due.
  - d. Should the application be submitted between October and December, 25% of the business license rate shall be due.

C. The collector shall not issue to any person another certificate for the same or any other business until such person shall have furnished to him the sworn statement and paid the license rate as herein required.

#### **5.04.150 Application for business license certificate—Renewal.**

In all cases, the applicant for the renewal of a business license certificate shall submit to the collector for guidance to determine the application and/or other rates required and in ascertaining the amount of the business license rate to be paid by the applicant, a sworn statement upon a form to be provided by the collector, setting forth such information concerning

the applicant's business during the preceding year as may be required by the collector to enable the collector to ascertain the amount of the business license rate to be paid by the applicant pursuant to the provisions of this chapter.

**5.04.160 Application—Sworn statement—Conclusiveness.**

No statements 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 or authorized employees of the city who are authorized to examine, audit and inspect such books and records of any licensee or applicant for a certificate as may be necessary in their judgment to verify or ascertain the amount of business license rate due, and who may demand that the licensee or applicant file a corrected statement.

**5.04.170 Business license certificate—Validity.**

A certificate shall be valid only after collector's endorsement has been affixed thereto indicating payment has been received of the amount of the penalties thereon, if any. A certificate, however, which has been paid for by a check or bank draft which subsequently dishonored by the bank upon which it was drawn shall not be a valid certificate even though the collector's endorsement appears thereon, and the person operating the business for which the certificate was issued shall be deemed to be operating without a valid certificate and shall be subject to the penalties provided in this chapter for so operating.

**5.04.180 Business license certificate—Revocation.**

A. Any certificate issued pursuant to the provisions of this chapter may be canceled for the following reasons:

1. A materially false statement contained in the application;
2. Failure to comply with the requirements of this chapter.

B. Prior to taking any action to cancel any certificate issued pursuant to this chapter, the director of finance shall issue a notice to correct as provided for in Section 5.04.055. If the violation is not corrected within the time specified, or if the violation is not capable of correction, the director of finance shall cause the issuance of a notice of administrative violation by a code enforcement officer.

C. The decision of the administrative hearing officer shall be final and any further rights to appeal shall be governed by the procedures set forth in Section 5.04.260.

**5.04.190 Business license certificate—Withheld.**

A. The collector shall not issue a certificate to any person for conducting any business while there is pending any action under this chapter against the person as the holder of any certificate at the same location until such action has been concluded.

B. No certificate for any ensuing current or unexpired period shall knowingly be issued or renewed to any person who at the time of making application therefor is indebted to the city for any unpaid business license rate.

C. If any person shall have upon two or more occasions made payment for the business license certificate with a check which was returned by the bank upon which it was drawn because of insufficient funds, the collector may thereafter require that such person make payment of the business license rate by cash payment or by money order or certified check.

D. The collector shall not renew any business license certificate if the holder of the certificate failed to satisfy in full

an administrative penalty imposed pursuant to a notice of administrative violation or a final order of an administrative hearing officer or court, if such order exists. If the collector determines that an administrative penalty remains unpaid at the time for mailing a renewal notice and there is no appeal pending, the collector shall state in the renewal notice that the renewal will not be accepted unless the full administrative penalty is paid in full at or before the time of renewal.

**5.04.200 Business license certificate not transferable.**

No certificate issued pursuant to this chapter shall be transferable; provided, that where a certificate is issued authorizing a person to transact and carry on a business at a particular place, such licensee may, upon application therefor and paying a fee for a duplicate license certificate, have the license amended to authorize, the transacting and carrying on of such business under the certificate at some other location to which the business is to be moved. Provided, further, that transfer whether by sale or otherwise, to another person under such circumstances that the real or ultimate ownership after the transfer is substantially similar to the ownership existing before the transfer, shall not be prohibited by this section. For the purpose of this section, stockholders, bondholders, partnerships or other persons holding an interest in a corporation or other entity herein defined to be a person, are regarded as having the real or ultimate ownership of such corporation or other entity.

**5.04.210 Business license certificates—Duplicates.**

A duplicate business license certificate may be issued by the collector to replace any certificate previously issued thereunder which has been lost or destroyed, upon the licensee filing a statement and paying the collector a duplicate certificate fee.

**5.04.220 Business license certificates—Posting and keeping.**

A. Any licensee, transacting and carrying on business at a fixed place of business in the city, shall keep the certificate posted in a conspicuous place upon the premises where such business is carried on.

B. Any licensee, transacting and carrying on business but not operating at a fixed place of business in the city, shall keep the certificate upon their person at all times while transacting and carrying on the business for which it is issued.

C. Whenever identifying stickers, tags, plates or symbols have been issued for each vehicle, device, machine or other piece of equipment included in the measure of a business license rate, the person to whom such stickers, tags, plates or symbols have been issued shall keep firmly affixed upon each vehicle, device, machine or piece of equipment, the identifying sticker, tag, plate or symbol which has been issued therefor at such locations as are designated by the collector. Such sticker, tag, plate or symbol shall not be removed from any vehicle, device, machine or piece of equipment in use during the period for which the sticker, tag, plate or symbol is issued.

D. No person shall fail to affix, as required herein, any identifying sticker, tag, plate or symbol to the vehicle, device, machine or piece of equipment for which it has been issued at the location designated by the collector.

E. No person shall give away, sell or transfer any identifying sticker, tag, plate or symbol, referred to above, to another person or permit its use by another person.

**5.04.230 Records.**

All persons subject to the provisions of this chapter shall keep complete records of business transactions, including sales, receipts, purchases, expenditures, and any other records and data relevant to establishing and verifying the rate liability under this chapter. Such persons shall retain all such records for examination by the collector for a period of at least 3

years. No person required to keep records under this section shall refuse to allow authorized representatives of the collector to examine the records at reasonable times and places.

#### **5.04.240 Records—Confidentiality.**

It is unlawful for the collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a business license certificate and to pay a business license rate, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof set forth in any statement or application, or to permit any statement or application or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person; provided, that nothing in this section shall be construed to prevent:

- A. The disclosure to, or the examination of records and equipment by, another city official, employee or agent for the collection of rate for the sole purpose of administering or enforcing any provisions of this chapter or collecting rates imposed hereunder;
- B. The disclosure of information to, or the examining of records by, federal or state officials or the tax officials of another city or country if a reciprocal arrangement exists, or to a grand jury or court of law upon subpoena;
- C. The disclosure of information and the results of the examination of records of particular payers, or relating to such payers, or to a court of law in a proceeding brought to determine the existence or amount of any liability of the particular payers to the city;
- D. The disclosure, after the filing of a written request to that effect, to the payer or to the payer's successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to the items included in the measure of any paid rate, any unpaid rate or amounts of rate required to be collected, interest and penalties; further provided, however, that the city attorney approves each such disclosure and that the collector may refuse to make any disclosure referred to in this subsection when, in the collector's opinion, the public interest would suffer thereby;
- E. The disclosure of the names and addresses of persons to whom business license certificates have been issued and the general type or nature of their business;
- F. The disclosure by way of public meeting or otherwise of such information as may be necessary to the city council in order to permit it to be fully advised as to the facts when a payer files a claim for refund or submits an offer of compromise with regard to a claim asserted by the city, or when acting upon any other matter;
- G. The disclosure of general statistics regarding amounts collected or business done in the city.

#### **5.04.250 Failure to obtain business license certificate or to file statement or corrected statement.**

A. If any person fails to file any required statement within the time prescribed or if, after demand therefor made by the collector, fails to file a corrected statement, or if any person subject to the rate imposed by this chapter fails to apply for and obtain a certificate, the collector may determine the amount of business license rate due from such person by means of such information as the collector may be able to obtain.

B. If the collector is not satisfied with the information supplied in applications or statements filed, the collector may determine the amount of any business license rate due by means of any information the collector 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 mail, postage prepaid, addressed to the person so assessed at person's last known address. Such person may, within 15 days after the mailing or serving of such notice, make application in writing to the collector for a hearing on the amount of the license rate. If such application is made, the collector shall cause the matter to be set for hearing within 15 days before the city council. The collector shall give at least 10 days' notice to such person of the time and place of hearing in the manner prescribed above for serving notices of assessment. The city council shall consider all evidence produced and shall make findings thereon, which shall be final. Notice of such findings shall be served upon the applicant in the manner prescribed above for serving notices of assessment.

#### **5.04.260 Appeals.**

Any person aggrieved by any decision of the collector with respect to the determination of the amount of a business license rate, or the issuance or refusal to issue, or cancellation of any business license certificate may file a request for administrative hearing with the city clerk within 15 days after notice of the decision of the collector. The city council shall thereupon fix a time and place for hearing such appeal not later than 30 days after the notice of appeal is received by the clerk. The clerk of the council shall give notice to such person of the time and place of hearing by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to such person at his last known address. The city council shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of the ordinance codified in this chapter.

#### **5.04.270 Collector—Additional powers.**

In addition to all other power conferred, the collector shall have the power, for good cause shown, to extend the time for filing any required sworn statement or application for a period not exceeding 30 days and, in such case, to waive any penalty that would otherwise have accrued, except that ten (10) percent simple interest shall be added to any rate determined to be payable.

#### **5.04.280 Business license—When payable.**

A. Unless otherwise specifically provided, all annual business license rates under provision of this chapter shall be due and payable in advance on the first day of January of each year; provided, that business license rates covering new operations commenced after the first day of January may be prorated for the balance of the license period as stated 5.04.140B.

B. Except as otherwise herein provided, business license rates, other than annual amounts, required hereunder shall be due and payable as follows:

1. Semiannual, measured by gross receipts, on the first day of January and the first day of July of each year;
2. Quarterly, measured by gross receipts, on the first day of January, April, July, and October of each year;
3. Monthly, measured by gross receipts, on the first day of each and every month;
4. Weekly flat rate on Monday of each week;
5. Daily flat rate on each day;
6. Other flat rates are payable on the first day of business and, thereafter, on the first day of any applicable period.

#### **5.04.290 Business license—Delinquencies and penalties.**

For failure to pay a business license rate when due the collector shall add a penalty of twenty (20) percent of the license

rate on the first day of each month after the due date thereof; provided, that the total amount of such penalty to be added shall in no event exceed sixty (60) percent of the amount of the business license rate due.

**5.04.300 Business license—Refunds.**

No refund of an overpayment of the amounts imposed by this chapter shall be allowed in whole or in part unless a claim for refund is filed with the collector within a period of 3 years from the last day of the calendar month following the period for which the overpayment was made and all such claims for refund of the amount of the overpayment must be filed with the collector in a form and manner prescribed by the collector. Upon the filing of such a claim and upon the determination by the collector that an overpayment has been made, amount overpaid shall be refunded.

**5.04.310 Prior license certificates—Exemptions and continuing obligation.**

A. Adoption of the ordinance enacting this chapter shall not relieve any person from any obligation or liability for payment to the city of a license rate or any other ordinance heretofore enacted by the city, and the obligation or liability shall continue.

B. Where a business license for revenue purposes has been issued to any person by the city upon payment of a license rate and the period of time for which the license was issued and the rate was paid has not expired, the business license rate prescribed for said person by this chapter shall not be payable until the expiration of said period of time.

**5.04.320 Business license—Establishment of rates.**

The amount of the business license rate shall be set annually by council resolution and may be updated from time to time. In making revisions of the business license rate, the city may change the rates set based on increased costs or by a percentage change in the consumer price index for the prior 12-month period.

**5.04.330 Establishment of Business classifications.**

The following business classifications shall be used to aid the collector and applications in determine the appropriate business license rate. These classifications shall not be considered all inclusive and may be revised from time to time on conjunction with the establishment or revision of the business license rates.

**CLASSIFICATION A.** Retail sales, restaurants, fast-food, home-based consultants, internet business, and other service businesses, including but not limited to:

Advertisement service	Air conditioning service	Ambulance service	Answering service	Apparel shops	Appliance repair
Appliance store	Armored car service	Auto body and fender shop	Automobile parts store	Bakery	Bar, tavern for the sale of nonalcoholic items
Barber shop	Beauty shop	Bicycle shop/repairs	Billiard and pool parlor	Boat sales	Book store
Bowling alley	Car wash	Carpet cleaning	Carpet shop	Caterers	Cleaning, laundry, laundromat
Clothing establishment	Coin and stamp shops	Concessionaire	Dairy	Dance academy	Day nursery
Delicatessen	Delivery service	Department store	Dog care	Drug store	Employment agency
Fast food	Feed store	Fitness facility, gym	Florist, nursery	Food market	Food truck

Funeral, crematorium	Furniture store	Garage, repair shop	Gardner	Gift shop	Glass company
Golf course	Grocery store	Gunsmith	Hardware store	Health spas	Home furnishing store
Janitorial service	Jeweler	Kennels	Knitting and sewing shop	Landscaping, Lawnmower service	Liquor store selling nonalcoholic items
Locksmith	Lumber company	Machine shop	Magazines and papers	Meat market	Music store / lessons
New car dealer	Newspaper publication	Office supplies store	Oil distributor	Paint store	Parking lot
Pawnshop	Pet shop	Pharmacy	Photographer	Printing shop	Radio and TV sales
Radio or TV stations	Recycling	Refrigeration service	Rental service	Restaurants	Service station
Security	Shoe repair shop	Shoe store	Sign shop	Snack shop	Supermarket
Taxidermist	Taxicab	Theaters	Tire repair service	Tire sales and services	Towing service
Training school	Travel agency	Tree service	Trucking service	Upholstery	Used car dealer
Variety store	Watch repair	Welding			

**CLASSIFICATION B.** Contractors, Subcontractor, Manufacturing, and Professionals.

1. Contractors, defined as any contractor with a Class A or B Contractor's license with the California State License Board.
2. Subcontractors, defined as any contractor who holds a Class C or D Contractor's license with the California State License Board.
3. Manufacturing, defined as activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful article of tangible personal property or substance of trade or commerce is produced. Manufacture includes the production or fabrication of specially made or custom made articles.
4. Utility, defined as any person furnishing the public with communication, water, light, heat, or power, subject to regulation by the Public Utilities Commission of the State of California. Except any public utility which pays a fee to the city under a franchise or similar agreement.
5. Professionals including but not limited to:

Accountant	Acupuncture	Advertising agent	Architect	Attorney
Auditor	Chemist	Chiropractor	Collection agency/agent	Commission agent
Credit reporting bureau	Dentist	Engineer	Mortician	Notary public

Optician	Optometrist	Osteopath	Pharmacist	Physician
Podiatrist	Psychiatrist	Psychologist	Real estate broker	Stenographer, public
Surgeon	Tax consultant	Veterinarian		

**CLASSIFICATION C.** Transportation and Trucking. Every person or entity who does not have a fixed place of business within the city and who (1) makes retail deliveries of goods and services by motor vehicle within the city, (2) who maintains, installs, or repairs goods, wares, and merchandise or equipment within the city, or (3) provides any other service within the city, shall pay an annual flat business license rate for each vehicle used to conduct business within the city.

**CLASSIFICATION D.** Rental of Residential Real Property. Every person or entity engaged in the business or renting or letting any apartment house containing three or more units; boardinghouse, dormitory, hotel, lodging house, motel or rooming house containing three or more units, convalescent hospital, nursing or rest home caring for three or more physically or mentally afflicted persons; or any renting or letting accommodations for sleeping or lodging, including short term vacation rentals of at least one unit.

**CLASSIFICATION E.** Rental of Commercial, Industrial and Agricultural Real Property. Every person or entity engaged in the business of renting, leasing and granting a license to use commercial, industrial, or agricultural real property as a landlord, lessor, or licensor.

**CLASSIFICATION F.** Any person engaged in any miscellaneous business including but not limited: athletic events, lecturer, shows, auto rates, auction houses, dances, fireworks stands, Christmas tree lots, itinerant vendor peddler or solicitor (requires additional permit through the Police department), photographer (without a fixed place of business in the city), street stands.