

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, UPDATING CHAPTER 5.04 REGARDING BUSINESS LICENSING AND TAXING AND MAKING FINDINGS UNDER CEQA

THE CITY COUNCIL OF THE CITY OF PALM DESERT DOES ORDAIN AS FOLLOWS:

SECTION 1. Amendment to Municipal Code. Palm Desert Municipal Code Chapter 5.04 *Business Licensing and Taxing* is amended to read as follows:

“Chapter 5.04 Business Licensing and Taxing

5.04.010 Definitions.

The following definitions shall apply in this title:

“Applicant” means a person applying for a business license pursuant to this title.

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

“City manager” means the city manager or that person’s designee.

“Contractor” for the purpose of this title is synonymous with the term “builder” and, within the meaning of the title, a contractor is any person who undertakes to, or submits a bid to, or does oneself or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. “Contractor” includes subcontractor, specialty contractor, and owner/builder.

“Gross Receipts” includes the total amounts actually received or receivable from sales and the total amount received or receivable for the performance of any act or service for which a charge is made or credit allowed, when done as a part of or in connection with a sale of materials, goods, wares, or merchandise. Included in “gross receipts” are all receipts, cash, credits, and property of any kind without deduction 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. Excluded from “gross receipts” are the following:

1. Cash discounts allowed or taken on sales;



2. Credit allowed on property accepted as part of the purchase price and that property may later be sold;

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 the contract of sales as is refunded in either cash or by credit;

5. 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 tax administrator with the names and addresses of the others and the amounts paid to them;

6. That portion of the receipts of a general contractor that represents payments to subcontractors licensed under this ordinance and provided the general contractor furnishes the tax administrator with the names and addresses of the others and the amounts paid to them;

7. Receipts of refundable deposits, except that refundable deposits forfeited and taken into the income of the business shall not be excluded;

8. As to a real estate agent or broker, the sales price of real estate sold for the account of others except that portion that represents commission or other income to the agent or broker;

9. As to retail gasoline dealers, a portion of his receipts from the sale of motor vehicle fuels equal to the motor vehicle fuel license tax imposed by and previously paid under the provisions of Part 2 of Division 2 of the Revenue and Taxation Code of the state;

10. As to retail gasoline dealers, 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 consumer or purchaser;

11. Those gross receipts attributed to activities carried on wholly out of the city by a person who has a fixed place of business within the city. Such person attributing all gross receipts out of the city shall pay the minimum license tax fee.

“Operate” means to conduct a business and includes all stages of conducting a business from initial planning to the wind-down of a business, whether or not a profit is being made.

“Owner/builder” means an individual authorized by this code to do construction or install equipment in or on buildings on premises used exclusively for a single-family residence, of which the individual is the legal owner and is where the individual resides intends to reside. Owner/builder shall pay fees herein the same as a general contractor



if the residence is offered for sale within one year after the date of completion of the same.

“Person” means any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, receiver, syndicate or other group or combination acting as a unit and includes the plural as well as the singular number.

“Sworn statement” is an affidavit or a declaration or certification made under penalty of perjury.

“Tax administrator” means the director of finance or that person’s designee.

5.04.020 Administration.

A. General administration.

1. Unless otherwise provided, the tax administrator shall administer and enforce this ordinance. The tax administrator shall examine each place of business in the city to determine whether this title is being complied with.

2. The tax administrator may file complaints and make arrests for any violation of this ordinance; and enter free of charge during regular business hours any place of business for which a license or permit is required and demand the exhibition of the license or permit.

3. The tax administrator may extend the time for filing information, compromise disputed claims as to license tax, create and adopt forms, and adopt administrative regulations necessary to carry out the provisions of this title.

B. Confidentiality. The tax administrator and each representative of the city having an administrative duty shall keep confidential all information concerning the business affairs and operations obtained by an investigation of records in the discharge of official duty and the amount and source of income, profits, losses, expenditures set forth in any statement or application. However, this section does not prevent disclosure:

1. Of examination of records and equipment used by another city official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter or collecting taxes imposed under this title;

2. Of information to, or the examination of records by federal or state officials, or the tax officials of any city or county or the tax officials of the city, and its auditors if a reciprocal arrangement exists or to a grand jury or a court of law, upon subpoena;

3. Of information and results of examination of records of particular taxpayers to a court of law in a proceeding brought to determine the existence or amount of any business tax liability to the city.



4. To the taxpayer or the taxpayer's successor, administrator, assignee, or guarantor, if directly interested, of information as to the items included in the measure of the paid tax, unpaid tax or amount of tax required to be collected, interest and penalties. However, the city attorney must approve each such disclosure and the tax administrator may refuse to make the disclosure referred to in this paragraph when in the tax administrator's opinion the public interest would suffer;

5. Of the name and address of a person to whom a license is issued, and the general type or nature of the business;

6. By way of public meeting or otherwise of such information as may be necessary to the City Council to permit it to be fully advised as to the facts when a taxpayer files a claim for refund of license taxes, or submits an offer of compromise with regard to a claim asserted against taxpayer by the city for license taxes, or when acting upon any other matter;

7. Of general statistics regarding taxes collected or business done in the city.

C. Errors not prejudicial. No error by the tax administrator or any other officer, employee, or agent of the city in the application of this title shall prevent, prejudice, or estop the collection by or for the city of the full amount of tax owed by any person under this title.

5.04.030 License requirements.

A. License and tax payment required. Business license taxes in the categories and amounts prescribed by City Council resolution are imposed upon the businesses and persons specified in this title, and no person shall transact and carry on any business without having procured a license from the city to do so, without having paid the business license tax or without complying with any and all regulations of such business contained in this title.

B. Evidence of doing business. When a person advertises, holds out, or represents that the person is in business in the city, or when the person holds an active license or permit issued by a governmental agency indicating that the person is in business in the city, or when the person fails to deny by a sworn statement given to the tax administrator that the person is not conducting a business in the city, after being requested to do so by the tax administrator, then these facts are prima facie evidence that the person is conducting a business in the city.

C. Multiple locations. A separate license must be obtained for each branch establishment or location of the business transacted and carried on and for each separate type of business at the same location. A warehouse and a distributing plant used in connection with a business licensed under this title is not a separate place of business or branch establishment within the meaning of this section.



D. Constitutional apportionment. If a person believes that the license places an undue burden upon interstate commerce or violates the equal protection or due process clause of the state or federal constitution, the person may apply to the tax administrator for an adjustment of the tax. The applicant shall by sworn statement and supporting testimony show the method of business and the gross volume or estimated gross volume of business and such other information as the tax administrator considers necessary. The tax administrator shall conduct an investigation and after obtaining the written approval of the city attorney shall fix as the license tax an amount that is reasonable and nondiscriminatory. In fixing the license tax, the tax administrator may base the license tax upon a percentage of gross receipts or other measure that assures that the license tax is uniform with that assessed on businesses of like nature. However, the amount fixed shall not exceed the license tax prescribed by this title.

5.04.040 License tax exemptions.

A. General exemptions. This title does not apply to a person transacting and carrying on a business exempt by the Constitution or statute of the United States or of the State from the payment of the tax prescribed.

B. Specific exemptions.

1. Charitable/nonprofit organizations. The following organizations and activities are exempt from payment of the license tax: (1) a business conducted as a charitable purpose or from that no profit is earned; (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; and (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 that profit is not derived, directly or indirectly, by any individual.

2. Disabled veterans. A disabled veteran holding an honorable discharge from a branch of the military service of the United States is exempt from the payment of the license tax prescribed in this title, if the veteran is physically unable to earn a livelihood by manual labor and is a qualified voter of the State.

3. Minor having minimum gross receipts. A person doing business who is a minor under 18 years old and whose gross receipts do not exceed forty five hundred dollars (\$4,500) shall be exempt from the requirements of this title.

4. Artist and art exhibits. A business license shall not be required of individual artists for the exhibition or display of paintings, sculpture, photographs or other fine arts in public buildings, art galleries, or in any business establishment if the exhibition or display is incidental to the primary business



conducted on the premises, and is primarily for cultural and educational purposes. Any artist shall be exempt from the requirements of this title if the sales of the artist's art work within the city do not result in annual gross receipts in excess of five thousand five hundred (\$5,500) dollars.

5. Certain retirees. A no-fee business license shall be issued to those individuals on a retirement system such as social security, private or public pension plan, making less than sixteen thousand five hundred (\$16,500) dollars per year and over the age of sixty five years, upon showing evidence of such.

C. Procedures for exemptions.

1. Any person claiming an exemption under this section shall file a sworn statement with the tax administrator 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 taxes imposed by this title.

2. Upon a proper showing contained in the sworn statement, the tax administrator shall issue a license to such person claiming exemption under this section without payment to the city of the license tax required by this title.

D. Additional requirements. A license tax exemption granted pursuant to this chapter do not exempt the person conducting the business from complying with the license and permit requirements of this title.

5.04.050 Application, issuance, and renewal.

A. Application and contents. A person required to have a license under this title shall file a written application with the tax administrator upon a form provided by the tax administrator. The application shall contain the name of applicant, the business licensed, the business's location, the license expiration date, and such other information as the tax administrator proscribes.

B. Verification. The tax administrator, each inspector, and each police officer may inspect the books and records of a person to determine the amount of license fee due and to verify the information supplied by the licensee or applicant. Every person by signing an application consents and agrees to permit the city to examine the person's books and records for these purposes. Each person subject to this title shall keep complete records of business transactions, including sales, receipts, purchases, and other expenditures, and shall retain them for examination by the tax administrator. The records shall be maintained for a period of at least six (6) years. Each person required to keep records under this section shall allow authorized representatives of the tax administrator to examine the records at reasonable times and places. The city may subpoena the books and records of any person who refuses to make them available to the city.



C. Consultation. The tax administrator will process the application and may consult with other city departments to determine whether the business and business premises meet the requirements of state law and the municipal code.

D. Issuance. Upon receiving the approval of departments to which the application has been referred and, where necessary, the city manager's approval, the tax administrator shall prepare and issue the license.

E. Renewal. When a licensee applies for a renewal of the licensee's license, the licensee shall file a written statement upon a form prescribed by the tax administrator, setting forth information concerning the business during the preceding year that the tax administrator required to fix the amount of the license tax.

F. Effect of indebtedness. A license will not be issued if the applicant is indebted to the city for any unpaid license fee, unless the applicant is permitted to enter into an agreement with the city to pay such delinquent taxes.

G. License tax determinations.

1. When reviewing an application, conducting an independent audit, or otherwise, the tax administrator may determine the amount of license tax due, using the information provided by the applicant, licensee, or other person or found during the audit.

2. When the tax administrator makes the determination, the tax administrator shall give a notice of the amount by personal service or first-class mail. Service is deemed effective on the date it is personally delivered or deposited in the mail. If the business maintains a physical location within the city, any notice or decision shall be posted on the site at which the business is located. Failure of any person to receive a notice properly served under this section does not affect the validity of the notice, service, decision, or any action or proceeding under this section.

3. The person may appeal the tax administrator's determination according to this chapter. If the applicant or licensee does not appeal within the time prescribed, the amount so assessed shall be final and shall immediately be due and owing to the city, but penalties as provided in this title shall continue to accrue until paid.

H. Deviation. There shall be no deviation in fees, penalties, or due dates, unless, specifically authorized by formal City Council action, after written request by the applicant through the tax administrator on forms provided by the city.

5.04.060 General license terms and conditions.

A. Annual license tax. All business license taxes are annual, unless otherwise expressly stated in this title. Upon issuance, the licensee shall pay the appropriate tax for a twelve month period. Expiration shall be the last day of the



preceding month of the year succeeding issuance. Taxes shall be due and payable on the first day of the month following the expiration date. Renewals shall be delinquent on the tenth day of the month following the expiration date.

B. Refunds for overpayments. The refund of an overpayment of tax imposed is allowed only when a claim for refund is filed with the tax administrator within eight months from the last day of the calendar month following the period for which the overpayment was made. Each claim for overpayment refund must be filed with the tax administrator on a form furnished by the city. If the tax administrator determines that an overpayment has been made, a refund may be issued in the amount overpaid.

C. License not transferable. A license issued under this title is not transferable, except when the licensee changes the licensee's place of business, the licensee may apply to the tax administrator for the transfer of the license to the new place of business. The fee for the transfer is established by City Council resolution. Any decal issued with a license is not transferable. Licensee shall not give away, sell, transfer, or allow use of such decal to or by another person.

D. Display of license. If the license is for carrying on business at a fixed place of business, the licensee shall post the license in a conspicuous place upon the premises where the business is carried on. If the license is for carrying on business that has no fixed place of business, the licensee shall keep the license upon the licensee's person at all times while carrying on business. The tax administrator may require a licensee to display a decal on licensee's vehicle or other equipment.

5.04.070 Modification, suspension, or revocation of license.

A. Grounds for modification, suspension, or revocation. Any license issued pursuant to the title may be modified, suspended, or revoked pursuant to this section. Grounds for modification, suspension, or revocation include:

1. That the building, structure, or equipment used in the conduct of the business does not comply with or fails to meet any state law or City ordinance, including but not limited to any health, zoning, fire, and building and safety laws of the state of California or any City ordinances;

2. That the licensee has knowingly made any false, misleading or fraudulent statement of material fact in the application for a license, or in any report or record to be filed with the City;

3. That the licensee was issued an exemption license pursuant to Section 5.04.040, but the exemption is found not to apply or no longer applies to the licensed business;

4. That the licensee has violated any provision of the California Business and Professions Code, Palm Desert Municipal Code, or any emergency order issued by the City Manager or City Council;



5. That the licensee has violated any conditions or restrictions of the license, conditional use permit, or any other permit issued by the City to licensee or has operated a business other than for which it has been licensed and/or permitted;

6. That the licensee has been held liable or convicted of any offense involving the maintenance of a nuisance resulting from any act performed in the exercise of any rights permitted by the issuance of the subject license;

7. That the licensee has violated any rule or regulation adopted by any governmental agency relating to the licensee's business;

8. That the licensee has conducted the licensed business in a manner contrary to the peace, health, safety, and the general welfare of the public.

B. Service. Any notice required to be served under this section must be served by personal service or first-class mail. Service is deemed effective on the date it is personally delivered or deposited in the mail. If the business maintains a physical location within the City, any notice or decision shall be posted on the site at which the business is located. Failure of any person to receive a notice properly served under this section does not affect the validity of the notice, service, decision, or any action or proceeding under this section.

C. Procedure for modification, suspension, or revocation. The city manager may issue a written notice of modification, suspension, or revocation of a license to the licensee if the city manager finds one or more of the grounds listed in subsection (A) of this section. The notice shall state the grounds for modification, suspension, or revocation of the license. If the city manager modifies a license, the notice shall include a description of how the license is modified. If the city manager suspends a license, the notice shall include a suspension period and any conditions required to lift the suspension following the suspension period.

5.04.080 Appeals.

A. Filing written notice of appeal. Any person aggrieved by any decision of the tax administrator or city manager must file an appeal within fifteen (15) calendar days following the date of service of the determination, notice, or decision. A written notice of appeal must contain the following information: (i) the name and contact information of the appellant, and (ii) the grounds for appeal in sufficient detail to enable the City Council and City to understand the nature of the controversy. The failure of any person who has been served with a determination, notice, or decision to timely and properly file an appeal is a failure to exhaust administrative remedies and the initial determination, notice, or decision will become final.

B. Notice of hearing. The City will notify the appellant in writing of the date, time, and location of the hearing at least ten (10) calendar days before the date of the scheduled hearing. The notice of hearing must be served by personal service or first-class mail. Service is deemed effective on the date it is personally delivered or



deposited in the mail. Failure of any person to receive a notice properly served under this section does not affect the validity of the notice, service, decision, or any action or proceeding under this section.

C. Appeal hearing. The appeal hearing shall be heard by the City Council. The tax administrator, city manager, and/or any other official from the City with knowledge of the matter and the appellant have the right to present evidence and witnesses. The formal rules of evidence and discovery do not apply. The rules of privilege are effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant or unduly repetitious evidence may be excluded. Oral evidence may be taken only on oath or affirmation. The parties may represent themselves or be represented by anyone of their choice. No party has the right to cross-examine any other party or witness except for good cause shown to the satisfaction of the City Council. The appellant may bring an interpreter to the hearing at his or her sole expense.

D. Final decision. The City Council's decision must be in writing and set forth the City Council's findings and final order. The City Council's decision is the final administrative decision of the City regarding the modification, suspension, or revocation of a license issued under this title. The City Council's decision is final and effective on the date of service of the decision. The decision must contain the following statement: "The decision of the City Council is final and binding. Judicial review of this decision is subject to the provisions and time limits set forth in California Code of Civil Procedure section 1094.6 *et seq.*" Failure to seek timely judicial review pursuant to California Code of Civil Procedure section 1094.5 *et seq.* means all objections to the City Council's decision are waived.

E. Effect and nature of decision. Upon suspension or revocation, the licensee shall cease operation of the business immediately, and any further operation shall be unlawful and a public nuisance. If the decision is to revoke the license, the licensee will not be issued a business license to operate the same business within one year after such revocation.

5.04.090 Violations, enforcement, and penalties.

A. Misdemeanor. A person who violates this title, who knowingly or intentionally misrepresents a material fact in procuring a license, or who willfully fails to exhibit one's license or permit on demand is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$1,000 or by imprisonment in jail for a period of not more than six months, or both, for *each* violation.

B. Penalty. The tax administrator shall add a penalty of ten percent (10%) of the business license tax on the tenth day of the month following the expiration date; twenty-five percent (25%) on the first day of the second month, and fifty percent (50%) on the first day of the third month after the expiration date thereof; provided, the amount of such penalties to be added shall in no event exceed fifty percent (50%) of the of the amount of the license due.



C. Tax owed by unlicensed business. The conviction and punishment of any person for engaging in any business without first obtaining a license to conduct such business shall not relieve such person from paying the license tax due and unpaid at the time of such conviction, nor shall the payment of any license tax prevent a criminal prosecution for the violation of any of the provisions of this code.

D. Revocation. Any business violating any of the provisions or failing to comply with any of the provisions of the Palm Desert Municipal Code or any emergency order shall be subject to business license revocation proceedings, pursuant to this chapter.

E. License tax debt to City. The license tax and penalty is a debt to the city. The city may bring an action to collect the debt.

F. Legal action. The city attorney may, on behalf of the city, take all appropriate legal action in order to collect such debts owing to the city, and may commence, or defend, in the name of the city in any court of competent jurisdiction, an action or actions relating to any amount due for new or renewal of business license taxes, including penalties, interest and deficit taxed revealed by audits. In case of recovery by the plaintiff, court costs, attorney's fees and auditor's fees shall be added to the judgment as costs to be collected from the defendant or defendants.

G. Remedies cumulative. All remedies prescribed hereunder shall be cumulative and the use of any 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 title, or any other provisions of this code.

H. No mandatory duty. Nothing contained in this Code shall be deemed to create a mandatory duty on the part of the City or any of its officers or employees to enforce this title or enforce it in any particular manner.”

SECTION 2. Severability. If any section, subsection, clause or phrase of this Ordinance or any part thereof is for any reason held to be invalid, unconstitutional, or unenforceable by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of the Ordinance. The City Council declares that it would have passed each section, subsection, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase would be declared invalid, unconstitutional or unenforceable.

SECTION 3. CEQA. The City Council hereby finds and determines that this Ordinance is exempt from CEQA pursuant to State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that the Ordinance would not have the potential or possibility for causing a significant effect on the environment. Specifically, the proposed changes to the Municipal Code are primarily technical and administrative in nature. The Ordinance would update the business license tax requirements and procedures. No construction is proposed and the amendments do not



constitute any project approvals. In reviewing the Ordinance the City Council has exercised its independent judgment and has reviewed and considered the Ordinance in light of all testimony received, both oral and written. Therefore, based upon the entire administrative record, the City Council hereby determines that no further environmental review is required for the Ordinance.

SECTION 4. Publication. The City Clerk of the City of Palm Desert, California, is hereby directed to publish a summary of this Ordinance in the Desert Sun, a newspaper of general circulation, published and circulated in the City of Palm Desert, California, and shall be in full force and effective thirty (30) days after its adoption.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Palm Desert, California, on the ____ day of _____, 2023 by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

KATHLEEN KELLY, Mayor

ATTEST:

Anthony Mejia, City Clerk
City of Palm Desert, California

APPROVED AS TO FORM:



Robert Hargreaves, City Attorney

