Title 3

REVENUE AND FINANCE

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Chapter 3.04

SALES AND USE TAX

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3.04.010 Statutory authority.

This chapter is adopted pursuant to Part 1.5, Division 2, of the Revenue and Taxation code of the state of California, and shall be known as the "uniform local sales and use tax ordinance." All subsequent amendments of the Revenue and Taxation Code which relate to the sales and use tax and which are not inconsistent with Part 1.5 of Division 2 of the Revenue and Taxation Code shall automatically become a part of this chapter. (1960 code § 21.1.1)

3.04.020 Purpose of provisions.

The city council hereby declares that the ordinance codified in this chapter is adopted to achieve the following, among other, purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To adopt a sales and use tax ordinance which complies with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;

B. To adopt a sales and use tax ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the state, insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;

C. To adopt a sales and use tax ordinance which imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes;

D. To adopt a sales and use tax ordinance which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting city sales and use taxes and at the same time minimize the burden of recordkeeping upon persons subject to taxation under the provisions of this chapter. (1960 code § 21.1.2)

3.04.030 Portions of Revenue and Taxation Code adopted by reference.

Except as otherwise provided in this chapter, and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this chapter as though fully set forth herein. (1960 code § 21.6)

3.04.040 Limitations on adoption of state law.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, wherever the state of California is named or referred to as the taxing agency, the name of this city shall be substituted therefor. The substitution, however, shall not be made when the word "State" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, the State Treasury, or the Constitution of the state of California; the substitution shall not be made when the result of that substitution would require action to be taken by or against the city, or any agency thereof, rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter; the substitution shall not be made in those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the state, where the result of the substitution would be to provide an exemption

from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the state under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or to impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provisions of that Code; the substitution shall not be made in Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code; and the substitution shall not be made for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 or in the definition of that phrase in Section 6203. (1960 code § 21.6.1)

3.04.050 Administration and operation – Contract with state.

Prior to the operative date, this city shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the sales and use tax ordinance codified in this chapter; provided, that if the city shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract, and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract, rather than the first day of the first calendar quarter following the adoption of the ordinance codified in this chapter. (1960 code § 21.2)

3.04.060 Rate of tax.

The rate of sales tax and use tax imposed by this chapter shall be one percent. (Ord. 1184 § 1, 1985; 1960 code § 21.1.3)

3.04.070 Sales tax imposed.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the city at the rate stated in LMC 3.04.060 of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in this city on and after the operative date. (1960 code § 21.3)

3.04.080 Place where sales consummated.

For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization. (1960 code § 21.4)

3.04.090 Use tax.

An excise tax is hereby imposed on the storage, use or other consumption in this city of tangible personal property purchased from any retailer on and after the operative date for storage, use or other consumption in this city, at the rate stated in LMC 3.04.060 of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax, regardless of the place to which delivery is made. (1960 code § 21.5)

3.04.100 Seller's permit not required when.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional seller's permit shall not be required by this chapter. (1960 code § 21.6.2)

3.04.110 Application of provisions relating to exclusions and exemptions.

A. LMC 3.04.120 shall be operative January 1, 1984.

B. LMC 3.04.130 shall be operative on the operative date of any act of the Legislature of the State of California which amends Section 7202 of the Revenue and Taxation Code or which repeals and reenacts Section 7202 of the Revenue and Taxation Code to provide an exemption from city sales and use taxes for operators of waterborne vessels in the same, or substantially the same, language as that existing in subdivisions (i)(7) and (i)(8) of Section 7202 as those subdivisions read on October 1, 1983. (Ord. 1155 § 1, 1983; 1960 code § 21.7)

3.04.120 Exclusions and exemptions.

A. The amount subject to tax shall not include any sales or use tax imposed by the state of California upon a retailer or consumer.

B. The storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city, in this state shall be exempt from the tax due under this chapter.

C. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

D. In addition to the exemptions provided in Section 6366 and 6366.1 of the Revenue and Taxation Code the storage, use, or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government is exempted from the use tax. (Ord. 1155 § 2, 1983; 1960 code § 21.7.1)

3.04.130 Exclusions and exemptions.

A. The amount subject to tax shall not include any sales or use tax imposed by the state of California upon a retailer or consumer.

B. The storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this state shall be exempt from the tax due under this chapter.

C. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of waterborne vessels to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

D. The storage, use, or other consumption of tangible personal property purchased by operators of waterborne vessels and used or consumed by such operators directly and exclusively in the carriage of persons or property of such vessels for commercial purposes is exempted from the use tax.

E. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

F. In addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code the storage, use, or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government is exempted from the use tax. (Ord. 1155 § 3, 1983; 1960 code § 21.7.2)

3.04.140 Enjoining collection prohibited.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the state or this city, or against any officer of the state or this city, to prevent or enjoin the collection under this chapter, or Part 1.5 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected. (1960 code § 21.8)

3.04.150 Alternating applicability of provisions.

At the time the provisions codified in this chapter go into operation, the provisions of Ordinances 271, 274, 282, 283, 414 and 467 shall be suspended and shall not again be of any force or effect until and unless for any reason the State Board of Equalization ceases to perform the functions incident to the administration and operation of the sales and use tax hereby imposed, provided, however, that if

for any reason it is determined that the city is without power to adopt this chapter, or that the State Board of Equalization is without power to perform the functions incident to the administration and operation of the taxes imposed by this article, the provisions of Ordinances 271, 274, 282, 283, 414 and 467 shall not be deemed to have been suspended, but shall be deemed to have been in full force and effect at the rate of one percent continuously from and after April 1, 1956. Upon the ceasing of the State Board of Equalization to perform the functions incident to the administration and operation of the taxes imposed by this chapter, the provisions of Ordinances 271, 274, 282, 283, 414 and 467 shall again be in full force and effect at the rate of one percent. Nothing in this chapter shall be construed as relieving any person of the obligation to pay to the city any sales and use tax accrued and owing by the reason of the provisions of Ordinances 271, 274, 282, 283, 414 and 467 in force and effect prior to and including March 31, 1956. (1960 code § 21.8.1)

Chapter 3.08

BUSINESS LICENSE TAX

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Article I. General Provisions

3.08.010 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. "Business" means and includes professions, trades and occupations, and all and every kind of calling, whether or not carried on for profit.

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

C. "Collector" means the city finance director.

D. "Engaging in business" means commencing, conducting or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

E. "Grocer" means and includes any business in which the principal activity consists of the sale of foodstuffs intended for human consumption, but shall not include restaurants or any other business where food products are prepared on the premises for immediate consumption.

F. "Gross receipts," except as otherwise specifically provided, means the gross receipts of the preceding fiscal year of the licensee or part thereof, and is defined as follows: The total amount actually received or receivable from all sales (within the city); the total amount or compensation actually received or receivable for the performance of any act or service (within the city), 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 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, commissions, 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. Transactions between a partnership and its partners;
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 sale as is refunded either in 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 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;
6. Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded;
7. 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;
8. As to a gasoline dealer, a portion of his receipts from the sale of motor vehicle fuels equal to the motor vehicle fuel tax imposed by and previously paid under the provisions of Part 2 of Division 2 of the Revenue and Taxation Code of the state;
9. As to a retail gasoline dealer, the special motor fuel license 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.

G. "Persons" means and includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts, business or common law trusts, societies and individuals transacting and carrying on any business in the city, other than as an employee.

H. "Route salesman" means any person having an established list of customers upon whom calls are made at least at monthly intervals.

I. "Sale" means and includes the transfer, in any manner or by any means whatsoever, of title to property for a consideration; the serving, supplying or furnishing for a consideration of any property; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price shall likewise be deemed to include any transaction which is or which, in effect, results in a sale within the contemplation of law.

J. "Sworn statement" means an affidavit sworn to before a person authorized to take oaths, or a declaration or certification made under penalty of perjury. (1960 code § 12.1)

3.08.020 Provisions enacted for revenue purposes.

This chapter is enacted solely to raise revenue for municipal purposes, and is not intended for regulations. (1960 code § 12.2)

3.08.030 License fees constitute tax – Limitations on effect of license.

The term "license," as used in this chapter, shall not be construed to mean a permit. The fees prescribed by the business license provisions of this article and Article II of this chapter constitute a tax for revenue purposes, and are not regulatory permit fees. The payment of a business license tax required by this article and Article II of this chapter, and its acceptance by the city, and the issuance of such license to any person shall not entitle the holder thereof to carry on any business unless he has complied with all of the requirements of this code and

all other applicable laws, nor to carry on any business in any building or on any premises designated in such license in the event that such building or premises are situated in a zone or locality in which the conduct of such business is in violation of any law. (1960 code § 12.2.1)

3.08.040 Constitutional apportionment – Adjustments.

A. None of the license taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or activities or sales outside the city so as to be violative of the equal protection and due process clauses of the Constitutions of the United States and the state of California.

B. In any case where a license tax is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce, or reflect activities or sales made outside of the city, violative of such constitutional classes, he may apply to the collector for an adjustment of the tax. Such application may be made before, at or within six months after payment of the prescribed license tax. The applicant shall, by sworn statement and supporting testimony, show this method of business and the gross volume or 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 license tax for the applicant an amount that is reasonable and nondiscriminatory, or, if the license tax has already been paid, shall order a refund of the amount over and above the license tax so fixed. In fixing the license tax to be charged, the collector shall have the power to base the license tax upon a percentage of gross receipts or any other measure which will assure that the license tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the license tax as prescribed by this chapter. Should the collector determine the gross receipts measure of license tax to be the proper basis, he may require the applicant to submit, either at the time of termination of applicant's business in the city, or at the end of each three-month period, a sworn statement of the gross receipts, and pay the amount of license tax therefor; provided, that no additional license tax during any one calendar year shall be required after the licensee shall have paid an amount equal to the annual license tax as prescribed in this chapter. (1960 code § 12.7)

3.08.050 Chapter provisions not exclusive.

Persons required to pay a license tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any license tax for the privilege of doing such business required under any other ordinance of the city, and shall remain subject to the regulatory provisions of other ordinances, except that this chapter shall repeal Ordinance 415 and amendments and codifications thereto, as contained in 1960 code Chapter 12. (1960 code § 12.3)

3.08.060 License tax – Required – Exceptions.

A. There are hereby imposed upon the businesses, trades, professions, calling and occupations specified in this chapter license taxes in the amounts hereinafter prescribed. It is unlawful for any person to transact, carry on and/or engage in any business, trade, profession, calling or occupation in the city without first having procured a license from the city to do so and paying the tax hereinafter prescribed, or without complying with any and all applicable provisions of this chapter.

B. This section shall not be construed to require any person to obtain a license prior to doing business within the city if such requirement conflicts with applicable statutes of the United States or of the state of California. Persons not so required to obtain a license prior to doing business within the city nevertheless shall be liable for payment of the tax imposed by this chapter. (1960 code § 12.4)

3.08.070 Exemptions – Generally.

A. Any person claiming an exemption to LMC 3.08.070 through 3.08.170 shall file a sworn statement with the collector stating the facts upon which exemption is claimed, and in the absence of such statement substantiating the claim, such person shall be liable for the payment of the taxes imposed by this chapter.

B. The collector shall, upon a proper showing contained in the sworn statement, issue a license to such person claiming exemption under this section without payment to the city for the license tax, the

minimum tax, or the registration fee required by this chapter.

C. The collector, after giving notice and a reasonable opportunity for hearing to a licensee, may revoke any license granted pursuant to the provisions of LMC 3.08.070 through 3.08.170 upon information that the licensee is not entitled to the exemption as provided herein. (1960 code § 12.8(j))

3.08.080 Exemptions – Agriculture.

The provisions of this chapter shall not require the payment of a license tax on the business of agriculture, except for the retail activities conducted in connection therewith. (1960 code § 12.8(b))

3.08.090 Exemptions – Benefit activities.

The provisions of this chapter shall not require the payment of a license tax for the conducting of any entertainment, concert, exhibition or lecture on scientific, historical, literary, benevolent or moral subjects within the city whenever the receipts of any such entertainment, concert, exhibition or lecture are to be appropriated to any church or school, or to any benevolent purpose within the city. (1960 code § 12.8(d))

3.08.100 Exemptions – Charitable purposes.

The provisions of this chapter shall not require the payment of a license tax to conduct, manage or carry on any business, occupation or activity on property which qualifies for tax exemption under Sections 206 and 214 of the Revenue and Taxation Code of the state. (1960 code § 12.8(c))

3.08.110 Exemptions – Disabled veterans.

Any veteran who is unable to obtain a livelihood by manual labor due to any physical disability may, at the discretion of the collector, obtain a license to hawk or peddle any goods, wares or merchandise without payment of any license tax, by applying to the license collector and producing a certificate from a duly licensed physician showing the applicant to be physically disabled, evidence of being a legal voter of the state, and a copy of an honorable discharge. (1960 code § 12.8(g))

3.08.120 Exemptions – Doctors maintaining office outside city.

The provisions of this chapter shall not apply to a doctor who maintains a professional office outside the city and who practices intermittently at Valley Memorial Hospital; provided, however, that as part of the sworn statement otherwise required by LMC 3.08.070, the physician claiming exemption shall certify that he is presently paying a business license tax to the city in which his office is located on the full amount of the receipts attributable to service rendered at Valley Memorial Hospital. (1960 code § 12.8(j))

3.08.130 Exemptions – Federal and state entities.

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 of the state of California from the payment of such taxes as are herein prescribed. (1960 code § 12.8(a))

3.08.140 Exemptions – Intercity freight carriers.

The provisions of this chapter shall not apply to intercity freight carriers who, from and after January 1, 1971, are paying an in-lieu tax to the state under the Highway Carriers Uniform Business License Tax Act; provided, however, this exemption shall not be deemed to prohibit the levying of any excise or license tax authorized pursuant to Division 2 of the Revenue and Taxation Code of the state. (1960 code § 12.8(i))

3.08.150 Exemptions – Nonprofit activities.

A. The provisions of this chapter shall not require the payment of a license tax for the conducting of any entertainment, dance, concert, exhibition or lecture by any benevolent, charitable, fraternal, educational, military, state, county or municipal organization or association whenever the receipts of any such entertainment, dance, concert, exhibition or lecture are to be appropriated for the purpose and objects for which such organization or association was formed and from which profit is not derived, either directly or indirectly, by any individual.

B. No business license under this article or Article II shall be required of any nonprofit institution, corporation, organization or association organized or conducted for nonprofit purposes only, when the receipts derived are to be wholly for the benefit of such organization and not in whole or in part for the private gain of any person. This exemp-

tion shall not apply to promoters employed by such nonprofit institutions, corporations, organizations or associations. (1960 code § 12.8(e))

3.08.160 Reserved.

3.08.170 Exemptions – Rental of one dwelling unit.

This chapter does not apply to the business of renting only one dwelling unit, including, but not limited to, a house, duplex, apartment, motel, roominghouse, hotel room, trailer court, mobile home, or other dwelling unit. A "dwelling unit" means a room or suite of two or more rooms designed for or occupied by one or more persons, or a family, for living or sleeping purposes. (Ord. 1412 § 1, 1993; 1960 code § 12.8(h))

3.08.180 Evidence of doing business.

When any person makes use of signs, circulars, cards, telephone books or newspapers, and advertises, holds out or represents that he is in business in the city, or when any person holds an active license or permit issued by a governmental agency indicating that he is in business in the city, and such person fails to deny by a sworn statement given to the collector that his is not conducting a business in the city, after being requested to do so by the collector, then these facts shall be considered prima facie evidence that he is conducting business in the city. (1960 code § 12.6)

3.08.190 Branch establishments – Separate licenses.

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, and each license shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in such license; provided, that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this chapter shall not be deemed to be separate places of business or branch establishments; and provided further, that any person conducting two or more types of businesses at the same location and under the same management, or at different locations, but which businesses use a single set or integrated set of books and records may, at this option, pay only one tax, calculated on all gross receipts of the businesses under the schedule that applies to the type of business of such person which requires the highest percentage payment on such gross receipts; except that a license fee in an amount established by city council resolution for each additional branch or location shall be paid upon issuance. (Ord. 1412 § 2, 1993; 1960 code § 12.5)

3.08.200 License – Contents.

Each person required to have a license under this chapter shall submit an application to the collector of the city. Upon the payment of the prescribed license tax, the collector shall issue a license, which shall contain the following information:

A. The name of the person to whom the license is issued;

B. The business licensed;

C. The place where the business is to be transacted and carried on and, when it is located in the city, a current certificate of occupancy number for the place of business;

D. The date of the expiration of the license;

E. Such other information as may be necessary for the enforcement of this chapter; and

F. Mailing address. (Ord. 1412 § 3, 1993; 1960 code § 12.9)

3.08.210 Application – First license.

A. Upon a person making application for the first license to be issued under this chapter, or for a newly established business, such person 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 license 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 license 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 license to a corporation or a partnership, the application shall set forth the names and places of residence of the officers or partners thereof;

5. In all cases where the amount of license tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the license tax to be paid by the applicant;

6. Any further information which the collector may require to enable him to issue the type of license applied for.

B. If the amount of the license tax to be paid by the applicant is measured by gross receipts, he shall estimate the gross receipts for the period to be covered by the license to be issued. Such estimate, if accepted by the collector as reasonable, shall be used in determining the amount of license tax to be paid by the applicant; provided, however, the amount of the license tax so determined shall be tentative only, and such person shall, within 30 days after the expiration of the period for which such license 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 license, and the license tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of renewal license taxes for other businesses, after deducting from the payment found to be due the amount paid at the time such first license was issued.

C. The collector shall not issue to any such person another license for the same or any other business until such person shall have furnished to him the sworn statement and paid the license tax as herein required. (1960 code § 12.10)

3.08.220 Application – Renewal business license tax.

A. In all cases, the applicant for the renewal of a license shall submit to the collector, on or before January 1st, the correct amount of tax and a sworn statement stating that the applicant has conformed to the applicable section of this article or Article II of this chapter.

B. The applicant/business must let the collector know of changes within the business pertaining to reclassification. Any changes pertaining to the business must be submitted to the collector. (Ord. 1406 § 1, 1993; 1960 code § 12.11)

3.08.230 Payment – Time and method.

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

B. Installment payment schedules may be requested by filing a written request with the collector, prior to the delinquency date of the license tax. Approval of the written request will be at the sole discretion of the collector. Payments will become delinquent on the tenth day of the month in which such payments are due. A fee set by resolution may be charged for this special processing. Installment license tax payments, if delinquent, will cause the balance of the license tax to become immediately due and payable and subject to the delinquency provision of LMC 3.08.370. (Ord. 1406 § 1, 1993; 1960 code § 12.20)

3.08.240 Minimum tax – Registration fee.

A. The minimum business license tax for a person affected by this chapter, unless specifically exempted from paying the tax, is $40.00, provided annual gross receipts exceed $5,000. The minimum tax may be prorated quarterly. If annual gross receipts are $5,000 or less, the minimum business tax is $10.00, unless the business is specifically exempted from the tax. In addition, a registration fee in an amount established by city council resolution is due at the time of application for a new license, provided the new license requires payment of at least the minimum business license tax. The registration fee is not required for renewal licenses.

B. There shall be no minimum tax on the business of renting, leasing or operating laundry equipment upon any person whose business is limited exclusively to such. (Ord. 1412 § 4, 1993; 1960 code § 12.34)

3.08.250 Reserved.

3.08.260 Refunds of overpayments.

No refund of an overpayment of taxes 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 three 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 on forms furnished by him and in the manner prescribed by him. Upon the filing of such a claim and when he determines that an overpayment has been made, the collector may refund the amount overpaid. (1960 code § 12.22)

3.08.270 Confidentiality of information – Disclosure restrictions.

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 license, or pay a license tax, 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 collection of taxes for the sole purpose of administering of enforcing any provisions of this chapter, or collecting taxes imposed hereunder;

B. The disclosure of information to, or the examination of records by, federal or state officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law upon subpoena;

C. The disclosure of information and results of examination of records of particular taxpayers, or relating to particular taxpayers, to a court of law in a proceeding brought to determine the existence or amount of any license tax liability of the particular taxpayers to the city;

D. The disclosure, after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees and guarantors if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax, or amounts of tax 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 his opinion the public interest would suffer thereby;

E. The disclosure of the names and addresses of persons to whom licenses 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 taxpayer files a claim for refund of license taxes or submits an offer of compromise with regard to a claim asserted against him by the city for license taxes, or when acting upon any other matter;

G. The disclosure of general statistics regarding taxes collected or business done in the city. (1960 code § 12.13)

3.08.280 Transferability – Change of ownership or location.

A license issued under this chapter is not transferable; provided, that if a license is issued authorizing a person to transact and carry on a business at a particular place, the licensee may, upon application therefor and paying a fee in an amount established by city council resolution, have the license amended to authorize the transacting and carrying on of the business under the license at some other location to which the business is or 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, is not 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. (Ord. 1412 § 5, 1993; 1960 code § 12.17)

3.08.290 Duplicate licenses.

A duplicate license may be issued by the collector to replace any license previously issued which has been lost or destroyed, upon the licensee filing a statement of such fact, and at the time of filing such statement paying to the collector a duplicate license fee in an amount established by city council resolution. (Ord. 1412 § 6, 1993; 1960 code § 12.18)

3.08.300 Posting and display of licenses.

A. Any licensee transacting and carrying on business at a fixed place of business in the city shall keep the license 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 license upon his person at all times while transacting and carrying on the business for which it is issued. (Ord. 1412 § 7, 1993; 1960 code § 12.9)

3.08.310 Statements and records – Audit and inspection.

A. 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 under this chapter. Such statement and each of the several items therein contained shall be subject to audit and verification by the collector, his deputies, or authorized employees of the city, who are hereby authorized to examine, audit and inspect such books and records of any licensee or applicant for license as may be necessary in their judgment to verify or ascertain the amount of license fee due.

B. All persons subject to the provisions of this chapter shall keep complete records of business transactions, including sales, receipts, purchases and other expenditures, and shall retain all such records for examination by the collector. Such records shall be maintained for a period of at least three years. No person required to keep records under this section shall refuse to allow authorized representatives of the collector to examine such records at reasonable times and places. (1960 code § 12.12)

3.08.320 Rules and regulations – Collector authority.

The collector may make rules and regulations not inconsistent with the provisions of this chapter as may be necessary or desirable to aid in the enforcement of the provisions of this chapter. The collector may require any licensee renting, leasing or operating coin-operated vending machines to submit a copy of any tax statement filed with any governmental agency which discloses gross receipts received from such machines. (1960 code § 12.17)

3.08.330 Collector powers – Filing deadline extensions.

A. In addition to all other power conferred upon him, 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.

B. For the purposes of deriving city revenue from this article and Article II, the collector shall also have the power to determine whether or not a person is engaged in business in the city when such question arises as a result of an occasional or a single isolated transaction during the course of one or more fiscal years. (1960 code § 12.16)

3.08.340 License tax – Deemed debt to city – Actions.

The amount of any license tax and penalty imposed by the provisions of this chapter shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent license tax and penalties and interest. (1960 code § 12.29)

3.08.350 Doing business without license does not waive requirements.

The conviction and punishment of any person for transacting any business without a license shall not excuse or exempt such person from the payment of any license due or unpaid at the time of such conviction, and nothing herein shall prevent a criminal prosecution of any violation of the business license provisions of this article and Article II of this chapter. (1960 code § 12.35)

3.08.360 Failure 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 he fails to file a corrected statement, or if any person subject to the tax imposed by this chapter fails to apply for a license, the collector may determine the amount of license tax due from such person by means of such information as he may be able to obtain.

B. If the collector is not satisfied with the information supplied in statements or applications filed, he may determine the amount of any license tax due

by means of any information he may be able to obtain.

C. If such a determination is made, the collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States Post Office at Livermore, California, postage prepaid, addressed to the person so assessed at his 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 tax. 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 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. (1960 code § 12.14)

3.08.370 Delinquent payment – Penalties.

A. 1. For failure to pay a license tax when due, the collector shall add a penalty as a percentage of the license tax as follows:

a. 25 percent beginning on March 1st;
b. 35 percent beginning on April 1st;
c. 50 percent beginning on May 1st.

2. No license shall be issued, nor one which has been suspended or revoked be reinstated or reissued, to any person who at the time of applying therefor is indebted to the city for any delinquent license taxes, unless the person, with the consent of the collector, enters into a written agreement with the city, through the collector, to pay the delinquent taxes, plus seven percent simple annual interest upon the unpaid balance, in monthly installments, or more often, extending over a period of not to exceed one year.

B. In any agreement so entered into, the person shall acknowledge the obligation owed to the city and agree that, if he or she fails to make timely payment of any installment, the whole amount unpaid shall become immediately due and payable, and that his or her current license shall be revocable by the collector upon 30 days' notice. If legal action is brought by the city to enforce collection under the agreement, the person shall pay all costs of suit incurred by the city or its assignee, including a reasonable attorney's fee. The execution of such an agreement shall not prevent the prior accrual of penalties on unpaid balances at the rate provided above, but no penalties shall accrue on account of taxes included in the agreement after the execution of the agreement, and the payment of the first installment, and during the time the person is not in breach of the agreement.

C. In the absence of a written agreement with the city, and in addition to the penalties imposed, any person who fails to remit any license fee imposed by the business license provisions of this chapter shall pay interest at the rate of seven percent per year on the amount of the fee, and is delinquent until paid. (Ord. 1412 § 8, 1993; 1960 code § 12.21)

3.08.380 Enforcement authority – Inspection of premises.

A. It shall be the duty of the collector, and he is hereby directed, to enforce each and all of the provisions of this chapter, and the chief of police shall render such assistance in the enforcement hereof as may from time to time be required by the collector or the city council.

B. The collector, in the exercise of the duties imposed upon him hereunder, and acting through his deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this chapter have been complied with.

C. The collector, and each and all of his assistants and any police officer, shall have the power and authority (upon obtaining an inspection warrant therefor) to enter, free of charge, and at any reasonable time, any place of business required to be licensed herein, and demand an exhibition of its license. Any person having such license theretofore issued, in his possession or under his control, who wilfully fails to exhibit the same on demand, is guilty of a misdemeanor, and subject to the penalties provided for by the provisions of this chapter. It shall be the duty of the collector and each of his assistants to cause a complaint to be filed against any and all persons found to be violating any of such provisions. (1960 code § 12.28)

3.08.390 Effect of chapter on past actions.

A. Neither the adoption of the ordinance codified in this chapter, nor its superseding of any portion of any other ordinance of the city shall in any manner be construed to affect prosecution for vio-

lation of any other ordinance committed prior to the effective date hereof, nor construed as a waiver of any license or any penal provisions applicable to any such violation, nor be construed to affect the validity of any bond or cash deposit required by any ordinance to be posted, filed or deposited, and all rights and obligations thereunto appertaining shall continue in full force and effect.

B. Where a license for revenue purposes has been issued to any person by the city, and the tax paid for the business for which the license has been issued under the provisions of any ordinance heretofore enacted and the term of such license has not expired, then the license tax prescribed for such business by this chapter shall have subtracted therefrom the prorated amount of the unexpired license. (1960 code § 12.31)

3.08.400 Appeal procedure.

Any person aggrieved by any decision of the collector with respect to the issuance or refusal to issue such license may appeal to the council by filing a notice of appeal with the clerk of the council. The council shall thereupon fix a time and place for hearing such appeal. 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 Post Office at Livermore, California, postage prepaid, addressed to such person at his last known address, The council shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this chapter. (1960 code § 12.15)

3.08.410 Reserved.

3.08.420 Violation – Remedies cumulative.

All remedies prescribed hereunder shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof. (1960 code § 12.30)

Article II. Classifications and Rates

3.08.430 Classification and reclassification.

A. In any case where a licensee or an applicant for a license believes that his individual business is not assigned to the proper classification under this section because of circumstances peculiar to it, as distinguished from other businesses of the same kind, he may apply to the collector for reclassification. Such application shall contain such information as the collector may deem necessary and require in order to determine whether the applicant's individual business is properly classified. The collector shall then conduct an investigation following which he shall assign the applicant's individual business to the classification shown to be proper on the basis of such investigation. The proper classification is that which, in the opinion of the collector, most nearly fits the applicant's individual business. The reclassification shall not be retroactive, but shall apply at the time of the next regularly ensuing calculation of the applicant's tax, except where the applicant applies for reclassification within 15 days of his original classification, in which case the reclassification shall be retroactive. No business shall be classified more than once in one year.

B. The collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office at Livermore, California, postage prepaid, addressed to the applicant at his last known address. Such applicant may, within 15 days after the mailing or serving of such notice, make written request to the collector for a hearing on his application for reclassification. If such request is made within the time prescribed, the collector shall cause the matter to be set for hearing before the city council within 15 days. The collector shall give the applicant at least 10 days' notice of the time and place of the hearing, in the manner prescribed above for serving notice of the action taken on the application for reclassification. The council shall consider all evidence adduced, and its findings thereon shall be final. Written notice of such finding shall be served upon the applicant in the manner prescribed above for service of the notice of the action taken on the application for reclassification. (1960 code § 12.23.11)

3.08.440 Retail sales business.

A. Every person engaged in the business of selling any goods, wares or merchandise at retail within the city limits, including that of route salesman, and not otherwise specifically taxed by other business license provisions of this article and Arti-

cle I of this chapter, shall pay an annual license fee of $.80 for each $1,000 of gross receipts.

B. For the purpose of this section, a "retail sale" or "sale at retail" means a sale of goods, wares or merchandise for any purpose other than resale in the regular course of business.

C. Fast-food Establishments. Every person engaged in the operation of a fast-food establishment shall pay a license fee of $2.40 for each $1,000 of gross receipts. For the purpose of this classification, "fast-food establishment" means a restaurant in a detached building primarily engaged in the business of providing food packaged and served in such a manner as to permit immediate consumption off the premises.

D. Grocers. Every person engaged in business as a grocer shall pay a license fee of $.50 for each $1,000 of gross receipts.

E. Motor Vehicle Sales. Every person engaged in the business of selling new or used motor vehicles at retail shall pay a license fee of $.50 for each $1,000 of gross receipts.

F. Real Property Sales. The sale of any more than two parcels of real property, improved or unimproved, in any one license tax year, shall be construed as a retail sale. (1960 code § 12.23)

3.08.450 Wholesale businesses.

A. For the purpose of this section, a "wholesale sale" or "sale at wholesale" means a sale of goods, wares or merchandise, including foodstuffs, for the purpose of resale in the regular course of business.

B. Every person engaged in the business of selling any goods, wares or merchandise at wholesale within the city limits, and delivered within the city, and not otherwise specifically taxed by other business license provisions of this article and Article I, shall pay an annual license fee of $.80 for each $1,000 of gross receipts.

C. Every person engaged in the business of selling any goods, wares or merchandise at wholesale within the city limits for delivery outside the city, where any element of the selling process has occurred within the city, and such transaction is not otherwise specifically taxed by other business license provisions of this article and Article I shall pay an annual license fee of $.80 based on 50 percent of gross receipts from such sales, unless otherwise exempted. (1960 code § 12.23.1)

3.08.460 Administrative headquarters and branch offices.

A. Every person conducting or carrying on the operation of an administrative headquarters or a branch office in the city shall pay a license fee of $.80 for each $1,000 of the total of all expenses incurred by the business at such administrative headquarters during the course of the period covered by the business license in question. This includes but is not limited to gross payroll, utilities, rent, supplies and equipment.

B. "Administrative headquarters" means a location where the principal business transacted consists of providing administrative or management-related services such as, but not limited to, recordkeeping, data processing, research, advertising, public relations, personnel administration, legal, and corporate headquarters services to other locations where the operations of the same business are conducted which lead more directly to the production of gross receipts.

C. "Branch offices" means a location within the city where the principal business transacted consists of providing management-related services such as, but not limited to, recordkeeping, public relations, sale-order preparation, advertising, personnel administration, intercompany or intracorporate legal services, and other services to other locations where the operation of the same business is conducted which more directly lead to the production of gross receipts.

D. A portion of a business which is a separate and clearly defined administrative headquarters may be taxed under this classification on that separate portion. (1960 code § 12.24.1)

3.08.470 Amusements and itinerant businesses – Flat rate.

Every person transacting and carrying on the businesses enumerated in this section shall pay a license tax as follows:

A. Circus or carnival, $250.00 for the first day, plus $150.00 for each additional day;

B. Other exhibitions or entertainments on an occasional basis not otherwise licensed, $20.00 per day for up to a 200-seat capacity, and $20.00 for each 200 or fraction thereof beyond the first 200;

C. Operation of a temporary place of sale, such as an auction at other than a fixed place of business, $60.00 per day;

D. Itinerant vendors, peddlers, hawkers, solicitors and telephone solicitors, $20.00 per day;

E. Cardrooms, $200.00 per year for each table;

F. Billiard rooms and poolrooms, $60.00 per year for the first table, plus $30.00 per year for each additional table;

G. Public dancehall, nightclub, or any place where dancing is permitted, $200.00 per year or $30.00 per night;

H. Amusement concession, when not connected with any fair or carnival, $20.00 per day per ride, game or concession. (Ord. 1212 § 1, 1986; 1960 code § 12.25)

3.08.480 Construction contractors.

A. Every person conducting or carrying on a business, who is required to be licensed as a contractor by the state, and who undertakes to or offers to undertake to, or submits bids to, or does himself or by or through others construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, 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, is defined as a contractor.

B. The term "contractor," as used in this section, also includes "subcontractor" and "specialty contractor," and shall pay an annual license fee of $.80 for each $1,000 of gross receipts for work engaged in at sites within the city. (1960 code § 12.23.6)

3.08.490 Interstate shipments exempted.

Nothing in this article or Article I shall be construed to require the inclusion in the computation of the amount of the license fee due hereunder of the gross receipts of the sale of goods which are shipped by the seller to points outside of the state of California. (1960 code § 12.23.2)

3.08.500 Manufacturing and processing businesses.

A. Each person engaged in the business of manufacturing or processing any goods, wares, merchandise, articles, substances or commodities at a fixed place of business within the city shall pay an annual license fee of $.80 for each $1,000 of gross receipts, less the value of raw materials or the value of the partially completed product at the time it enters the manufacturing process within the city.

B. Whenever:

1. There are no gross receipts because the manufacturing process does not result in a finished product; or

2. The final product consists principally of raw materials or component parts manufactured elsewhere by the licensee;

then the following alternate method of calculating gross receipts under this section shall be used: The total of all expenses incurred in the manufacturing process at the business location within the city, including, but not limited to, gross payroll, utilities, rent and equipment. The tax due is the greater of the calculation under subsection A or B of this section.

C. A business taxed under this section shall not be considered either a retailer or wholesaler with respect to the sale of goods manufactured by such business within the city. (Ord. 1412 § 9, 1993; 1960 code § 12.24)

3.08.510 Money-lending businesses.

Every person conducting, managing or carrying on the business of lending money or advancing credit, or arranging for the loan of money or the advancing of credit as principal or agent, including, but not limited to, savings and load institutions, finance companies, mortgage-loan brokers, moneylenders or money brokers, where the obligation to repay the money lent or debt incurred or to compensate for the advance of credit is secured by a lien on real or personal property, or some interest in real property, unless such business is exempt therefrom by law, shall pay an annual license fee of $2.40 per $1,000 of gross receipts. (1960 code § 12.23.4)

3.08.520 Outside or delivery businesses.

A. Every person not having a fixed place of business within the city who engages in business within the city shall pay a license tax at the same rate prescribed in this chapter for persons engaged in the same type of business from and having a fixed place of business within the city.

B. Every person not having a fixed place of business within the city who delivers goods, wares or merchandise of any kind by vehicle, or who provides any services by the use of vehicles in the city shall pay a license tax of $60.00 per year per vehicle. (1960 code § 12.26)

3.08.530 Professional, semiprofessional or connected businesses.

A. As used in this section, "broker" shall include "commission merchant." The term "commission merchant" means a person who, for compensation in the form of commission, engages in selling activities, including the solicitation or negotiation of a sale or the forwarding of sales orders which lead to the sale of goods, wares or merchandise owned by some person other than the commission merchant. The business of a commission merchant shall be deemed to include also the buying and selling of goods, wares or merchandise by a person, to the extent that the person:

1. Does not engage in the business of manufacturing, refining, fabricating, milling, treating or other processing of the goods, wares or merchandise bought and sold, and does not cause such goods, wares or merchandise to be manufactured, refined, fabricated, milled, treated or otherwise processed;

2. Does not obtain or retain title to such goods, wares or merchandise except in one or more of the following situations: While such may be in transit, or for short periods of time before transportation commences or after it ceases; and

3. Does not store or warehouse such goods, wares or merchandise except during one or more of the following situations: While such goods, wares or merchandise are actually in transit or for short periods of time before transportation commences or after it ceases.

B. Every person engaged in any business of a professional, semiprofessional, or connected or pertinent business nature shall pay an annual license fee of $1.60 for each $1,000 of gross receipts for services performed in the city. The following list includes but shall not be limited to several examples of professional, semiprofessional or connected businesses: accountant; advertising; advertising counsel, analyst; appraiser, including State Inheritance Tax appraiser; architect; artist; assayer; attorney at law; attorney, patent; auditor; bail-bond broker; barber; beautician; broker; business opportunity broker; business and safety consultant; business or public agency consultant; cemetery broker; certified public accountant; chiropodist; chiropractor; civil engineer; collection agency or mercantile agency; commercial artist; consulting engineer; dentist; designer or decorator; draftsman; drugless practitioner (provided, however, that this section shall not apply to persons who treat the sick through prayer or spiritual means); electrical engineer; electrologist; employment agency; geologist, herb doctor (prescribes); illustrator or showcard writer; insurance adjuster or claims adjuster; investment and investment trust; insurance broker; landscape gardener or landscape architect; lapidary; mapmaker or cartographer; mechanical engineer; mineral, oil and gas broker; mortician; naprapath and naturopath; oculist; optician; optometrist; osteopath; outdoor advertising; pharmacist; physician; physiotherapist; psychologist; podiatrist; real estate broker, and salesmen not on salary; stock and bond broker; surgeon; surveyor; tax counselor; taxidermist; veterinarian; and X-ray laboratory.

C. Nothing contained in this section shall be deemed or construed as applying to any person engaged in any of the professions or occupations hereinbefore enumerated, solely as an employee carrying on any such business in the city.

D. Every person conducting, managing or carrying on the business of furnishing reports on persons to insurance companies for underwriting purposes, or furnishing reports on persons to mercantile concerns as a basis for extending credit, shall be classified as "semiprofessional," and shall pay an annual license fee based upon the schedule set forth in this section. (1960 code § 12.23.3)

3.08.540 Recreation and entertainment.

A. Every person engaging in the business of exhibiting or operating any amusement device shall pay an annual license fee of $5.00 for each $1,000 of gross receipts. For the purpose of this section, "amusement device" means any electrical or mechanical apparatus which, upon insertion of a coin, slug or token in any slot or receptacle attached to or connected with such apparatus, operates or may be operated for use as a game, contest or amusement, including, but not limited to, mechanical or electrical phonograph-record players.

B. Every other person engaged in the business of providing entertainment, recreation or amusement, and not otherwise specifically taxed by other business license provisions of this article or Article I shall pay an annual license fee of $.80 for each $1,000 of gross receipts. For the purpose of this section, the "business of providing entertainment, recreation or amusement" shall include but is not limited to the following: theatrical or music entertainment, all shows or exhibits, exhibiting motion

pictures, sports and athletic exhibitions or contents, poolroom or billiard room, bowling alley, golf course, and circus. (1960 code § 12.23.5)

3.08.550 Rental of commercial property.

A. Every person engaged in the business of renting or letting any building, structure or other property for commercial purposes, or a portion of such building, structure or property within the city, for a purpose other than dwelling, sleeping or lodging to a tenant, shall pay an annual license fee of $1.20 for each $1,000 of gross receipts.

B. A lessor otherwise subject to the license fee described in subsection A of this section shall not be exempt therefrom by reason of the fact that one or more persons may reside within a building or structure where the primary purpose of the particular tenancy or the primary use or right to use by the tenant is for some purpose other than dwelling, sleeping or lodging. (1960 code § 12.23.8)

3.08.560 Rental of residential property.

Each person engaged in the business of renting, leasing, conducting or operating a house, duplex, apartment, motel, roominghouse, hotel, trailer court, or mobile home consisting of a total of two or more dwelling units shall pay an annual license fee of $1.20 for each $1,000 of gross receipts. The term "dwelling unit" shall be as defined in LMC 3.08.170. (Ord. 1412 § 10, 1993; 1960 code § 12.24)

3.08.570 Utilities.

A. Persons carrying on, conducting, managing or engaging in the business of providing utility service shall pay an annual license fee of $.80 for each $1,000 of gross receipts.

B. For the purpose of this classification, "utility service" shall include, but not be limited to, telephone, telegraph, gas, electric, CATV, and garbage and rubbish collection; provided, however, that any tax levied under this classification on a utility specified in the first paragraph of Section 14 of Article XIII of the State Constitution shall not exceed in amount that permissible under said Section 14. (1960 code § 12.23.9)

3.08.580 Vending machines.

Each person engaged in the letting, leasing or operation of coin-operated vending machines or other mechanical devices, unless enumerated by another section of this article, shall pay a license tax of $5.00 for each $1,000 of gross receipts from such machines or devices. (Ord. 1412 § 11, 1993; 1960 code § 12.25.1)

3.08.590 Warehousing and storage.

Persons carrying on, conducting, managing or engaging in any business consisting of warehousing or storage shall pay an annual tax of $.80 for each $1,000 of gross receipts. (1960 code § 12.24.2)

3.08.600 Water.

Any person, firm or corporation engaged in the business of selling water to the city or to the inhabitants of the city shall pay a license tax of one percent of its annual gross receipts, payable quarterly, and such person, firm or corporation shall submit a verified quarterly statement showing its gross receipts for the preceding quarter within 30 days after such quarter. (1960 code § 12.23.10)

3.08.610 Miscellaneous businesses.

Any person engaged in a business not specifically taxed by other provisions of this article or Article I of this chapter, and not otherwise exempted, shall pay an annual tax of $1.60 for each $1,000 of gross receipts. (1960 code § 12.26.1)

3.08.620 Reserved.

Article III. Additional Tax on Residential Construction Businesses

3.08.630 Definitions.

In this article, unless the context otherwise requires:

A. "Construction cost" shall be determined as follows:

1. For construction of all residential units except spaces in mobile home parks, the construction cost shall be determined by multiplying the total number of square feet in the residential unit by the cost of construction per square foot. The cost of construction per square foot shall be determined by reference to the most recent Building Valuation Data, published by the International Conference of Building Officials in Building Standards Magazine.

2. For construction of a mobile home park, or spaces in a mobile home park, the construction

cost shall be determined by the developer's cost, and shall include the cost of installing all improvements in the mobile home park necessary to residential use.

B. "Mobile home" means a trailer coach defined by Section 635 of the State Vehicle Code, used for human habitation.

C. "Residential unit" means a single-family dwelling, a dwelling unit in a duplex, or any other place designed for human occupancy which contains a kitchen. This term shall also include a sleeping room in a hotel or motel with or without kitchen facilities, but shall exclude space designed for use as a garage or carport. Construction of rental spaces in a mobile home park shall be deemed, likewise, to be construction of a residential unit. (1960 code § 12.51)

3.08.640 Imposition of tax – Rate.

A business license tax is hereby imposed solely for revenue purposes, in lieu of any other business license tax imposed in this chapter, upon every person transacting and carrying on the business of the construction of a residential unit or units in the city, or the construction of a mobile home park or spaces in a mobile home park in the city. The rate of such tax shall be one and three-fourths percent of the cost of construction of each residential unit; provided, however, that the total tax herein imposed shall not be less than $650.00 for each residential unit. (1960 code § 12.52)

3.08.650 Exemptions from tax.

The tax imposed by this article shall not apply to the following:

A. The construction of a residential unit which is a replacement equivalent in size for a unit being removed from the same parcel of land;

B. The construction of any building or unit by a bank, including national banking associations;

C. The construction of a building by an "insurer," as that term is defined in Article XIII, Section 14 4/5, of the California Constitution;

D. The construction of a building on property which qualified for tax exemption under Sections 206, 207 and 214 of the State Revenue and Taxation Code, if the applicant for the building permit indicates that the building, when constructed on the property, shall be used for the same purposes for which the property is granted exemption;

E. The construction of a building by the federal or state government or any political subdivision of the state. (1960 code § 12.53)

3.08.660 Computation – Due date.

The tax due hereunder shall be determined at the time of issuance of a building permit for the construction applied for, and shall be paid concurrently with such application; provided, however, that for construction of a mobile home park, or spaces in a mobile home park, the tax shall initially be computed from estimates of construction cost submitted by the developer, which tax shall be paid at the time of issuance of the building permit; and provided, further, that if actual construction cost of a mobile home park, or spaces in a mobile home park, exceeds the estimated construction cost, an additional tax on the additional cost shall be paid before issuance of a certificate of occupancy for the mobile home park or spaces in the mobile home park. (1960 code § 12.52)

3.08.670 Liability for payment – Enforcement.

The tax shall be due from the person by whom a residential unit is constructed. The building official shall collect the tax as set forth in LMC 3.08.640 and 3.08.660. The amount due shall constitute a debt payable to the city, and an appropriate city official may bring action in the name of the city for the collection of such a debt. (1960 code § 12.55)

3.08.680 Annexation fee credited toward tax.

In the event that a residential unit is constructed upon land covered by an annexation agreement with the city of Livermore, and such annexation agreement provides for the payment of an annexation fee payable at the time of the issuance of the building permit, and such annexation fee is paid pursuant to the terms of such agreement, then, in such event, the annexation fee so paid shall be credited toward the payment of the tax herein provided. (1960 code § 12.54)

3.08.690 Refunds.

The tax paid to the city under this article for a building or unit of a building which is not constructed shall be refunded upon application of the taxpayer and a showing to the satisfaction of the director of finance that the building or unit has not been constructed or construction begun, and that

the building permit issued for the building or unit is canceled or surrendered. (1960 code § 12.57)

3.08.700 Disposition of revenue.

All of the tax proceeds shall be placed in the general fund. (Ord. 1430 § 1, 1994; 1960 code § 12.58)

3.08.710 Construction or occupancy without building permit or tax payment prohibited – Penalty.

Should a person construct a residential unit or building without having obtained a building permit therefor and without having paid the tax required by this article, if the building is not abated by the city, the tax imposed by this article shall become immediately due and payable by the person originally liable for such tax, his successors or assigns, of the unit or building. In addition to such tax, there shall be added a penalty of 25 percent of the tax, which shall become immediately payable in the same manner as the tax. The tax and penalty shall bear interest at the rate of one and one-half percent per month until paid. No occupancy permit may be issued for, and it is unlawful for any person to occupy or offer for occupancy, a residential unit or building in the city unless the tax imposed by this article upon the construction of such unit or building is paid. (1960 code § 12.56)

3.08.720 Operative date.

The tax imposed by this article shall be collected with all building permits for residential units or buildings issued on and after June 26, 1978, or upon the construction of any such unit or building constructed without a building permit on or after said date. (1960 code § 12.59)

Article IV. Industrial Construction Tax

3.08.730 Definitions.

In this chapter unless the context otherwise requires:

A. "Construction" includes construction of new units as well as alteration to existing units which would increase the square footage by greater than 10 percent.

B. "Construction cost" shall be determined by multiplying the total number of square feet in the industrial unit by the cost of construction per square foot. The cost of construction per square foot shall be determined by reference to the most recent building valuation data published by the International Conference of Building Officials in Building Standards Magazine.

C. "Industrial unit" is a structure designed for industrial use.

D. "Industrial use" includes all uses (primary, general, specific, accessory, conditional, etc.) which are permitted by the city's zoning ordinance in an industrial district. (Ord. 1135 § 1, 1983; 1960 code § 12.60)

3.08.740 Imposition of tax – Rate – Due date – Computation – Delinquency.

A. Imposition – Rate. A business license tax is imposed solely for revenue purposes, in lieu of any other business license tax imposed in this chapter, upon every person transacting and carrying on the business of the construction of an industrial unit or units in the city. The rate of such tax shall be one and three-quarters percent of the cost of construction of each unit.

B. Due Date – Computation. The amount of the tax shall be determined and paid at the time of issuance of a building permit for the construction applied for. (Ord. 1135 § 1, 1983; 1960 code § 12.61)

3.08.750 Exceptions.

The tax imposed by this chapter shall not apply to the following:

A. The construction of an industrial unit which is a replacement equivalent in size for a unit being removed from the same parcel of land;

B. The construction of any building or unit by a bank, including national banking associations;

C. The construction of a building by an "insurer," as that term is defined in Article XIII, Section 14-4/5, of the California Constitution;

D. The construction of a building on property which qualifies for tax exemption under Section 206, 207 and 214 of the Revenue and Taxation Code, State of California, if the applicant for the building permit indicates that the building when constructed on the property shall be used for the same purposes for which said property is granted exemption;

E. The construction of a building by the federal or state government or any political subdivision of the state. (Ord. 1135 § 1, 1983; 1960 code § 12.62)

3.08.760 Credit against tax for annexation fee paid.

In the event that an industrial unit is constructed upon land covered by an annexation agreement with the city and such annexation agreement provides for the payment of an annexation fee payable at the time of the issuance of the building permit and such annexation fee is paid pursuant to the terms of such agreement, then the annexation fee so paid shall be credited toward the payment of the tax herein provided. (Ord. 1135 § 1, 1983; 1960 code § 12.63)

3.08.770 Tax liability and enforcement.

The tax shall be due from the person by whom an industrial unit is constructed. The building official shall collect the tax as set forth in LMC 3.08.020. The amount due shall constitute a debt payable to the city, and an appropriate city official may bring action in the name of the city for the collection of such debt. (Ord. 1135 § 1, 1983; 1960 code § 12.64)

3.08.780 Construction or occupancy without permit.

Should a person construct an industrial unit without having obtained a building permit therefor and without having paid the tax required by this chapter, if the unit is not abated by the city, the tax imposed by this chapter shall become immediately due and payable by the person originally liable for such tax, his successors or assigns. In addition to such tax, there shall be added a penalty of 25 percent of the tax, which shall become immediately payable in the same manner as the tax. The tax and penalty shall bear interest at the rate of one and one-half percent per month until paid. No occupancy permit may be issued for, and it shall be unlawful for any person to occupy or offer for occupancy, an industrial unit in the city unless the tax imposed upon the construction of such unit by this chapter is paid. (Ord. 1135 § 1, 1983; 1960 code § 12.65)

3.08.790 Refunds.

The tax paid to the city under this chapter for a unit which is not constructed shall be refunded upon application of the taxpayer and a showing to the satisfaction of the administrative services director that the unit has not been constructed or construction begun and that the building permit issued for the unit is canceled or surrendered. (Ord. 1895 § 5, 2010; Ord. 1135 § 1, 1983; 1960 code § 12.66)

3.08.800 Proceeds of tax.

The proceeds of the tax received pursuant to LMC 3.08.020 shall be placed in the city's general fund. (Ord. 1135 § 1, 1983; 1960 code § 12.67)

3.08.810 Operative date.

The tax imposed by this chapter shall be collected with all building permits for industrial units or buildings applied for on and after June 14, 1983, or upon the construction of any such unit or building constructed without a building permit on or after said date. (Ord. 1135 § 1, 1983; 1960 code § 12.68)

Article V. Transfer of Certain Tax Functions to County

3.08.820 Transfer of duties elected by city – Statutory authority.

Pursuant to the provisions of Title 5, Division 1, Part 2, Chapter 2, Article 1, Sections 51500 to and including 51507 of the Government Code of the state, the city council does hereby elect that the duties of assessing property and the collection of real property and unsecured personal property taxes in the city be, and the same are hereby transferred to, the assessor and tax collector of the county of Alameda, the county in which the city is situated. (1960 code § 21.70)

3.08.830 Compensation for county functions.

The city shall pay to the county of Alameda such compensation for the functions performed by the county, as provided for in LMC 3.08.610, as may be fixed by agreement between the board of supervisors of the county and the city council, and that the making of such agreement is hereby authorized. (1960 code § 21.71)

Chapter 3.12

HOTEL TRANSIENT OCCUPANCY TAX

Sections:

3.12.010 Statutory authority.
3.12.020 Definitions.
3.12.030 Amount of tax imposed.
3.12.040 Exemptions.
3.12.050 Operator's duties.
3.12.060 Registration of hotels.
3.12.070 Reporting and remitting tax.
3.12.080 Records to be kept.
3.12.090 Delinquent payment – Penalties and interest.
3.12.100 Failure to collect and report – Determination of tax by administrative services director.
3.12.110 Actions to collect.
3.12.120 Refunds.
3.12.130 Appeal procedure.
3.12.140 Effective date.

3.12.010 Statutory authority.

This chapter is adopted pursuant to the authorization contained in Chapter 6, Part 1, Division 1 of Title 5 of the Government Code of the state. (1960 code § 21.83)

3.12.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

A. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

B. "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms, or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

C. "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his function through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter, and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

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

E. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel, valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property, and services of any kind or nature, without any deduction therefrom whatsoever.

F. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered. (1960 code § 21.84)

3.12.030 Amount of tax imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the administrative services director may require that such tax shall be paid

directly to the administrative services director. (Ord. 1895 § 5, 2010; Ord. 1143 § 1, 1983; 1960 code § 21.85)

3.12.040 Exemptions.

A. No tax shall be imposed upon:

1. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax provided in this chapter;

2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

B. No exemption shall be granted except upon a claim therefor made at the time rent is collected, and under penalty of perjury, upon a form prescribed by the administrative services director. (Ord. 1908 § 12, 2010; 1960 code § 21.86)

3.12.050 Operator's duties.

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of the tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided. (1960 code § 21.87)

3.12.060 Registration of hotels.

Within 30 days after the effective date of the ordinance codified in this chapter, or within 30 days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register the hotel with the finance director and obtain from him a "Transient Occupancy Registration Certificate," to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

A. The name of the operator;

B. The address of the hotel;

C. The date upon which the certificate was issued;

D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Administrative Services Director for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Administrative Services Director. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, not to operate a hotel without strictly complying with all local applicable laws, including, but not limited to, those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit." (Ord. 1908 § 13, 2010; 1960 code § 21.88)

3.12.070 Reporting and remitting tax.

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the administrative services director, make a return to the administrative services director, on forms provided by her, of the total rents charged and received, and the amount of tax collected from transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the administrative services director. The administrative services director may establish shorter reporting periods for any certificate holder if she deems it necessary in order to ensure collection of the tax, and she may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the administrative services director. (Ord. 1908 § 14, 2010; 1960 code § 21.89)

3.12.080 Records to be kept.

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city, which records the administrative services director shall have the right to inspect at all reasonable times. (Ord. 1908 § 15, 2010; 1960 code § 21.93)

3.12.090 Delinquent payment – Penalties and interest.

A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of 10 percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the ten-percent penalty first imposed.

C. Fraud. If the administrative services director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid. (Ord. 1908 § 16, 2010; 1960 code § 21.90)

3.12.100 Failure to collect and report – Determination of tax by administrative services director.

A. If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the administrative services director shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the administrative services director shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter.

B. In case such determination is made, the administrative services director shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may, within 10 days after the serving or mailing of such notice, make application in writing to the finance director for a hearing on the amount assessed.

C. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the administrative services director shall become final and conclusive and immediately due and payable. If such application is made, the administrative services director shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties.

D. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the administrative services director shall determine the proper tax to be remitted, and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in LMC 3.12.130. (Ord. 1908 § 17, 2010; 1960 code § 21.91)

3.12.110 Actions to collect.

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator, which has not been paid to the city, shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city of Livermore for the recovery of such amount. (1960 code § 21.95)

3.12.120 Refunds.

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the administrative services director within three years of the date of payment. The claim shall be on forms furnished by the administrative services director.

B. An operator may claim a refund, or take as credit against taxes collected but unremitted, the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the administrative services director that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient directly to the administrative services director, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the administrative services director that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. (Ord. 1908 § 18, 2010; 1960 code § 21.94)

3.12.130 Appeal procedure.

Any operator aggrieved by the decision of the administrative services director with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within 15 days of the serving or mailing of the determination of tax due. The council shall fix a time and place of hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known place of address. The findings of the council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 1908 § 19, 2010; 1960 code § 21.92)

3.12.140 Effective date.

This chapter shall be effective 30 days from and after the date of the passage of the ordinance codified herein, except that the tax imposed by the foregoing chapter shall become operative and be imposed on the first day of October, 1983, and shall not apply prior to that date. (Ord. 1143 § 2, 1983; 1960 code § 21.96)

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amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the finance director that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient directly to the finance director, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the finance director that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. (1960 code § 21.94)

3.12.130 Appeal procedure.

Any operator aggrieved by the decision of the finance director with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within 15 days of the serving or mailing of the determination of tax due. The council shall fix a time and place of hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known place of address. The findings of the council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (1960 code § 21.92)

3.12.140 Effective date.

This chapter shall be effective 30 days from and after the date of the passage of the ordinance codified herein, except that the tax imposed by the foregoing chapter shall become operative and be imposed on the first day of October, 1983, and shall not apply prior to that date. (Ord. 1143 § 2, 1983; 1960 code § 21.96)

Chapter 3.13

TRI-VALLEY TOURISM BUSINESS IMPROVEMENT DISTRICT

Sections:

3.13.010 Statutory authority.
3.13.020 Boundaries.
3.13.030 Amendments to state law.
3.13.040 Purpose.
3.13.050 Definitions.
3.13.060 Amount of assessments.
3.13.070 Exemptions.
3.13.080 Reporting and remitting assessment.
3.13.090 Records to be kept.
3.13.100 Delinquent payment – Penalties and interest.
3.13.110 Failure to collect and report – Determination of assessment by finance director.
3.13.120 Actions to collect.
3.13.130 Refunds.
3.13.140 Appeal procedure.
3.13.150 Effective date.

3.13.010 Statutory authority.

There is established in the cities of Pleasanton, Livermore, San Ramon and Dublin the Tri-Valley tourism business improvement district (“the district”) pursuant to Resolution No. 2005-197 of the city of Livermore and, under the provisions of the Parking and Business Improvement District Law of 1994, as set forth in the Streets and Highways Code of the State, Section 36600 et seq. (Ord. 1784 § 1, 2006)

3.13.020 Boundaries.

The boundaries of the district shall be the corporate limits of the cities of Pleasanton, Livermore, San Ramon and Dublin, as such corporate limits are amended from time to time. (Ord. 1784 § 1, 2006)

3.13.030 Amendments to state law.

The businesses and operation of the district shall be subject to any amendments to the Parking and Business Improvement District Law of 1994, as amended. (Ord. 1784 § 1, 2006)

3.13.040 Purpose.

The purposes for which the assessments collected under this chapter shall be used are the statutory purposes set forth in Section 36600 et seq. of the Streets and Highways Code of the State, or one or more of the following purposes:

A. Sales and marketing programs and activities designed to attract overnight groups.

B. Communications and public relations activities and services to build greater awareness of Tri-Valley businesses and the Tri-Valley region as a tourism, meeting, and event destination.

C. Administrative costs and operation. (Ord. 1784 § 1, 2006)

3.13.050 Definitions.

Except where the context shall otherwise require, the definitions given in this section govern the construction of this chapter:

A. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

B. "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms, or any portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

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

D. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of 30 consecutive calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired, unless there is an agreement in writing between a hotel and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered. (Ord. 1784 § 1, 2006)

3.13.060 Amount of assessments.

All hotels with 35 or more rooms within the boundaries of the district shall be subject to an assessment based upon $1.00 per paid occupied room per night. (Ord. 1784 § 1, 2006)

3.13.070 Exemptions.

Stays by persons who are otherwise exempt from paying a transient occupancy tax as defined in Chapter 3.12 LMC shall be exempt from the assessment. (Ord. 1784 § 1, 2006)

3.13.080 Reporting and remitting assessment.

Each hotel shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the finance director, make a return to the finance director, on forms provided by the city, of the total number of rooms occupied per night, and the amount of assessment collected from occupied rooms. At the time the return is filed, the full amount of the assessment collected shall be remitted to the finance director. The finance director may establish shorter reporting periods for any hotel if the director deems it necessary in order to ensure collection of the assessment, and may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All assessments collected by hotels pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the finance director. (Ord. 1784 § 1, 2006)

3.13.090 Records to be kept.

It shall be the duty of every hotel liable for the collection and payment to the city of any assessment imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such assessment as he may have been liable for the collection of and payment to the city, which records the finance director shall have the right to inspect at all reasonable times. (Ord. 1784 § 1, 2006)

3.13.100 Delinquent payment – Penalties and interest.

A. Original Delinquency. Any hotel that fails to remit any assessment imposed by this chapter within the time required shall pay a penalty of 10 percent of the amount of the assessment in addition to the amount of the assessment.

B. Continued Delinquency. Any hotel that fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10 percent of the amount of the assessment in addition to the amount of the assessment and the 10 percent penalty first imposed.

C. Fraud. If the finance director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the assessment shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Interest. In addition to the penalties imposed, any hotel who fails to remit any assessment imposed by this chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalties Merged with Assessment. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the assessment herein required to be paid. (Ord. 1784 § 1, 2006)

3.13.110 Failure to collect and report – Determination of assessment by finance director.

A. If any hotel fails or refuses to collect the assessment and to make, within the time provided in this chapter, any report and remittance of the assessment or any portion thereof required by this chapter, the finance director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of the assessment due. As soon as the finance director shall procure such facts and information as is able to be obtained upon which to base the assessment imposed by this chapter and payable by any hotel who has failed or refused to collect the same and to make such report and remittance, the finance director shall proceed to determine and assess against such business lodging the assessment, interest and penalties provided for by this chapter.

B. In case such determination is made, the finance director shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the business lodging so assessed at his last known place of address. Such business lodging may, within 10 days after the serving or mailing of such notice, make application in writing to the finance director for a hearing on the amount assessed.

C. If application by the hotel for a hearing is not made within the time prescribed, the assessment, interest and penalties, if any, determined by the finance director, shall become final and conclusive and immediately due and payable. If such application is made, the finance director shall give not less than five days' written notice in the manner prescribed herein to the hotel, to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such assessment, interest and penalties.

D. At such hearing, the hotel may appear and offer evidence why such specified assessment, interest and penalties should not be so fixed. After such hearing, the finance director shall determine the proper assessment to be remitted, and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such assessment, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in LMC 3.13.140. (Ord. 1784 § 1, 2006)

3.13.120 Actions to collect.

Any assessment required to be paid by any person under the provisions of this chapter shall be deemed a debt owed by the hotel to the city. Any such assessment collected by a hotel, which has not been paid to the city, shall be deemed a debt owed by the hotel to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city of Livermore for the recovery of such amount. (Ord. 1784 § 1, 2006)

3.13.130 Refunds.

A. Whenever the amount of any assessment, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the finance director in accordance with the provisions of Chapter 3.42 LMC and California Government Code Section 900 et seq. The claim shall be on forms furnished by the finance director.

B. A hotel may claim a refund, or take as credit against assessments collected but unremitted, the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the finance director that the person from whom the assessment has been collected was not a person who utilized the hotel.

C. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. (Ord. 1784 § 1, 2006)

3.13.140 Appeal procedure.

Any hotel aggrieved by the decision of the finance director with respect to the amount of such assessment, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within 15 days of the serving or mailing of the determination of assessment due. The council shall fix a time and place of hearing such appeal, and the city clerk shall give notice in writing to such hotel at his last known place of address. The findings of the council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 1784 § 1, 2006)

3.13.150 Effective date.

This chapter shall be effective 30 days from and after the date of the passage of the ordinance codified herein, except that the assessment imposed by the foregoing chapter shall become operative and be imposed on February 9, 2006, and shall not apply prior to that date. (Ord. 1784 § 1, 2006)

Chapter 3.16

REAL PROPERTY TRANSFER TAX

Sections:

3.16.010 Adoption – Statutory authority.
3.16.020 Administration by county recorder.
3.16.030 Amount of tax.
3.16.040 Persons liable for payment.
3.16.050 Exemptions – Instruments in writing to secure a debt.
3.16.060 Exemptions – Certain political entities.
3.16.070 Exemptions – Bankruptcy proceedings.
3.16.080 Exemptions – Instruments pursuant to Securities and Exchange Commission.
3.16.090 Exemptions – Partnerships.
3.16.100 Refund claims.
3.16.110 Operative date.

3.16.010 Adoption – Statutory authority.

This chapter is adopted pursuant to the authorization contained in Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the state. (1960 code § 21.72)

3.16.020 Administration by county recorder.

The county recorder shall administer this chapter in conformity with the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code, and the provisions of any amendment adopted pursuant thereto. (1960 code § 21.80)

3.16.030 Amount of tax.

There is hereby imposed on each deed, instrument or writing by which any lands, tenements or other realty sold within the city shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) exceeds $100.00, a tax at the rate of 27 and one-half cents for each $500.00 or fractional part thereof. (1960 code § 21.73)

3.16.040 Persons liable for payment.

Any tax imposed pursuant to LMC 3.16.030 shall be paid by any person who makes, signs or issues any document or instrument subject to the

tax, or for whose use or benefit the same is made, signed or issued. (1960 code § 21.74)

3.16.050 Exemptions – Instruments in writing to secure a debt.

Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt. (1960 code § 21.75)

3.16.060 Exemptions – Certain political entities.

The United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, or the District of Columbia, shall not be liable for any tax imposed pursuant to this chapter with respect to any deed, instrument of writing to which it is a party, but the tax may be collected by assessment from any other party liable therefor. (1960 code § 21.76)

3.16.070 Exemptions – Bankruptcy proceedings.

A. Any tax imposed pursuant to this chapter shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;

2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title II of the United States Code, as amended;

3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title II of the United States Code, as amended; or

4. Whereby a mere change in identity, form or place of organization is effected.

B. Subdivisions 1 through 4, inclusive, of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval or change. (1960 code § 21.77)

3.16.080 Exemptions – Instruments pursuant to Securities and Exchange Commission.

Any tax imposed pursuant to this chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954, but only if:

A. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

B. Such order specifies the property which is ordered to be conveyed;

C. Such conveyance is made in obedience to such order. (1960 code § 21.78)

3.16.090 Exemptions – Partnerships.

A. In the case of any realty held by a partnership, no tax shall be imposed pursuant to this chapter by reason of any transfer of an interest in the partnership, or otherwise, if:

1. Such partnership (or other partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and

2. Such continuing partnership continues to hold the realty concerned.

B. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

C. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subsection B of this section, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination. (1960 code § 21.79)

3.16.100 Refund claims.

Claims for refund of taxes imposed pursuant to this chapter shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code of the state. (1960 code § 21.81)

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3.16.110 Operative date.

The ordinance codified in this chapter shall become operative upon the operative date of any ordinance adopted by the county, pursuant to Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the state, or upon the effective date of said ordinance (December 11, 1967), whichever is later. (1960 code § 21.82)

Chapter 3.24

SCHOOL FACILITIES FINANCING*

Sections:

Article I. Interim School Facilities Fees

3.24.010 Findings – Statutory authority.
3.24.020 Definitions.
3.24.030 School district overcrowding – Public hearing.
3.24.040 Residential development restrictions in overcrowding districts.
3.24.050 Dedication of land or payment of fee required.
3.24.060 Amount of fee or land dedication – Standards.
3.24.070 Use of fees or land – School district to submit schedule.
3.24.080 Distribution of revenues between districts.
3.24.090 Accounting by school districts.
3.24.100 Termination.

Article II. School Facility Mitigation

3.24.110 Purpose.
3.24.120 Mitigation agreement.
3.24.130 Participation in Mello-Roos District.

*Prior legislation: 1960 code §§ 17B.1, 17B.2, 17B.3, 17B.4, 17B.5, 17B.6, 17B.7, 17B.8, 17B.9, 17B.10.

Article I. Interim School Facilities Fees

3.24.010 Findings – Statutory authority.

The city council finds, determines and declares as follows:

A. The public interest, welfare and convenience require adoption of a means whereby interim school facilities can be provided where new residential development creates conditions of overcrowding in existing school facilities;

B. Pursuant to Chapter 4.7 of Division 1 of Title 7 of the Government Code (Section 65970 et seq.), the city council is authorized to require dedication of land for interim school facilities, or fees in lieu of such dedication, where it concurs with the governing body of a school district in finding that overcrowding exists in one or more attendance areas within the district;

C. This chapter is enacted pursuant to Chapter 4.7 and constitutes the ordinance referred to in Government Code Sections 65972 and 65974. In case any conflicts arise between this article and the provisions of Chapter 4.7, the latter shall prevail. (Ord. 1396 § 1, 1992)

3.24.020 Definitions.

As used in this chapter:

A. "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of such school or schools within an attendance area, as determined by the governing body of the district.

B. "Reasonable methods for mitigating conditions of overcrowding" means and includes, but is not limited to, agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to or for the benefit of the school district or such buildings owned by the school district will be used.

C. "Residential development" means a project containing residential dwellings, including mobile homes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units. (Ord. 1396 § 1, 1992)

3.24.030 School district overcrowding – Public hearing.

Upon notice that the governing body of a local school district has made the following findings, the city council shall hold a public hearing and determine by resolution whether it concurs with these findings:

A. Conditions of overcrowding exist in one or more geographically defined attendance areas within the district which will impair the normal functioning of educational programs, including the reasons for the existence of such conditions; and

B. That all reasonable methods of mitigating such conditions, as specified in the notice, have been evaluated and no feasible mitigation methods exist. (Ord. 1396 § 1, 1992)

3.24.040 Residential development restrictions in overcrowding districts.

If the city council concurs with such findings of the school district as provided in LMC 3.24.030, it shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use or approve a tentative subdivision map for residential purposes, within such area, unless it takes one of the following measures:

A. Adopts a resolution pursuant to LMC 3.24.050; or

B. Adopts a resolution which includes findings that there are specific overriding fiscal, economic, social or environmental factors which, in the judgment of the city council, would benefit the city, thereby justifying the approval of the residential development without the dedication of land or payment of fees. (Ord. 1396 § 1, 1992)

3.24.050 Dedication of land or payment of fee required.

If the city council concurs with such findings of the school district as provided in LMC 3.24.030, it may adopt a resolution requiring any owner of a proposed residential development within the affected area to dedicate land, pay fees in lieu of dedication or use a combination of these methods to provide classroom and related facilities for elementary or high schools, as a condition to approval of the residential development; provided, that:

A. The land or fees, or both, transferred to the school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

B. The location and amount of land to be dedicated, or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

C. A finding is made by the city council that the general plan provides for the location of public schools, and that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

D. If the payment of fees is required, the payment shall be made at the time the building permit is issued, and shall be held in trust by the city and shall be transferred to the affected school district or districts at least once a year.

E. Only the payment of fees will be required in subdivisions containing 50 parcels or less.

F. The resolution has been in effect for 30 days prior to the implementation of the dedication or fee requirement. (Ord. 1396 § 1, 1992)

3.24.060 Amount of fee or land dedication – Standards.

A. The standards for the amount of fees or dedicated land where a resolution has been adopted pursuant to LMC 3.24.050 shall be established by resolution of the city council.

B. The standards for the amount of fees or dedicated land shall be recommended to the city council by the governing board of such affected school district. Such standards and facts supporting them shall be transmitted to the city council. If the city council concurs with such standards, they shall until revised, be used by decisionmaking bodies in situations where dedications of land, or fees, or both, are required as a condition to the approval of a residential development. Nothing herein shall prevent the city council from establishing and using standards other than those established by the school district in the event that the council does not concur in those transmitted by the district.

C. Any fees collected or land dedicated pursuant to this article shall be subject to the limitations contained in Government Code Section 65995. (Ord. 1396 § 1, 1992)

3.24.070 Use of fees or land – School district to submit schedule.

Following the decision by the city council to require the dedication of land or the payment of fees, or both, the governing body of the school district shall submit a schedule specifying how it will use the land or fees, or both, to include the school sites to be used, the classroom facilities to be made available, and the time when such facilities will be available. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council, and the reasons for the modifications. (Ord. 1396 § 1, 1992)

3.24.080 Distribution of revenues between districts.

Where two separate school districts operate schools in an attendance area where conditions of overcrowding exist for both school districts, the city council shall enter into an agreement with the governing board of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter. (Ord. 1396 § 1, 1992)

3.24.090 Accounting by school districts.

A. Any school district receiving funds pursuant to this article shall maintain a separate account for any fees paid, and shall file a report with the city council on the balance in the account at the end of the previous fiscal year and on the facilities leased, purchased or constructed during the previous year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins, and where conditions of overcrowding will no longer exist. Such report shall be filed by October 15th of each year, and shall be filed more frequently at the request of the city council.

B. The city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the city council.

C. During the time that the report has not been filed in the manner prescribed in this section, there shall be a waiver of any performance of the payment of fees or the dedication of land. (Ord. 1396 § 1, 1992)

3.24.100 Termination.

If overcrowding conditions no longer exist, the school district shall immediately notify the city. Upon receipt of such notification, the city council shall repeal the resolution described in LMC 3.24.050, and cease levying any fee or requiring the dedication of any land pursuant to this article. (Ord. 1396 § 1, 1992)

Article II. School Facility Mitigation

3.24.110 Purpose.

Because fees authorized under state law may be inadequate to completely mitigate the effects of new development on the Livermore Valley Joint Unified School District, the city council intends, by this article, to require all future residential development within the boundaries of the school district to fully mitigate any impacts on school facilities. (Ord. 1508 § 1, 1997; Ord. 1396 § 1, 1992)

3.24.120 Mitigation agreement.

No development agreement, annexation, zoning ordinance amendment or general plan amendment allowing residential development within the boundaries of the Livermore Valley Joint Unified School District shall be approved unless the applicant enters into an agreement with the school district to fully mitigate the proposed project's impacts on school facilities. The agreement shall be in substantial conformance with a form agreement approved by resolution of both the city council and the school board. (Ord. 1508 § 1, 1997; Ord. 1396 § 1, 1992)

3.24.130 Participation in Mello-Roos District.

No tentative subdivision map, parcel map or site plan for residential development within the boundaries of the Livermore Valley Joint Unified School District, not subject to the provisions of LMC 3.24.120, shall be approved unless the applicant agrees to participate in a Mello-Roos Community Facilities District, or in lieu of participation in such district, one of the following measures has been taken:

A. An agreement has been reached with the school district to acquire and/or construct school facilities through alternative methods.

B. Funds have been paid directly to the school district in an amount which will provide full mitigation of the proposed project's impacts on school facilities. (Ord. 1508 § 1, 1997; Ord. 1396 § 1, 1992)

Chapter 3.26

AFFORDABLE HOUSING FEE

Sections:

3.26.010 Intent and purpose.
3.26.020 Findings.
3.26.030 Definitions.
3.26.040 Applicability – Time of payment – Exceptions – Credits.
3.26.050 Fee for residential development.
3.26.060 Fee for commercial and industrial development.
3.26.070 Affordable housing fee fund – Use of fees.
3.26.080 Refunds.
3.26.090 Fee adjustment or waiver.
3.26.100 Appeals – Protest procedures – Judicial actions.
3.26.110 Accounting requirements.

3.26.010 Intent and purpose.

It is the purpose of this chapter to establish a feasible means by which developers assist in increasing the supply of affordable housing.

A. Need for Affordable Housing. A serious shortage of affordable housing exists in the state. Concerned with this shortage, the State Legislature has stated that "the lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California." California housing is the most expensive in the nation, and the consequences include a lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration. Of particular concern is the shortage of housing for low-income and moderate-income households (Government Code Section 65589.5).

The Legislature has enacted policies to encourage more affordable housing: requiring cities to address the issue in their housing elements, providing for density bonuses, providing for second dwelling units, limiting the grounds on which affordable housing developments may be disapproved, and others (Government Code Sections 65583, 65589.5(d), 65852.150, 65913, 65915).

Echoing this concern, the city's general plan housing element has the goal of providing housing affordable to all economic segments of the community, and the policy of meeting its share of regional housing needs. The housing element requires that

15 percent of the units in a residential development be affordable, or that developers pay an affordable housing fee instead (1999 – 2006 Housing Element: Section V, Goal 3, Policy 3.1, Program 3.1.1).

As a result of increasing growth in California, significant residential and nonresidential development is expected to occur in the city. Because of housing market conditions, the shortage of affordable housing will be exacerbated. Both residential and nonresidential development contribute, in different ways, to the need for more affordable housing.

B. New Residential Development. Residential development, if it does not include affordable housing, contributes to the need for affordable housing because it reduces the available supply of residential land in the community. The developers of new market-rate dwelling units have the responsibility to help provide some affordable housing.

C. New Nonresidential Development. Nonresidential development also contributes to the need for affordable housing because it generates jobs and generates the need for more housing for its employees. A certain proportion of the new employees will require affordable housing. Traditionally, these nonresidential uses have benefited from a supply of housing for their employees available at competitive prices and locations close to the place of employment. But in recent years the supply of housing has not kept pace. If employees are unable to find appropriate housing in the city, they are forced to commute long distances. This situation would adversely affect their quality of life and the community's. Commuters consume limited energy resources, increase congestion on already overcrowded highways and have a negative impact on air quality.

The competition for affordable housing is especially acute. An identifiable portion of the new employees attracted to the city by nonresidential development will live in moderate, low-income and very-low-income households and will therefore compete with present residents for scarce affordable housing units in the city.

D. Studies. The city has undertaken three studies: "City of Livermore Housing Impact Fee Study," dated July 8, 1998, prepared by David M. Griffith & Associates, Ltd.; "City of Livermore Study of Inclusionary Housing Program and In-Lieu Fees," dated February 3, 2000, prepared by DMG-Maximus, Inc.; and "City of Livermore Inclusionary Housing Ordinance Update: Feasibility Analysis," dated April 2005, prepared by Bay Area Economics. The studies evaluate the impact of (1) high-cost, low-density residential development on the supply of affordable housing; (2) commercial and industrial development on the need for affordable housing; and (3) increasing the inclusionary housing requirement from 10 to 15 percent and including housing affordable to moderate income households. Regarding residential development, the 2005 Inclusionary Housing Ordinance Update: Feasibility Analysis shows that increasing the inclusionary housing requirement from 10 to 15 percent increases the cost of developing residential units. However, the analysis shows that the resulting developer returns are still above a 10 percent rate of return on costs. Thus the overall impact of increasing the requirement does not unreasonably burden developers.

The 2000 Inclusionary Housing Study shows that the strong demand for high-cost, low-density residential development in Livermore has made residential land scarce and expensive, so that development of affordable housing is not feasible without subsidies. It calculates the fees to be imposed on market-rate residential development to offset a portion of the required subsidies. The calculation is based on the difference between the development cost for a market-priced residence and the maximum affordable purchase price (to a lower-income family) for a residence of comparable size.

Regarding nonresidential development, the 1998 Study evaluates the impact of commercial and industrial development on lower-income housing needs by estimating the number of lower-income jobs, and households, associated with various types of employment-generating development. This approach was upheld by the Federal Ninth Circuit Court of Appeal in *Commercial Builders v. City of Sacramento*.

Concerned about the effect of this housing impact fee on nonresidential development especially, the city undertook an analysis entitled, "Economic Impact of Proposed ... City of Livermore Housing Impact Fee," dated August 1998, prepared by Keyser Marston Associates, Inc. That economic analysis concluded that for most types of commercial development (high-tech R&D/office,

retail), the cost advantages to building in Livermore are not significantly affected by the proposed fee.

E. The Proposed Fee. The affordable housing fees proposed under this chapter will assist in providing affordable housing in the city by assisting in the private and nonprofit development and preservation of affordable owner and rental housing and related programs that help residents to enter or remain in affordable housing. These include, but are not limited to, mortgage subsidies and downpayment assistance, site acquisition, banking of land for use in the development of affordable housing, rental subsidies, construction financing, issuance of bonds, providing predevelopment funds, providing rehabilitation funds to preserve existing affordable housing stock, providing loan security, and any other assistance that will serve to increase or maintain the supply of affordable housing in the city.

It is the city's intent that this chapter create a fair and feasible way to assist in providing affordable housing in the city. It is the city's intent that this chapter and any fee-setting resolution adopted under it fully conform to the requirements of the State Mitigation Fee Act in the adoption and monitoring of development impact fees.

F. Implementation of Housing Element. The city council finds that this chapter and the housing impact fee resolution implement policies in the city's housing element. (Ord. 1763 § 2, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.020 Findings.

Mindful of the requirements for establishing an appropriate nexus between the impact of new development and the use of the fee, as set forth in Government Code Section 66000 and following, the city council finds as follows:

A. The purpose of this fee is to establish a feasible means by which developers of residential and nonresidential projects assist in increasing the supply of affordable housing.

B. The fee will be used to finance a variety of programs and mechanisms for creating more affordable housing, including but not limited to: mortgage subsidies and down payment assistance, site acquisition, banking of land for use in the development of affordable housing, rental subsidies, construction financing, issuance of bonds, providing predevelopment funds, providing rehabilitation funds to preserve existing affordable housing stock, providing loan security, and any other assistance that will serve to increase or maintain the supply of affordable housing in the city.

C. There is a reasonable relationship between the fee's use and the types of development projects on which the fee is imposed. Both residential and nonresidential development affect the need for more affordable housing. Market-priced residential development impacts the supply of housing; commercial and industrial development impact the demand for housing.

D. There is a reasonable relationship between the need for affordable housing and the types of development projects on which the fee is imposed. New residential development contributes to the need for affordable housing because it reduces the available supply of residential land in the community. Nonresidential development contributes to the need for affordable housing because it generates jobs and therefore the need for more housing for its employees. A certain proportion of the new employees will require affordable housing.

E. There is a reasonable relationship between the amount of the fee and the cost of the affordable housing programs attributable to the development on which the fee is imposed. As shown in the 2000 Inclusionary Housing Study, the fee for residential development is based on the difference between the development cost for a market-priced residence and the maximum affordable purchase price (to a low-income family) for a residence of comparable size. And, based on the 1998 Study, the fee for nonresidential development is based on estimating the number of lower-income jobs, and households, associated with various types of employment-generating development. The 2005 Inclusionary Housing Ordinance Update: Feasibility Analysis, which analyzes an increase in the inclusionary requirement, proposes the same methodology for calculating the in-lieu fee as the 2000 Study. The fee calculation is still based on the difference between the development cost for a market-priced residence and the maximum affordable purchase price. (Ord. 1763 § 3, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.030 Definitions.

In this chapter:

A. "1998 Housing Impact Fee Study" means the study entitled "City of Livermore Housing Impact Fee Study," dated July 8, 1998, prepared by David M. Griffith & Associates, Ltd., which is on file in the city community development department.

"2000 Inclusionary Housing Program Study" means the study entitled "City of Livermore Inclusionary Housing Program Study," dated February 3, 2000, prepared by DMG-Maximus, Inc., which is on file in the city community development department.

"2005 Inclusionary Housing Ordinance Update: Feasibility Analysis" means the study entitled "City of Livermore Inclusionary Housing Ordinance Update: Feasibility Analysis," dated April 2005, prepared by Bay Area Economics, which is on file in the city community development department.

"Studies" means all of the above.

B. "Affordable housing" means, for very-low-income, low-income and moderate-income households, that the housing cost, adjusted for family size, does not exceed 30 percent of gross income (Health and Safety Code Section 50052.5(b)). The monetary standards for affordable housing are determined annually by city council resolution (city of Livermore affordable housing sales prices and rental rates).

C. "Development" means a subdivision map approval or any new residential or nonresidential construction, addition, extension or enlargement of an existing structure. "Development" also includes a conversion or change in use of an existing commercial structure when the conversion or change may result in a greater number of workers at that location.

"Commercial development" includes, but is not limited to, retail, service, office and lodging.

"Industrial development" includes, but is not limited to, manufacturing, warehouse, research and development center, high-cube warehouse, mini-storage.

D. "Development cost of a housing unit" means the construction valuation of the building permit, on- and off-site costs including site development, design costs, and project administration costs, other than profit, and the cost of all permits, fees and impact fees charged by the city, plus a percentage for the cost of land.

E. "Gross developed acreage," when calculating residential density, means the gross acreage of a development project excluding the land required for dedication for major streets, for public parks, and for public schools.

F. "Gross floor area," when calculating commercial and industrial fees, means the square footage of: (1) the floor area included within the surrounding exterior walls of a building, or portions of it, including mezzanines, or (2) the usable area under the horizontal projection of the roof or floor above. "Gross floor area" does not include floor area devoted to vehicle parking, necessary interior driveways and ramps, atriums and lobbies.

G. "Housing element" means the city of Livermore 1999 – 2006 housing element of the 2003 Livermore general plan and amendments to it.

H. Income.

"Above-moderate-income household" means persons or families whose incomes are above 120 percent of the area median income, adjusted for family size, as established annually by the California Department of Housing and Community Development (HCD).

"Low-income household" means persons or families whose incomes are 80 percent or less of the area median income, adjusted for family size, as established annually by the California Department of Housing and Community Development (HCD) and confirmed by city council resolution (Health and Safety Code Section 50079.5). In this chapter, "low-income household" includes both very-low-income and low-income households.

"Moderate-income household" means persons or families whose incomes are between 80 percent and 120 percent of the area median income, adjusted for family size, as established annually by the California Department of Housing and Community Development (HCD) and confirmed by city council resolution (Health and Safety Code Section 50093(b)).

"Very-low-income household" means persons or families whose incomes are 50 percent or less of the area median income, adjusted for family size, as established annually by the California Department of Housing and Community Development (HCD) and confirmed by city council resolution

(Health and Safety Code Section 50105). (Ord. 1763 § 4, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.040 Applicability – Time of payment – Exceptions – Credits.

A. Applicability. Except as provided in subsection B of this section, this chapter applies to new development which results in:

1. Residential: a new residential dwelling unit. If a project includes more than 10 residential units, this chapter applies only if the city council has approved the in-lieu fee alternative under LDC 10.06.050(E). The in-lieu alternative is available without city council approval for projects that include 10 or fewer residential units.

2. Commercial and industrial:

a. New commercial or industrial use; or

b. Additional gross floor area for commercial or industrial use; or

c. A change in use of an existing commercial or industrial structure requiring city approval which results in an increase in the number of employees.

This chapter applies to development fees charged as a condition of development. It is not intended to and does not apply to regulatory and processing fees or fees required under a development agreement (Government Code Section 66000 (b)).

B. Exceptions. This chapter does not apply to:

1. These types of residential development:

a. Residential development which fully satisfies the inclusionary housing requirement of LDC 10.06.050, or an alternative (other than the in-lieu fee) under subsection E of that section;

b. A secondary dwelling unit approved under LDC 6.03.120;

c. Expansion or remodeling;

d. Replacement which occurs within 36 months of demolition or destruction; or

e. An affordable housing development which receives a density bonus under LDC 6.02.030 for including very-low-income or low-income housing.

2. Church, temple, or other property used primarily for religious worship.

3. Public and private day care, elementary and secondary school.

4. Development for public use on publicly owned property by the city, county of Alameda, state or federal government, or other public agency, such as the Livermore Area Recreation and Park District.

5. These types of commercial and industrial development: remodeling or addition which does not increase the gross floor area by 200 square feet or more; replacement which occurs within 36 months of damage or destruction; temporary use for less than 12 months; public hospital.

C. Time of Payment. The affordable housing fee is payable before the date of final inspection or the date the certificate of occupancy is issued, whichever occurs first, or as specified in the city council resolution establishing the amount of the (commercial/industrial) fee, or as provided in a development agreement.

D. Deferred Fee Program. The city council may, by resolution, adopt administrative guidelines to provide a special fee deferral program in response to unprecedented conditions such as extraordinary economic changes. (Ord. 1948 § 1, 2011; Ord. 1902 § 4, 2010; Ord. 1901 § 3 (Exh. A § 5), 2010; Ord. 1879 § 5, 2009; Ord. 1763 § 5, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.050 Fee for residential development.

A. General. A person who constructs one or more residential dwelling units shall pay an affordable housing fee, unless the particular development is an exception under LMC 3.26.040(B).

If the residential development project has more than 10 units, the developer is required to comply with either subsection (A)(1) or (2) of this section:

1. Provide units that are reserved for sale or rental as affordable housing, under LMC 18.32.035:

a. General plan area: 15 percent affordable units. (In this section, "general plan area" means everywhere in the city except the redevelopment project area, defined below.);

b. Redevelopment project area: 10 percent affordable units. (In this section, "redevelopment project area" means that area designated in the Redevelopment Plan for Livermore Redevelopment Project, as amended.); or

2. Submit a written request to, and obtain approval from, the city council to satisfy the requirement by an alternative means of compliance, under LMC 18.32.035(F). These alternatives may include: secondary units, off-site construction, in-lieu fee, or dedication of land.

B. Method of Calculation. The affordable housing fee for residential development is calculated using the following method. The method is set forth in greater detail in the 2000 Study.

1. General Plan Area. In the general plan area, the fee shall be 15 percent of the difference between:

a. The development cost for the market-priced unit; and

b. The maximum affordable purchase price (of a moderate-income and low-income housing unit averaged together) for a housing unit with the same number of bedrooms as the market-priced unit giving rise to the requirement. This maximum affordable price is established by city council resolution;

c. The fee per market-priced unit shall not exceed 15 percent of the estimated development cost of constructing a three-bedroom detached housing unit that would meet the standards of the affordable housing program. This maximum fee shall be set annually by city council resolution.

2. Redevelopment Project Area. In the redevelopment project area, the fee shall be 10 percent of the difference between:

a. The development cost for the market-priced unit; and

b. The maximum affordable purchase price for a housing unit with the same number of bedrooms as the market-priced unit giving rise to the requirement. This maximum affordable price is established by city council resolution;

c. The fee per market-priced unit shall not exceed 10 percent of the estimated development cost of constructing a three-bedroom detached housing unit that would meet the standards of the affordable housing program. This maximum fee shall be set annually by city council resolution. (Ord. 1902 § 5, 2010; Ord. 1763 § 6, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.060 Fee for commercial and industrial development.

A. General. A person who develops commercial or industrial property shall pay an affordable housing fee, unless the particular development is an exception under LMC 3.26.040(C). The amount of the fee will be established by city council resolution. Once the fee is established, it shall automatically be increased annually based upon the median home price as reflected in the Bay East Association of Realtors report. The city will also review and revise the fee periodically, based on the factors set forth in subsection B of this section.

B. Method of Calculation. The affordable housing fee for commercial and industrial development is based on the fact that commercial and industrial development generates the need for more affordable housing because a certain proportion of the new employees will have household incomes that place them in the lower income categories. These employees will require affordable housing.

The affordable housing fee for commercial and industrial development will be calculated using the following method. The method is set forth in greater detail in the study.

1. Estimate the number of full-time very-low-income and low-income employees for each general type of commercial and industrial development, by category. The estimate will be based on a unit of commercial or industrial development, which means the employees per 1,000 square feet of development, or per number of hotel/motel rooms. Adjust this employment impact to account for voluntary commuting (employees who choose to live elsewhere).

2. Determine the estimated number of lower-income households for each category, based on census data.

3. Estimate the capital subsidy required to make new rental units the city affordable for very-low-income and low-income households.

4. Allocate the subsidy costs per unit of development, by type of development, according to the number of very-low-income and low-income households generated.

C. Time of Payment. The affordable housing fee is payable before the date of final inspection or the date the certificate of occupancy is issued, whichever occurs first, or as specified in the city council resolution establishing the amount of the (commercial/industrial) fee, or as provided in a development agreement. Alternatively, the developer may pay the fee in either of the two ways provided below:

1. Letter of Credit. The developer may pay the fee, at 20 percent each year, over five years. Under this alternative, the developer shall post a letter of credit, in a form approved by the city attorney, for: (a) the full amount of the fee; plus (b) a two percent administrative charge; plus (c) interest

for the projected unpaid balance over the five years. The interest rate shall not exceed the interest rate established in the California Government Code. The developer shall replace the letter of credit each year to add the annual fee increase represented by the increase in the median home price as reflected in the Bay East Association of Realtors report.

2. By Agreement. A developer may elect to pay the required fee before the first certificate of occupancy is issued or within two years, whichever is sooner, subject to all of the requirements of this subsection.

a. General Requirement. If a developer chooses this option, before a building permit is issued, he or she shall: (i) enter into a written agreement with the city; and (ii) record the agreement with the Alameda County recorder.

b. Contents of Agreement. The agreement shall be signed by the property owner and shall include the following provisions, in a form prepared by the city attorney:

i. A legal description of the property;

ii. A provision that the agreement runs with the land and is enforceable against successors in interest;

iii. That the agreement shall be recorded in the grantor-grantee index in the name of the city as grantee and in the name of the property owner as grantor;

iv. A provision that the owner shall pay the fee before a certificate of occupancy is issued, or within two years, whichever is sooner;

v. The amount of the fee due at the time of the agreement;

vi. A provision that the amount of the fee due will be the amount of the fee due on the date of the agreement plus a periodic increase based on the increase in median home price as reflected in the Bay East Association of Realtors report. The amount of any fee paid more than two years after the date of the building permit is the amount of the fee in effect when the fee is paid; and

vii. A requirement that, with the opening of any escrow for the sale of the property, the property owner provide appropriate notification and escrow instructions that the fee be paid to the city from the sale proceeds in escrow before disbursing proceeds to the seller.

c. Release of Obligation. When the obligation is paid in full, the city shall record a release of obligation.

d. Authorization. The community development department director is authorized to sign the agreement and the release of obligation under this subsection (C)(2).

D. Adjustments. The community development director may reduce the fee amount established under this section if a developer submits sufficient information demonstrating that the jobs produced by the new commercial or industrial project will yield fewer low-wage jobs than the number resulting from the calculation under subsection B of this section. The fee reduction shall be directly proportional to the reduction in low-wage jobs. If a new use (which does not continue the same number of reduced low-wage jobs) is later established at the same location, the city may then collect the balance of the fee. (Ord. 1765 §§ 15, 16, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.070 Affordable housing fee fund – Use of fees.

A. Affordable Housing Fee Fund. The city will deposit all housing impact and in-lieu fees in an affordable housing fee fund. The city will keep the fees, and all interest earned on the account, only for the uses specified in subsection B of this section.

B. Use of Fees. The fees and interest earned will be used only to finance programs to create more affordable housing, including:

1. Mortgage subsidies and down payment assistance;

2. Site acquisition;

3. Banking of land for use in the development of affordable housing;

4. Rental subsidies;

5. Construction financing;

6. Issuance of bonds;

7. Providing predevelopment funds;

8. Providing rehabilitation funds to preserve existing affordable housing stock;

9. Providing loan security; and

10. Any other assistance that will serve to increase or maintain the supply of affordable housing in the city. (Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.080 Refunds.

The city may refund affordable housing fees if:

A. 1. A building permit or zoning use permit expires (and no extension is granted);

2. No construction or use occurs for a development for which the affordable housing fee was paid;

3. The fees paid have not been committed; and

4. The developer applies for the refund within one year after the expiration of the building or zoning use permit; or

B. If authorized by city council resolution under Government Code Section 66001(d) to (f). (Ord. 1902 § 6, 2010; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.090 Fee adjustment or waiver.

A. General. The developer of a project subject to a development fee under this chapter may apply to the community development department for an adjustment to or waiver of the fee. The waiver of the fee must be based upon the absence of any reasonable relationship between the impact of that development on affordable housing and either the amount of the fee charged or the type of program or facilities to be financed.

B. Application. The application must be made in writing and filed with the community development department no later than: (1) 10 days before the public hearing on the development permit application for the project, or (2) if no development permit is required, the time of the application for a building permit. The application must state in detail the factual basis and legal theory for the claim of adjustment or waiver.

C. Burden of Proof – Considerations. The developer bears the burden of proof in presenting substantial evidence to support the application. The community development department shall consider the following factors in its determinations whether or not to approve a fee adjustment or waiver:

1. The factors identified in Government Code Section 66001:

a. The purpose and proposed uses of the fee;

b. The type of development;

c. The relationship between the fee's use and the type of development;

d. The relationship between the need for affordable housing and the type of development;

e. The relationship between the amount of the fee and the portion of it attributable to the development; and

2. The substance and nature of the evidence, including the city's affordable housing fee, the 1998 or 2000 Study, and the developer's technical data supporting its request. The developer must show comparable technical information to show that the fee is inappropriate for the particular development. (Ord. 1902 §§ 7, 8, 2010; Ord. 1763 § 7, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.100 Appeals – Protest procedures – Judicial actions.

A. Appeals. A developer may appeal to the city council any determination made under this chapter. If a developer is seeking a fee adjustment or waiver, he or she must first comply with LMC 3.26.090.

An appeal must be on a form prescribed by the community development department, state the factual and legal grounds for the appeal, and be filed with the city clerk within 15 days of the date of the decision being appealed. The city council will set the matter for hearing within 30 days of the city clerk's receipt of notice of the appeal. The city council will conduct the hearing, prepare written findings of fact and a written decision, and shall preserve the complete administrative record of the proceeding. The council will consider relevant evidence presented by the appellant and by the community development department. In making its determination, the city council will follow the standards set forth in this chapter.

B. Protest Procedures. A person protesting the imposition of fees must comply with the procedures in Government Code Sections 66020 and 66021.

C. Judicial Actions. Any judicial action brought to challenge the affordable housing fee is subject to Government Code Sections 66022 and 66024. (Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.110 Accounting requirements.

The city will comply with the accounting requirements in the Fee Mitigation Act, including the following:

A. The city shall avoid any commingling of this affordable housing fee fund with any other accounts, except for temporary investments. The

city shall expend the fees solely for the purposes for which the fees were collected (Government Code Section 66006(a)).

B. Within 180 days after the last day of each fiscal year, the city shall make available to the public the information for the fiscal year prescribed in Government Code Section 66006(b).

The city council shall review this information at the next regularly scheduled public meeting within 15 days after the information is made available to the public. Notice of the time and place of the meeting, including the address where the information may be reviewed, shall be mailed at least 15 days before the meeting to any interested party who has filed a written request for it (Government Code Section 66006(b)).

C. Every five years following the first deposit into the fund, the city council shall make all of the following findings regarding that portion of the fund remaining unexpended (whether committed or uncommitted):

1. Identify the purpose to which the fee is to be put;

2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged;

3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements; and

4. Designate the approximate dates on which the funding referred to in subsections (C)(3) of this section is expected to be deposited into the fund.

Within 180 days after sufficient funds have been collected to complete financing on the incomplete public improvements, the city shall identify an approximate date by which the construction will be commenced or shall refund the unexpended portion of the fees and any interest earned in conformance with Government Code Section 66001(e); and

D. Any person may request and pay for an audit to determine whether the fee is reasonable, under Government Code Sections 66006(d) and 66023. (Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

Chapter 3.27

TRANSFERABLE DEVELOPMENT CREDITS IN-LIEU FEE

Sections:

3.27.010 Intent and purpose.
3.27.020 Findings.
3.27.030 Definitions.
3.27.040 Applicability – Exemptions.
3.27.050 Amount of fee.
3.27.060 Time of payment.
3.27.070 Use of funds.
3.27.080 Accounting.

3.27.010 Intent and purpose.

The purpose of this chapter is to implement policies adopted in the 2003 general plan and the North Livermore urban growth boundary initiative. It is the city's policy, expressed in these documents, that new residential development on TDC receiving areas as identified in the 2003 – 2025 general plan or any subsequent general plan amendments that allow for new residential land use designations or increases in residential density shall acquire TDCs or pay an in-lieu fee in order to construct any dwelling units beyond that which is permitted by the parcel's baseline density identified in the general plan. (Ord. 1785 § 1, 2006)

3.27.020 Findings.

The city council makes the following findings:

A. The North Livermore urban growth boundary initiative establishes the transferable development credits program. The TDC program grants development credits to properties in North Livermore. The development credits may be acquired by properties located with the city boundary and urban growth boundary and designated as TDC receiving areas in the general plan, to exceed the designated baseline density.

B. Development credits shall be provided by either directly acquiring easements from properties in North Livermore or through the payment of the in-lieu fee equal to the number of credits necessary to exceed the baseline density.

C. The in-lieu fee will fund the acquisition of easements for the permanent protection of agriculture and other open space lands in the North Livermore area. Through agreement, the city may

coordinate with a land trust on the use of the fee revenues consistent with the purpose of the fee. (Ord. 1785 § 1, 2006)

3.27.030 Definitions.

In this chapter:

"Baseline density" means the maximum density allowed in TDC receiving areas and TDC receiving zones when property owners choose not to use the TDC option. When property owners choose to use the TDC option, baseline density shall be calculated as the maximum density allowed under the range of densities in the baseline component of the TDC receiving area general plan designation.

"North Livermore" is the area bounded by the Livermore urban growth boundary, the city of Dublin sphere of influence boundary on June 30, 2002, the Alameda-Contra Costa Counties boundary, Vasco Road, and the north and east boundary of the Vasco-Laughlin specific plan area, east of Vasco Road, on June 11, 2001.

"Transferable development credits (TDCs)" means the credits granted under the initiative that may only be used in compliance with the initiative and this chapter.

"TDC option" means the general plan designation and Livermore Development Code requirements that apply when owners of property in TDC receiving areas and TDC receiving zones apply to exceed baseline density in compliance with all requirements.

"TDC receiving area" means a general plan classification that allows baseline uses and densities when property owners choose not to use the TDC option but provides for higher than baseline density and alternative development regulations when property owners elect to use the TDC option.

"TDC receiving zone" means a zoning district that allows baseline uses and densities when property owners choose not to use the TDC option but provides for higher than baseline density and alternative development regulations when property owners elect to use the TDC option.

"TDC sending area" means the North Livermore area described in the initiative and the 2003 – 2025 general plan in which property owners can choose to record easements, create TDCs and transfer TDCs in compliance with this section. (Ord. 1901 § 3 (Exh. A § 6), 2010; Ord. 1785 § 1, 2006)

3.27.040 Applicability – Exemptions.

A. Applicability. This chapter applies to each residential development in the city located on a TDC receiving area that elects to exceed the baseline density identified in the 2003 general plan.

B. Exemptions. This chapter does not apply to:

1. Residential development located within the boundaries of the downtown specific plan planning area, designated as downtown area on the general plan land use map, adopted by the city council on February 9, 2004, as amended from time to time.

2. Housing units that are covered by an affordable housing agreement with the city including, but not limited to, housing units provided under state law as implemented through LDC 6.02.030, Density bonuses for affordable and senior housing, affordable units provided consistent with other general plan policies, or units provided consistent with the city's inclusionary housing requirements per LDC 10.06.050. (Ord. 1901 § 3 (Exh. A § 7), 2010; Ord. 1785 § 1, 2006)

3.27.050 Amount of fee.

A. Amount Set by Resolution. The amount of the TDC in-lieu fee shall be established by resolution of the city council. Once the fee is established, it shall be reevaluated and revised, as appropriate, biannually.

B. Methodology. The city council shall establish the amount of the in-lieu fee based on the following:

The initial fee shall be based on the following calculation:

Property valuation per TDC (Baseline)	+	Easement Preparatory Cost per TDC	+	Endowment for long-term management of easement per TDC	=	TDC In-Lieu Fee

1. The property valuation per TDC shall be determined through an analysis of recent property sales in North Livermore, or other comparable lands as appropriate, and the valuation of easement acquisitions, as available and appropriate.

2. The easement preparatory costs per TDC shall include costs associated with preparation of an easement, including, but not limited to, staff and administrative time and materials, appraisals, prep-

aration of baseline reports, legal descriptions, title insurance, and other required fees and taxes.

3. The endowment for long-term management of the easement per TDC includes necessary staff and administrative time and material associated with the long-term management of the easement. (Ord. 1785 § 1, 2006)

3.27.060 Time of payment.

A. When a final subdivision map would create an entitlement to exceed the baseline density in a TDC receiving zone, payment of the corresponding TDC in-lieu fee shall be a condition of approval placed on the tentative map. This condition shall be satisfied prior to final map approval.

B. When site plan approval would create an entitlement to exceed baseline density in a TDC receiving zone, payment of the corresponding in-lieu fee shall be a condition of approval. This condition shall be satisfied prior to issuance of building permits.

C. Deferred Fee Program. The city council may, by resolution, adopt administrative guidelines to provide a special fee deferral program in response to unprecedented conditions such as extraordinary economic changes. (Ord. 1890 § 1, 2009; Ord. 1785 § 1, 2006)

3.27.070 Use of funds.

A. Revenues from TDC in-lieu fees shall be used for the acquisition of TDCs from North Livermore. TDC in-lieu fees may be used in conjunction with other funds available for acquisition and/or preservation of open space and/or agricultural lands in North Livermore. When TDC in-lieu fees are used with other preservation funds, TDC credits on the subject property shall be retired.

B. Other than TDC acquisition, revenue from TDC in-lieu fees shall only be used for costs incurred in administering the TDC program including but not necessarily limited to facilitating TDC transactions, preparing/recording TDC easements, monitoring/enforcing easements and maintaining records. TDC in-lieu fee revenues may be used to offset the administration costs incurred by the city and/or by a land trust authorized by the city to administer portions of the TDC program. (Ord. 1785 § 1, 2006)

3.27.080 Accounting.

The city shall deposit the in-lieu fees in a separate fund, and avoid commingling with other funds except for temporary investments. The funds shall be expended only for the purposes set forth in LMC 3.27.070. Any interest earned by moneys in the fund shall also be deposited in the fund and only used for the intended purposes. (Ord. 1785 § 1, 2006)

Chapter 3.28

GAS TAX IMPROVEMENT FUND

Sections:

3.28.010 Special gas tax street improvement fund created.
3.28.020 Source of moneys.
3.28.030 Expenditure restrictions.

3.28.010 Special gas tax street improvement fund created.

To comply with the provisions of Sections 180 to 207 of the State Streets and Highways Code, with particular reference to Section 196, there is created in the city treasury a special fund, to be known as the "special gas tax street improvement fund." (1960 code § 2.6)

3.28.020 Source of moneys.

All moneys received by the city from the state under the provisions of Sections 180 to 207 of the Streets and Highways Code for the acquisition of real property or interests therein for, or the construction, maintenance or improvement of streets or highways, other than state highways, shall be paid into the special gas tax street improvement fund. (1960 code § 2.7)

3.28.030 Expenditure restrictions.

All moneys in the special gas tax street improvement fund shall be expended exclusively for the purposes authorized by, and subject to all of the provisions of Sections 180 to 207 of the Streets and Highways Code. (1960 code § 2.8)

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Chapter 3.36

UTILITY USERS TAX

Sections:

3.36.010 Definitions.
3.36.020 Exemptions.
3.36.030 Telephone users tax.
3.36.040 Electricity and gas users tax.
3.36.050 Water users tax.
3.36.060 Cable television users tax.
3.36.070 Maximum amount payable.
3.36.080 Actions to collect.
3.36.090 Duty to collect – Procedures.
3.36.100 Powers and duties of tax administrator.
3.36.110 Administrative agreements.
3.36.120 Interest and penalty.
3.36.130 Failure of service user to pay.
3.36.140 Records.
3.36.150 Refunds.
3.36.160 California Public Utilities Commission jurisdiction.
3.36.170 Operative date – Repeal.

3.36.010 Definitions.

Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this chapter:

A. "Cable television corporation," "electrical corporation," "gas corporation," "telephone corporation," and "water corporation" shall have the same meanings as defined in Section 215.5, 218, 222, 234, and 241, respectively, of the Public Utilities Code of the state of California.

B. "Service supplier" means a person required to collect and remit a tax imposed under the provisions of this chapter.

C. "Service user" means a person required to pay a tax imposed under the provisions of this chapter.

D. "Tax administrator" means the finance director of the city. (Ord. 1141 § 1, 1983; 1960 code § 21.100)

3.36.020 Exemptions.

Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be a violation of the Constitutions of the United States and California. Additionally, this tax shall not be imposed on any governmental entity. The tax administrator shall prepare a list of the persons exempt from the provisions of this chapter by virtue of this section and furnish a copy thereof to each service supplier. (Ord. 1141 § 1, 1983; 1960 code § 21.101)

3.36.030 Telephone users tax.

A. There is imposed a tax upon every person in the city, other than a telephone corporation, using intrastate telephone communication services in the city. The tax imposed by this section shall be at a rate of three percent of the charges made for such services, and shall be paid by the person paying for such services.

B. As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due nor shall the words "telephone communication services" include land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations.

C. The tax imposed in this section shall be collected from the service user by the person providing the intrastate telephone communication services. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

D. Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Section 4251 of Title 26 of the United States Code. (Ord. 1141 § 1, 1983; 1960 code § 21.102)

3.36.040 Electricity and gas users tax.

A. There is imposed a tax upon every person in the city, other than an electrical corporation or a gas corporation, using electrical energy in the city.

As used in this subsection, the words "using electrical energy" shall not be construed to mean the use of such energy from a storage battery; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of storage batteries.

As used in this subsection, the words "using electrical energy" shall not be construed to mean

the receiving of such energy by an electrical corporation or a governmental agency at a point within the city for resale.

B. There is imposed a tax upon every person in the city, other than a gas corporation or an electrical corporation, using gas in the city which is delivered through mains or pipes.

As used in this subsection, the word “charges” shall not include charges made for gas used in the generation of electrical energy by a public utility or a governmental agency.

As used in this subsection, the words “using gas” shall not be construed to mean the receiving of such gas by a gas corporation or governmental agency at a point within the city for resale.

C. The taxes imposed by this section shall be at the rate of three percent of the monthly charges for such gas and electricity and shall be paid by the person paying for such gas and electricity.

D. Notwithstanding the provisions of subsection C of this section, the taxes imposed by this section shall be imposed on monthly charges per account in excess of $10.00 for any gas account and $15.00 for any electric account.

E. The taxes imposed in this section shall be collected from the service user by the person selling the electrical energy and gas. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month. (Ord. 1141 § 1, 1983; 1960 code § 21.103)

3.36.050 Water users tax.

A. There is imposed a tax upon every person in the city, other than a water corporation, using water in the city which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of three percent of the charges made for such water, and shall be paid by the person paying for such water.

B. The tax imposed in this section shall be collected from the service user by the person selling the water. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month. (Ord. 1141 § 1, 1983; 1960 code § 21.104)

3.36.060 Cable television users tax.

A. There is imposed a tax upon every person in the city using cable television service in the city. The tax imposed by this section shall be at the rate of three percent of the charges made for such service, and shall be paid by the person paying for such service.

B. The tax imposed in this section shall be collected from the service user by the person providing such cable television service. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month. (Ord. 1141 § 1, 1983; 1960 code § 21.105)

3.36.070 Maximum amount payable.

A. The combined total maximum of taxes paid by any single service user for one location under this chapter shall not exceed the sum of $10,000 during any 12-month period between July 1st and June 30th.

B. A service user may deposit the maximum tax specified in subsection A of this section with the tax administrator during the month of July of each year as payment in full and in advance of taxes due under this chapter for the 12-month period commencing on the first day of the month and ending on June 30th thereafter. Any service user making said payment in July of any given year shall not thereafter be billed for any tax under this code for that 12-month period.

C. The penalty assessment provided in this chapter shall not be counted in computing the maximum tax as provided in subsection A of this section.

D. Any service user paying more than the maximum tax provided for in subsection A of this section during the 12-month period commencing July 1st and ending June 30th, may claim a refund or credit for such overpayment in the manner provided in LMC 3.36.150.

E. The phrase “one location” as used in subsection A of this section shall mean one or more contiguous sites for which the service user receives one or more utility billings. (Ord. 1141 § 1, 1983; 1960 code § 21.106)

3.36.080 Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user which has not been remitted to the tax administrator shall be deemed a debt owed to the city by the person required to collect and remit, Any person owing money to the city

under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Ord. 1141 § 1, 1983; 1960 code § 21.107)

3.36.090 Duty to collect – Procedures.

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

A. The tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with regular billing practice of the service supplier. Except in those cases where a service user pays the full amount of said charges but does not pay any portion of a tax imposed by this chapter, or where a service user has notified a service supplier that he is refusing to pay a tax imposed by this chapter which said service supplier is required to collect, if the amount paid by a service user is less than the full amount of the charge and tax has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.

B. The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period. (Ord. 1141 § 1, 1983; 1960 code § 21.108)

3.36.100 Powers and duties of tax administrator.

The tax administrator shall have the power to enforce the provisions of this chapter. The tax administrator shall have power to adopt rules and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed; and a copy of such rules and regulations shall be on file and available for public examination in the tax administrator's office. (Ord. 1141 § 1, 1983; 1960 code § 21.109)

3.36.110 Administrative agreements.

The tax administrator may make administrative agreements to vary the strict requirements of this chapter so that collection and remittance of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier so long as the overall result of the agreements results in collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file and available for public examination in the tax administrator's office. (Ord. 1141 § 1, 1983; 1960 code § 21.110)

3.36.120 Interest and penalty.

A. Taxes collected from a service user which are not remitted to the tax administrator on or before the due dates provided in this chapter are delinquent. Any tax billed to a service user but not paid to the service supplier shall not be deemed an obligation of the service supplier unless such tax is thereafter paid to the service supplier.

B. In addition to remitting the amount of the tax, any service supplier who fails to remit any tax imposed by this chapter within the time required, and upon 10 days' written notice to the service supplier of its failure to remit, shall pay a penalty of 10 percent of the amount of the tax.

C. If the tax administrator determines that the nonpayment of any service supplier of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated above.

D. Every penalty imposed under the provisions of this section shall become a part of the tax required to be remitted. (Ord. 1141 § 1, 1983; 1960 code § 21.111)

3.36.130 Failure of service user to pay.

A. Whenever the tax administrator determines that a service user has deliberately withheld the amount of any tax on him by the provisions of this chapter from the amounts remitted to a service supplier required to collect the tax, or that a service user has failed to pay the amount of the tax to such service supplier for a period of four or more billing periods, or whenever the tax administrator deems it in the best interest of the city, he shall relieve such service supplier of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods. The tax administrator shall notify the service user that he has assumed responsibility to collect the taxes due to the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him personally or by deposit of the notice in the United State mail, postage prepaid

thereon, addressed to the service user at the address to which billing was made by the service supplier required to collect the tax; or, should the service user have changed his address, to his last known address. If a service user fails to remit the tax to the tax administrator within 15 days from the date of the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of 25 percent of the amount of the tax set forth in the notice shall be imposed, but not less than $5.00. The penalty shall become part of the tax herein required to be paid.

B. In addition to the penalties imposed, any service user who fails to pay any tax imposed by this chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the payment first became delinquent until paid. (Ord. 1141 § 1, 1983; 1960 code § 21.112)

3.36.140 Records.

It shall be the duty of every service supplier required to collect and remit to the city any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax such service supplier may have been required to collect and remit to the city, which records the tax administrator shall have the right to inspect at all reasonable times. (Ord. 1141 § 1, 1983; 1960 code § 21.113)

3.36.150 Refunds.

A. Filing Claim. Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section provided a claim in writing therefor, stating under penalty of perjury the specific ground upon which the claim is founded, is filed with the tax administrator within three years of the date of payment. The claim shall be on forms furnished by the tax administrator.

B. Refund to Service Supplier. A service supplier may claim a refund or take as credit against taxes collected and remitted an amount overpaid, paid more than once or erroneously or illegally collected or received, when it is established that the person from whom the tax has been collected was not a service user.

C. Refund to Service User. Any service user may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the city, by filing a claim in the manner provided in subsection A of this section.

D. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. (Ord. 1141 § 1, 1983; 1960 code § 21.114)

3.36.160 California Public Utilities Commission jurisdiction.

Nothing contained in this chapter is intended to conflict with applicable rules, regulations and tariffs of any service supplier subject to the jurisdiction of the California Public Utilities Commission. In the event of any conflict, the provisions of said rules, regulations and tariffs shall control. (Ord. 1141 § 1, 1983; 1960 code § 21.115)

3.36.170 Operative date – Repeal.

The taxes imposed by this chapter shall become operative on September 1, 1983. This chapter shall be repealed as of June 30, 1984, or on the first day of the month following the month in which the amount of taxes imposed by this chapter and received by the tax administrator exceed $550,000, whichever occurs first. (Ord. 1141 § 1, 1983; 1960 code § 21.116)

Chapter 3.38

EMERGENCY MEDICAL SERVICES TAX

Sections:

3.38.010 Purpose and intent.
3.38.020 Definitions.
3.38.030 Amount of tax imposed.
3.38.040 Imposition of tax.
3.38.050 Exemptions.
3.38.060 Refunds.
3.38.070 Determination of land use.
3.38.080 Collection.
3.38.090 Use of tax proceeds.
3.38.100 Administrative interpretation.
3.38.110 Untimely or unpaid taxes.

3.38.010 Purpose and intent.

The purpose of this chapter is to continue funding for existing emergency medical services to be financed by a special tax. (Ord. 1501 § 1, 1997)

3.38.020 Definitions.

Except where context otherwise requires, the definitions given in this section govern the construction of this chapter:

A. "Emergency medical services" shall mean and include salaries, equipment, and training required to provide "first-in" response by fire personnel to provide advanced life support to persons suffering medical emergencies.

B. "Benefit unit" shall mean the measure of benefit attributed to a property use, with a single-family residential use being the standard for a single benefit unit.

C. "Occupant" shall mean the person or persons who rent, lease, reside in or otherwise occupy the real property to which emergency medical services are available.

D. "Owner" shall mean the owner of the real property to which emergency medical services are available as shown on Alameda County's most recent assessment roll.

E. "Year" shall be the period from July 1st to the following June 30th. (Ord. 1501 § 1, 1997)

3.38.030 Amount of tax imposed.

An annual emergency medical services tax in the amount of $11.74 per "benefit unit" is imposed on owners of real property within the city of Livermore. The number of benefit units shall be determined by the use to which the owner has put the property, as follows:

Use	Benefit units
One living unit	1 benefit unit
Two to four living units	3 benefit units
Five or more living units	5 benefit units
One-story store	2 benefit units
Store on first floor with offices or apartments above	4 benefit units
Miscellaneous commercial	2 benefit units
Department store	5 benefit units
Discount house	5 benefit units
Restaurant	4 benefit units
Shopping center	7 benefit units
Supermarket	4 benefit units
Warehouse	2 benefit units
Light industrial	4 benefit units
Heavy industrial	6 benefit units
Miscellaneous industrial	2 benefit units
Nurseries	2 benefit units
Quarries	2 benefit units
Terminals, trucking and distribution	2 benefit units
Wrecking yards	2 benefit units
Improved government-owned property	2 benefit units
Golf courses	2 benefit units
Schools	6 benefit units
Churches	4 benefit units
Other institutional properties	2 benefit units
Lodge halls and clubhouses	4 benefit units
Carwashes	2 benefit units
Commercial garages (auto repair)	2 benefit units
Service stations	2 benefit units
Funeral homes	2 benefit units
Nursing or boarding homes	6 benefit units
Hospitals	5 benefit units
Hotel	5 benefit units
Motel	5 benefit units
Mobile home parks	5 benefit units
Banks	4 benefit units
Medical-dental offices	4 benefit units
One to five-story offices	4 benefit units
Office buildings over five stories	7 benefit units
Bowling alleys	4 benefit units
Theaters	4 benefit units
Other recreational activities (rinks, stadiums, race tracks, etc.)	2 benefit units

(Ord. 1501 § 1, 1997)

3.38.040 Imposition of tax.

The tax is imposed on the owner as of July 1st each year; provided, however, that if any building or structure on any parcel is unoccupied for the full preceding year, the tax is imposed on the first owner of the building or structure thereafter. The tax required to be collected by the owner constitutes a debt owed by the owner to the city. (Ord. 1501 § 1, 1997)

3.38.050 Exemptions.

The owner of real property that is unimproved is exempt from payment of the tax. (Ord. 1501 § 1, 1997)

3.38.060 Refunds.

The owner of improved parcels which were unoccupied for a full year shall receive a refund of any tax paid, provided an application in a form satisfactory to the city manager is filed no later than August 1st for the preceding year for which a refund is sought. (Ord. 1501 § 1, 1997)

3.38.070 Determination of land use.

The records of the county assessor of the county of Alameda and the records of the city of Livermore may be used to determine the actual use of each parcel of real property for purposes of determining the tax hereunder. (Ord. 1501 § 1, 1997)

3.38.080 Collection.

The tax levied and imposed by this chapter shall be due on July 1st of each year, but it may be paid in two installments due no later than December 10th and April 10th. The tax shall be delinquent if not received on or before the delinquency date set forth in the notice mailed to the owner's address as shown on the most current assessment roll of the Alameda County tax collector and shall be collected from the owner in such manner and at such times as the council may provide. The tax due may, at the option of the council, be collected by Alameda County in conjunction with and at the same time and in the same manner as the county's collection of property taxes, provided that nothing herein shall be construed to impose a tax lien on the property to secure payment of the tax. Nonpayment of the tax results in personal liability of the person liable for the tax and the tax obligation may be enforced by any lawful means available to the city for collection of personal obligations owed to the city. (Ord. 1501 § 1, 1997)

3.38.090 Use of tax proceeds.

All proceeds of the tax levied and imposed hereunder shall be paid into a special fund designated for use for emergency medical services only. (Ord. 1501 § 1, 1997)

3.38.100 Administrative interpretation.

The council may, by resolution, adopt guidelines for administrative matters related to the interpretation and enforcement of this chapter. Such guidelines may establish new uses or may modify uses listed in LMC 3.38.030; provided, that the maximum number of benefit units for any use cannot exceed seven. (Ord. 1501 § 1, 1997)

3.38.110 Untimely or unpaid taxes.

A one-time penalty of 10 percent of the tax due is hereby imposed on all taxpayers who fail to pay the tax provided by this chapter when due. The penalty shall become part of the tax debt. (Ord. 1501 § 1, 1997)

Chapter 3.40

CLAIMS ADMINISTRATION

Sections:
3.40.010 General.
3.40.020 Special claims procedures.
3.40.030 Delegation of authority to reject claims.
3.40.040 Settlement authority.

3.40.010 General.

The general claims procedures applicable to local public agencies, including this city, are governed by the provisions of Chapter 1 of Division 3.16 of the California Government Code. (Ord. 1431 § 3, 1994)

3.40.020 Special claims procedures.

Pursuant to the authority of Section 935 of the California Government Code and notwithstanding the exceptions contained in Section 905 thereof, all claims against the city for money or damages when a procedure for processing such claims is not otherwise provided by state law, shall be presented within time limitations and in the manner prescribed by Sections 910 and 915.2 of the California Government Code. Such claims shall be further subject to the provisions of Section 945.4 of the California Government Code related to the prohibition of suits in the absence of the presentation of claims and action thereon by the council. (Ord. 1431 § 3, 1994)

3.40.030 Delegation of authority to reject claims.

Pursuant to California Government Code Section 935.4, the city council authorizes the city attorney to reject claims filed pursuant to the chapter. (Ord. 1431 § 3, 1994)

3.40.040 Settlement authority.

Pursuant to California Government Code Section 935.4, the city council authorizes the city attorney to settle claims up to $50,000. Claims above $10,000 require the concurrence of the city manager. Claims in excess of $50,000 or those involving action which requires city council approval must be approved by the city council. (Ord. 1431 § 3, 1994)

Chapter 3.42

CLAIMS AND DEMANDS AGAINST THE CITY

Sections:
3.42.010 Purpose and intent.
3.42.020 Claims against city.
3.42.030 Application – Effective date.
3.42.040 Appeals.

3.42.010 Purpose and intent.

The Tort Claims Act (Government Code Section 810 et seq.) provides that no suit for money or damages may be brought against the city unless a claim has been timely presented to the city. The general claim procedures are governed by the provisions of Chapter 1 of Division 3.6 of the Government Code of the State of California, commencing with Section 900 and following. Those provisions also provide that local ordinances shall govern those claims the Act excludes and which other state statutes do not expressly govern.

The time periods and procedures for presenting a claim set forth in this chapter are intended to apply to all claims excluded by the Act, or not expressly governed by statute, including claims which currently exist, whether or not they have been presented to the city. This chapter is not intended to extinguish existing claims without providing a reasonable period for the presentation of those claims. (Ord. 1777 § 1, 2005)

3.42.020 Claims against city.

A. It is the intent of this chapter that all claims and demands against the city for damages or money not otherwise governed by the Tort Claims Act, California Government Code Section 900 et seq., or another state law, shall be presented within the time and in the manner as if the time and manner had been prescribed in Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof).

B. All claims or demands against the city shall be made in writing and filed with the city clerk. All claims shall be signed and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless signed by every member of that class. In addition, all claims shall contain the information required by California Government

Code Section 910 et seq. and be completed using the City of Livermore Claim Form pursuant to Government Code Section 910.4.

C. Consistent with Government Code Sections 935(b) and 945.4, all claims shall be presented prior to the filing of any action on such claims and no such action may be maintained by a person who has not complied with the requirements of LMC 3.42.030. (Ord. 1777 § 1, 2005)

3.42.030 Application – Effective date.

As of the effective date of the ordinance codified in this chapter, its provisions shall be applicable to any claim described in this chapter not otherwise time-barred. If the application of the time periods established by this chapter would extinguish an existing claim which is not otherwise time-barred, then the date by which that claim must be presented to the city shall be the sooner of:

A. The date any applicable claims period would have expired; or

B. Six months after the effective date of the ordinance codified in this chapter for claims described in the first sentence of Government Code Section 911.2 or one year after the effective date of the ordinance codified in this chapter for claims described in the second sentence of that section. Nothing in this chapter shall be construed to extend the time for the presentation of any claim, which time was established by statute, ordinance, or other law in effect prior to the adoption of the ordinance codified in this chapter. (Ord. 1777 § 1, 2005)

3.42.040 Appeals.

Any person aggrieved by any decision regarding a claim they file against the city shall be required to comply with the appeal procedure of this section.

A. Any person aggrieved by any decision regarding their submission of a claim to the city may appeal to the city manager by filing a notice of appeal with the city clerk within 14 days of the date of the decision.

B. Within 20 days from receipt of the appeal notice, the matter shall be set for hearing. The appellant shall be served with notice of the time and place of the hearing as well as any relevant materials at least five days prior to the time of the hearing. The appellant, the city manager (or his or her designee) and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

C. Based upon the submission and review of the evidence and the city's file, the city manager/designee shall issue a written notice and order upholding or reversing the determination from which the appeal is taken. The notice shall be given no less than 45 days after the conclusion of the hearing and shall state the reason for the decision. If the city manager fails to or refuses to act within the 45-day period, the claim shall be deemed to have been rejected by the city manager at the end of business on the tenth day.

D. Nothing in this provision is deemed to circumvent or supersede the provisions of Government Code Section 900 et seq. If the claim is subject to time constraints which the claimant believes would preclude usage of this appeal section, the claimant must provide the city with notice of its refusal to utilize the appeal process, so that the city may have an opportunity to determine if it is willing to waive any time constraints which cause the claimant concern. If the city fails to issue written response within two weeks, the claimant may proceed to enforce its claim in superior court without a response from the city.

E. Nothing in this appeal section permits a claimant to file a claim or action on behalf of a class or group unless done so in accordance to the requirements established by this chapter.

F. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed to have been received no later than the fifth calendar day following the date of mailing, as established by proof of mailing, i.e., proof of service or return receipt requested. (Ord. 1777 § 1, 2005)

Chapter 3.45

SOCIAL OPPORTUNITY ENDOWMENT FUND

Sections:

3.45.010 Creation of fund.
3.45.020 Purpose of the fund.
3.45.030 Definitions.
3.45.040 Administration and organization of fund.
3.45.050 Awards from fund.

3.45.010 Creation of fund.

The endowment fund known as the "social opportunity endowment fund" is hereby created and referred to in this chapter as the "fund." (Ord. 1790 § 1, 2006)

3.45.020 Purpose of the fund.

The purpose of the fund is to provide a long-term, stable funding source for the delivery of quality human services to low income city residents.

The primary goal of the fund is to maximize the efficient and cost-effective delivery of human services and to facilitate collaborative efforts and a coordinated approach to improve and expand the delivery of quality human services to low income residents in the city.

The fund is intended to be an endowment whereby the balance of the fund is grown so that the interest earnings alone will provide a stable source of revenue to support the delivery of human services in the city. (Ord. 1790 § 1, 2006)

3.45.030 Definitions.

The following words and phrases as used in this chapter shall have the following meanings:

A. "Human services" shall mean a broad range and intricate variety of programs, projects and activities designed to protect, improve and restore the personal welfare and well-being of residents of all ages and the social health of the community. By way of example, typical human services include, but are not limited to, social services, shelter, economic support, employment and training, education, health and protective services.

B. "Low income person" shall mean a person having an annual income of not more than 80 percent of the median income for the Oakland Standard Metropolitan Statistical Area as defined by the U.S. Department of Labor and U.S. Department of Housing and Urban Development for a family of similar size as determined in accordance with the Housing and Community Development Act of 1974, as amended. (Ord. 1790 § 1, 2006)

3.45.040 Administration and organization of fund.

A. The housing and human services division shall administer the operation of the fund, process applications for awards from the fund, and oversee the use of awards from the fund consistent with this chapter and the plan adopted by city council resolution.

B. The human services commission shall evaluate applications for awards from the fund and make recommendations to the city council regarding the applications. The commission shall also render written reports to the city council detailing the activities of the fund not less than once a year and at such other times as requested by the city council.

C. The fund shall be interest-bearing. The interest accrued on the fund shall be deposited back into the fund. None of the moneys in the fund shall revert to the general fund.

D. It is intended that the fund shall be financed through contributions from development agreements, reinvestment of interest earned on the balance of the fund, grants, gifts, donations, and other alternative funding sources. However, the city's general fund operating budget may include an annual appropriation for the fund as approved by the city council based upon recommendations made by the human services commission.

E. To maintain a consistent source of funding for human services, no more than $80,000 or 30 percent of the balance in the fund, whichever is less, may be awarded each fiscal year.

The city is not obligated to award the full amount available each fiscal year for award from the fund. The maximum cumulative amount that may be awarded in a fiscal year shall not exceed the difference between the total amount to be awarded for human services for that fiscal year and the public service portion of the city's community development block grant entitlement.

The remaining balance of the fund shall be invested consistent with Section 53601 of the Government Code and the city's standard practices.

F. The city council shall adopt by resolution a plan establishing the policies and procedures for the administration of the fund consistent with this chapter. At a minimum, the plan shall include:

1. A process for accepting and reviewing applications for awards from the fund.

2. Criteria to be considered by the human services commission when evaluating applications by eligible agencies and organizations for awards from the fund for qualified programs, projects, and activities.

3. Administrative requirements to monitor the use of an award including provisions for reporting and invoicing.

4. Procedures and requirements for the actual delivery and use of an award. (Ord. 1790 § 1, 2006)

3.45.050 Awards from fund.

A. Only public agencies and community-based organizations that have a 501(c)(3) status shall be eligible to apply for an award from the fund.

B. Only programs, projects, or activities that primarily benefit low income persons and are consistent with the policies set forth in this chapter and the plan adopted by city council resolution shall be qualified for an award from the fund.

C. Awards from the fund shall be made only to eligible agencies and organizations for qualified programs, projects, and activities depending to the extent that a need for low income residents is identified in the city's consolidated plan priorities or the human services needs assessment.

D. Housing and human services staff shall process applications for awards from the fund and present a list of eligible agencies and organizations to the human services commission for qualifying programs, projects, and activities. The human services commission will evaluate and rank the applications based upon the criteria in the council's resolution and provide a recommendation to the city council for award from the fund.

E. The city council may within its discretion make awards from the fund. The city council is not obligated to follow the recommendations of the human services commission. (Ord. 1790 § 1, 2006)