

Title 5

REVENUE AND FINANCE

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Chapter 5.05

BUSINESS LICENSES¹

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1. **Editor's note:** For statutory provisions authorizing a city to license for revenue and regulation purposes, see Government Code section 37101; for provisions regarding the authority of a city to license in exercise of police power, see Business and Professions Code section 16000; for provisions regarding licensing by cities generally, see Business and Professions Code sections 16000 through 16003.

Editor's note: Prior legislation: Ords. 496, 498, 514, 526, 556, 609, 643, 652, 653, 690, 732 and 740.

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Article I. General Provisions

5.05.010 Purpose.

This chapter is enacted solely to raise revenue for municipal purposes, and is not intended for regulation. (Ord. 754 § 1, 2000; 1991 code § 6-1)

5.05.020 Definitions.

As used in this chapter:

Administrative offices mean offices of firms or organizations providing executive, management or administrative services to their own companies, and generating no gross receipts. This category includes offices that have no direct public or client contact, and do not generate income. This category does not include professional offices, as defined below, or banks and savings and loan offices.

Auctioneer means a person who sells or advertises for sale or arranges for the disposal to the highest bidder at public auction any interest in real or personal property.

Business means professions, trades, vocations, rentals, leases, enterprises, establishments and occupations and every kind of calling whether or not carried on for profit, whether or not the business has a fixed place of business in the city.

Carnival means a circus, fair, menagerie, tent show, exhibit, game of skill or ride.

Collector means the city tax collector, finance director, or other city officer charged with the administration of this chapter.

Contractor means and includes a subcontractor, developer or builder. (Bus. and Prof. Code § 16000(c); Health and Saf. Code § 19830.)

Craft fair means a craft fair, street fair, art fair or similar activity where sellers rent spaces, stalls or designated places from the organizer.

Days mean calendar days.

Dwelling unit means one or more habitable rooms designed for occupancy by only one family, for living and sleeping purposes, and having a kitchen. (See PHMC § 5.05.240.)

Employee means a person who regularly works 30 or more hours during a week in any six-month period and who is engaged in the operation or conduct of business in the city, including but not limited to the owner, or the owner's family, partner, agent or manager.

Exhibition means an exhibition where a fee is charged to the public or to participants or where a donation is accepted.

Garage/yard sale means a garage sale, yard sale or similar activity in a residential area where individuals sell their own personal property. (See PHMC § 18.15.070.)

Gross receipts mean the total of amounts actually received and receivable from sales, services and use of real or personal property. Included in *gross receipts* are all receipts, cash, credits and property of any kind without deduction of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses. Included as *gross receipts* is the money received by a lessor, lessee or sublessee leasing to another person. Excluded from *gross receipts* are the following:

- A. Cash discounts allowed and taken on sales;
- B. Credit allowed on property accepted as part of the purchase price and which property may later be sold;
- C. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- D. 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;
- E. Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee furnishes the collector with the names and addresses of the others and the amounts paid to them. Examples include travel agents and ticket agencies;
- F. That portion of the receipts of a general contractor which represents payments to subcontractors licensed under the title, and provided the general contractor furnishes the collector with the names and addresses of the subcontractors and the amounts paid to them;
- G. Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business are not excluded;
- H. 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;
- I. As to a retail gasoline dealer, (1) a portion of his or her receipts from the sale of motor vehicle fuels equal to the motor vehicle fuel license tax imposed by and previously paid under Part 2 of Division 2 of Revenue and Taxation Code of the State of California; and (2) the special motor fuel tax imposed by Section 4041 of Title 26 of the United States Code if paid by the dealer or collected by him or her from the consumer or purchaser;
- J. The amount of gross receipts which has been the basis of a business license tax paid to any other city.

Gross receipts subject to business license tax means the portion of gross receipts related to business conducted within the city. For businesses with their business headquarters located within the city, their total gross receipts shall be deemed to be related to business conducted within the city (see *gross receipts* definition above), unless an apportionment of gross receipts is requested by the business under PHMC § 5.05.210.

Itinerant vendor means a person who engages in a temporary and transient business in the city selling any merchandise, article, or service with the intent of continuing for not more than 90 days, and who for the purpose of carrying on such business either has no fixed place of business, or hires or occupies a room or place for the sale of merchandise.

Manufacturing means a business which has as its primary function the production of a finished product or products from materials or parts assembly or modification through the use of hand labor or machinery, according to an organized plan or systematically with the division of labor.

Peddler any person who travels from door to door, house to house, or place to place, in order to enter uninvited upon residential property, with the object of selling, offering for sale, or soliciting subscriptions, contracts, or orders for any food, wares, merchandise, or real or personal property, or with the object of offering business services to be performed now or in the future.

Person means a natural person, or a domestic or foreign corporation or association, syndicate, joint stock corporation, partnership, club, business or common law trust, or society transacting and carrying on any business in the city, other than as an employee.

Professional means a person engaged in an occupation requiring a bachelor's or advanced educational degree and a professional license in the field. Examples include medicine, law, engineering, psychology and accounting.

Rummage sale means the sale of assorted things, usually secondhand. It includes a flea market or swap meet.

Sale means the exchange of goods or services for money or its equivalent.

Sworn statement means an affidavit, declaration, or certification made under penalty of perjury.

Vending machine means a machine or device which operates with the insertion of a coin, plug, token or card. It includes but is not limited to washing, drying, dry cleaning, and pressing machines; a machine which dispenses objects or information; or a machine which is used as a game, contest or amusement. (Bus. and Prof. Code §§ 16002.2 and 16002.5.) (Ord. 754 § 1, 2000; 1991 code § 6-2)

Article II. Business License Requirements

5.05.030 Business license required – Amount of tax.

Each person doing business in the city is required to have a business license, unless the business is exempt under PHMC § 5.05.240. The following factors are prima facie evidence that a person is conducting business in the city:

- A. The person advertises, holds out, or represents that he or she is in business in the city; or
- B. A person holds an active license or permit issued by a governmental agency indicating that he or she is in business in the city; or
- C. A person fails to deny by a sworn statement given to the collector that he or she is not conducting a business in the city, after being requested to do so by the collector.

Each person conducting a business in the city shall pay the amount designated by city council resolution, as either: (1) an annual license tax measured by gross receipts from the preceding completed 12-month period (or, for a new business which has no gross receipts history, based on a reasonable estimate); or (2) the specific tax for a designated activity. (Ord. 754 § 1, 2000; 1991 code § 6-3.1)

5.05.040 Application.

- A. Required. A person required to have a license under this chapter shall file a written application with the collector on a form prescribed by the collector. The application shall be in the form of a sworn statement.

B. Contents. The application shall contain:

1. Business name, address, telephone number. (The address must be the physical location where the business is conducted. However, at the city's discretion, a post office box or mail drop may be used for some home-based businesses, if the actual location is provided for the city's internal records.)
2. Type of ownership.
3. Nature of the business.
4. Applicant's name, residence address, and residence telephone number. For a corporation, this includes the name, residence address, and residence telephone numbers of the officers, and the federal employer identification number. For a sole proprietor or partnership, this includes the name, residence address, and residence telephone number of the owners or partners, their social security numbers, and federal employer identification number.
5. The year for which the application is made.
6. Financial and other information necessary to determine the amount of the tax. In the initial application, the applicant shall provide an estimate of the annual gross receipts or other data upon which the tax for the particular business is based, for the period covered by the license.
7. Such other information as the collector prescribes. (Ord. 754 § 1, 2000; 1991 code § 6-3.2)

5.05.050 New businesses.

A. When a person first applies for a business license, the applicant shall provide the information set forth in PHMC § 5.05.040. The estimate of gross receipts or other data, if accepted by the collector as reasonable, shall be used in determining the amount of tax to be paid in advance by the new applicant. The amount of the tax is tentative.

B. Within 30 days after the end of the period for which the first license was issued, and before the issuance of a renewal license, the person shall furnish the collector with a sworn statement showing the actual data upon which the license tax is based during the period of the license, and the tax for such period shall be finally ascertained and paid, or a refund given, after credit is given for payment of the tentative tax. (Ord. 754 § 1, 2000; 1991 code § 6-3.3)

5.05.060 Renewal.

A. It is the responsibility of the licensee to ensure timely renewal of the business license and payment of the tax.

B. When a licensee applies for renewal of his or her license, the licensee shall file a written statement on a form prescribed by the collector, setting forth the information concerning the business during the preceding year which the collector requires to fix the amount of the tax.

C. If a licensee fails to file a required statement, or, if after demand by the collector, a licensee fails to file a corrected statement, the collector may determine the amount of license tax due, using the information he or she is able to obtain. (Ord. 754 § 1, 2000; 1991 code § 6-3.4)

5.05.070 Display of license.

Each licensee shall display his or her license by posting the license in a conspicuous place upon the premises where the business is carried on. If the license is for carrying on business which has no fixed place of business, the licensee shall keep the license upon his or her person at all times while carrying on business. If the license is for the rental or leasing of residential or commercial property, the licensee shall keep the license in the files of the business. (Ord. 754 § 1, 2000; 1991 code § 6-3.5)

5.05.080 Record keeping.

Each person subject to this chapter shall keep complete records of business transactions, including sales, receipts, purchases and other expenditures, and shall retain them for examination by the collector. Records which shall be maintained for audit purposes include state and federal income tax returns, schedules and records included in such returns, the state sales and use tax return (if applicable), and any additional records used to calculate the business license tax. The records shall be maintained for a period of at least three years. Each person required to keep records under this section shall allow authorized representatives of the collector to examine the records at reasonable times and places. (See also PHMC § 5.05.280.) (Ord. 754 § 1, 2000; 1991 code § 6-3.6)

5.05.090 License nontransferable.

A license issued under this chapter is not transferable except for a change in the business location under PHMC § 5.05.100. (Ord. 754 § 1, 2000; 1991 code § 6-3.7)

5.05.100 Change of business location.

If a licensee holds a license for the transaction of business at a specified location, and the licensee changes the place of business within the city, the licensee shall apply to the collector for the transfer of the license to the new place of business within 60 days after the change in location. The fee for the transfer is set by city council resolution. If a licensee fails to notify the city in writing of a change of address within 60 days of the change, the license terminates and expires at midnight of the sixtieth day. Upon termination and expiration of a license in this manner, there is no prorated refund of the tax paid. (Ord. 754 § 1, 2000; 1991 code § 6-3.8)

5.05.110 Business closure.

A business owner shall notify the city in writing within 60 calendar days of the last day of operation in the city. If the owner fails to notify the city, the license terminates and expires at midnight of the sixtieth day. When the license terminates in this manner, there is no prorated refund of the tax paid. (Ord. 754 § 1, 2000; 1991 code § 6-3.9)

5.05.120 Duplicate license.

The collector may issue a duplicate license to replace one which is lost or destroyed. The licensee shall file a statement of loss or destruction. The fee for the duplicate license is established by city council resolution. (Ord. 754 § 1, 2000; 1991 code § 6-3.10)

5.05.130 Licensing separate places and types of businesses.

A. Separate places of business. A separate license must be obtained for each branch establishment or separate place of business in which business is carried on.

B. Several businesses at same location. A separate license must be obtained for each separate type of business at the same location if the basis for the tax is not the same for each type of business. A person conducting two or more types of businesses at the same location and under the same management, but with a single set or integrated set of books and records, may pay only one tax if all business types are licensed in the same way (i.e., all gross receipts). That tax will be calculated according to the category of the business type which received the highest percentage of gross receipts. The calculation must be based on taxable activity in all business types being combined. (Ord. 754 § 1, 2000; 1991 code § 6-3.11)

5.05.140 Compliance with requirements.

The payment of the license tax and the issuance of the license do not entitle the holder to carry on a business unless he or she complies with all the requirements of the city, conducts the business in a zone where it is allowed, and complies with all applicable laws. (Ord. 754 § 1, 2000; 1991 code § 6-3.12)

5.05.150 Annual adjustments.

The rate of the license tax shall be adjusted annually as follows: The Consumer Price Index (CPI) published as of June 30, 1967, by the U.S. Department of Labor, Bureau of Labor Statistics for San Francisco, California, area shall be used as the base year. The CPI used for the computation for the succeeding year shall be the preceding June to June, all Urban Index, San Francisco/Oakland/San Jose Index. One hundred percent of the change in the CPI shall be applied to all of the classifications, rounded to the nearest dollar. (Ord. 754 § 1, 2000; 1991 code § 6-3.13)

5.05.160 Tax payment due date.

A. New businesses. The license tax for each new business is due on the date the business begins and is payable within 30 days.

B. Renewals. The license tax is due and payable in advance after the first year in which the tax is paid, as follows:

1. Annual. The tax which is payable annually is due on January 1st, or annually based on the effective date of the business license, at the city's discretion;
2. Semiannual. The tax which is due semiannually is due six months after the effective date of the license;
3. Quarterly. The tax which is due quarterly is due three months after the effective date of the license;
4. Daily. The tax which is due daily is due each day. (Ord. 754 § 1, 2000; 1991 code § 6-3.14)

5.05.170 Proration of tax.

A. Only the annual tax may be prorated. The tax shall be based on the proportionate number of months the business was in operation during a year. Any part of a calendar month the business operates shall be considered a full month under this section.

B. The following are not eligible for prorated taxes: a business which elects to use an annual tax when a shorter term license is available; a business that pays the minimum tax; and a business which fails to notify the city within 60 days of closing, under PHMC § 5.05.110. (Ord. 754 § 1, 2000; 1991 code § 6-3.15)

5.05.180 Delinquent dates.

The license tax is delinquent as follows:

A. In the case of a new business, or an annual or semiannual license, if not paid within 30 days of the due date;

B. In the case of a quarterly license, if not paid within 15 days of the due date;

C. In the case of a daily license, if not paid by 5:00 p.m. of the due date.

In all cases, when the due date for a license falls on a weekend or a city holiday, the nonpenalty period is extended to include the next city working day. For payment sent through the mail, a postmark on the working day is sufficient to avoid the penalty. (1991 code § 6-3.16)

5.05.190 Penalty.

A. The collector may add a penalty for payment after the date specified in PHMC § 5.05.180 equal to 20% of the unpaid tax due for each month or portion of a month that the tax remains unpaid, up to a maximum of 100% penalty. Interest in the amount established by council resolution may apply after the delinquent charge reaches its maximum.

B. The collector may not issue a new license or reinstate a former license to a person indebted to the city for penalties. If a person ceases one business, when taxes or penalties are owed, and starts another business which is essentially the same, the taxes and penalties from the former business will apply to the new business, unless the owner provides sufficient written evidence that the business is different.

C. In addition to the payment of the basic license tax, a fee in the amount established by city council resolution is due from any person who knowingly engages in business without first obtaining a business license. For failure to obtain a business license within 15 days of notice, the new business is subject to all the penalty provisions of this section.

D. The collector may agree in writing to accept installment payments of the amount due over a period not exceeding one year. The agreement to accept installment payments may include provisions for:

1. Payment of simple annual interest on the unpaid balance, in the amount established by city council resolution;
2. Acceleration in case of default;
3. Payment of attorney's fees and court costs for collection; and
4. Revocation of the debtor's existing business license upon 30 days' notice in the event of default under the agreement. (Ord. 754 § 1, 2000; 1991 code § 6-3.17)

Article III. Adjustments – Exemptions – Taxpayer Relief**5.05.200 Reclassification procedure.**

If a licensee or applicant believes that his or her individual business is not assigned to the proper classification because of circumstances peculiar to it, as distinguished from other businesses of the same kind, he or she may apply to the collector for reclassification. The application shall contain such information as the collector requires in order to determine whether the business is properly classified.

The collector shall conduct an investigation following which the collector shall assign the applicant's individual business to the classification shown to be proper on the basis of the investigation. The proper classification is that classification which, in the opinion of the collector, most nearly fits the applicant's business. If there is uncertainty in this chapter or the resolution establishing the amount of taxes, the collector may rely on categories set forth in the Standard Industrial Code (SIC) and amendments to it. The reclassification is not retroactive, but applies at the time of the next regularly ensuing calculation of the applicant's tax. No business shall be reclassified more than once during a year. (Ord. 754 § 1, 2000; 1991 code § 6-4.1)

5.05.210 Apportionment.

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

basis, he or she may require the applicant to submit a sworn statement of the gross receipts and pay the amount of license tax. (Ord. 754 § 1, 2000; 1991 code § 6-4.2)

5.05.220 Refund of overpayment.

A claim for refund of an overpayment must be filed with the collector in the manner prescribed, and within four months of the last day of the period for which the overpayment was made. If the collector determines that an overpayment has been made, he or she may refund the amount overpaid, less an administrative fee set by council resolution. There is no refund for overpayment when a business closes if the city is not notified within the time period set forth in PHMC § 5.05.110. (Ord. 754 § 1, 2000; 1991 code § 6-4.3)

5.05.230 Procedure for claiming exemption.

A person claiming an exemption under this article shall file a written statement with the collector. The statement shall include a sworn statement, stating the facts upon which the exemption is based, and when applicable, the statute or other legal authority on which the claim for exemption is based. Upon a proper showing, the collector may issue a license without payment of the license tax. A person aggrieved by a decision of the collector may appeal as provided in PHMC § 5.05.260. (Ord. 754 § 1, 2000; 1991 code § 6-4.4)

5.05.240 Exempt activities and organizations.

The following organizations and activities are exempt from payment of the business license tax:

- A. Alcoholic beverages. The manufacture, sale, purchase, possession and transportation of alcoholic beverages regulated under the exclusive power of the State of California. (Cal. Const. Art. 20 § 22.)
- B. Bail bond agents. (Hughes v. Los Angeles (1914) 168 Cal. 764.)
- C. Banks and financial corporations. (Rev. and Tax. Code § 23182.)
- D. Blind person. A blind person operating a vending facility. (Welf. and Inst. Code § 19633.)
- E. Cafe musician. A cafe musician as defined in Business and Professions Code section 16000.5.
- F. Charitable and nonprofit organizations.
 - 1. Business conducted for a charitable purpose.
 - 2. The conduct of entertainment, a concert, exhibition or lecture whenever the receipts are for a religious, educational or charitable purpose.
 - 3. A minister, clergyman, Christian Science practitioner, rabbi or priest of any religious organization that has been granted an exemption from federal income tax under Internal Revenue Code § 501(c)(3). (Bus. and Prof. Code § 16000(b); Rev. and Tax. Code § 7284.1.)
 - 4. When an exemption is claimed under this subsection F, the collector may request written evidence of the charitable or nonprofit status, including evidence of the organization's status under Internal Revenue Code § 501(c)(3). (Bus. and Prof. Code § 16000(b); Rev. and Tax. Code § 7284.1.)
- G. Constitution or statute. The tax imposed by this chapter does not apply to a person transacting and carrying on a business exempt by the constitution or statutes of the United States or the State of California. (See also PHMC § 5.05.210.)
- H. Exhibiting artist. An individual artist who displays a painting, sculpture, photograph, or other fine art in a public building, art gallery, or business establishment, if: the display is incidental to the primary business conducted on the premises; the display is primarily for cultural and educational purposes; and the artist's annual gross receipts from all displays in the city do not exceed \$2,000 per year.

I. Insurance company. Insurance company which pays an in-lieu tax or premium under California Constitution Article XIII, Section 28.

J. Interstate commerce. An intercity transportation business by any household goods carrier, or a person or corporation owning or operating a motor vehicle in the transportation of property for hire, under the jurisdiction of the State Public Utilities Commission. (Pub. Util. Code § 5327.)

K. Laundry equipment. The rental, leasing or operating of laundry equipment which meets the standards for exemption under Business and Professions Code section 16002.2.

L. Part-time domestic work. A natural person who performs gardening, janitorial, housework, or similar household or domestic services on a part-time basis and whose gross receipts earned in the city do not exceed \$2,000 per year.

M. Public utility franchise. A public utility holding a franchise granted by the city (under Public Utilities Code sections 1011 and 6001 et seq.) and which makes payments under the franchise.

N. Real estate auctioneer. A real estate auctioneer, unless the auctioneer's permanent place of business is in the city. (Bus. and Prof. Code § 16002.1)

O. Residential care facility or residential family day care home. Residential care facility or residential family day care home of six people or less, whether adults or children or a small family day care home of eight children or less. (See generally: Health and Saf. Code §§ 1502, 1502.5, 1523.1(a)(3), 1566.2, 1568.05(b), 1569.18, 1596.78(c), 1596.803(a)(3), 1597.45(b).)

P. Second unit. A second dwelling unit approved under PHMC § 18.20.100.

Q. Self-employed minor. A self-employed minor under 18 years whose gross receipts do not exceed \$2,000 a year.

R. Soliciting subscriptions. A natural person under 18 years who solicits subscriptions for, or sells, delivers or makes collections for, a newspaper or magazine.

S. Tow trucks. Consistent with PHMC § 5.05.020's definition of gross receipts and Vehicle Code section 12111, a vehicle tower having no fixed place of business in the city is taxed based on gross receipts attributable to work done within the city.

T. Veterans.

1. A veteran holding an honorable discharge from a branch of the military service of the United States, who is physically unable to obtain a livelihood by manual labor. (Bus. and Prof. Code §§ 16001 and 16001.5.)
2. The soliciting for donations for the support of veterans by a federally chartered veterans' organization specified in the United States Code Title 36. (Bus and Prof. Code § 16000.7.)

U. Wholesaler/commercial traveler. A commercial traveler without a fixed place of business in the city whose business is limited to merchandise sold or dealt in at wholesale in this state. (Bus. and Prof. Code § 16002.) (Amended during 2005 recodification; Ord. 754 § 1, 2000; 1991 code § 6-4.5)

5.05.250 Compliance with permit requirements.

The exemption from payment of license tax granted by this chapter does not exempt the person conducting the business from complying with the other permit requirements of this chapter. (Ord. 754 § 1, 2000; 1991 code § 6-4.6)

5.05.260 Appeal procedure.

- A. A person aggrieved by a decision of the collector or of any other officer of the city made under this article may appeal to the city council.
- B. A person appealing a decision shall file written notice of the appeal with the city clerk within 15 days after notice of the decision. The notice shall state the grounds relied upon for appeal.
- C. The city clerk shall cause the matter to be set for hearing before the city council within 45 days from the date of receipt of the notice of appeal, giving the appellant not less than 10 days' notice in writing of the time and place of hearing.
- D. The findings and determination of the city council at the hearing are final and conclusive. Within three days after the findings and determinations are made, the city clerk shall give written notice of them to the appellant.
- E. If no appeal is taken, the decision of the collector or other officer is final and conclusive on expiration of the time fixed for appeal. (Ord. 846 § 3, 2010; Ord. 754 § 1, 2000; 1991 code § 6-4.7)

Article IV. Enforcement by City**5.05.270 License tax and penalty as debt to city.**

The license tax and penalty is a debt to the city. The city may bring an action to collect the debt. (Ord. 754 § 1, 2000; 1991 code § 6-5.1)

5.05.280 Examination by city.

Each person subject to this chapter shall keep complete records of business transactions as provided in PHMC § 5.05.080.

The collector, and each person designated by the collector to do so, may inspect the books and records of a licensee or applicant to determine the amount of license fee due and to verify the information supplied by the licensee or applicant. Every person, by signing an application, consents and agrees to permit the city to examine his or her books and records for these purposes. A statement or information furnished by the business person under this chapter is not conclusive and does not bind the city.

If a person fails to submit the information required, or the collector is not satisfied with the statements or records filed, the collector may determine the amount of the business license tax by means of other information. (Ord. 754 § 1, 2000; 1991 code § 6-5.2)

5.05.290 Revocation or suspension.

A. Grounds. The collector may revoke or suspend a license granted under this chapter for any of the following reasons: (1) a false statement in the application, or (2) conducting business in an illegal, improper, or disorderly manner, or in a manner which endangers the public welfare.

B. Procedure. The collector shall give the licensee written notice of the grounds for revocation or suspension. The notice shall specify a time and place of hearing, and shall be given at least five days before the time of the hearing. The licensee shall show cause why his or her license should not be revoked or suspended. (Ord. 754 § 1, 2000; 1991 code § 6-5.3)

5.05.300 Enforcement remedies.

The remedies prescribed are cumulative and the use of one does not bar the use of another remedy for the purpose of enforcing this chapter. (Ord. 754 § 1, 2000; 1991 code § 6-5.4)

Article V. Administration

5.05.310 Administration, inspection and enforcement.

The collector shall administer and enforce this chapter. The collector may examine each place of business in the city to determine whether this chapter is being complied with.

The collector is authorized to:

- A. Extend the time for filing information required for a period of not more than 30 days and to waive the penalty that otherwise would accrue. After the 30-day grace period, penalties under PHMC § 5.05.190 are due.
- B. Adjust disputed claims after it has been ascertained from an audit of the taxpayer's books of account or other papers that an error caused the license tax to be set at a higher or lower amount than it would have had the information been supplied correctly and assess penalties when applicable.
- C. Adopt forms and prescribe information to be given in the forms.
- D. Adjust disputed claims as regards penalties and interest charges on late payment of taxes.
- E. Refund overpayments, consistent with PHMC § 5.05.220.
- F. The collector and each police officer and each authorized license inspector may: (1) enter free of charge during regular business hours any place of business for which a license is required and demand the exhibition of the license certificate; and (2) file a complaint or issue a citation for the violation of this article.
- G. Collect any back taxes, penalties and interest due for three years. (Code Civ. Proc. § 338(1).) (Ord. 754 § 1, 2000; 1991 code § 6-6.1)

5.05.320 Disclosure of information.

The collector and each representative of the city having an administrative duty shall keep confidential all information concerning the business affairs and operations obtained by an investigation of records in the discharge of official duty and the amount and source of income, profits, losses and expenditures set forth in statement or application. However, the city may allow examination of records by and disclosure of information:

- A. To the public regarding the business name, address and telephone number; the name of the person to whom the license is issued; the type of ownership (i.e., sole proprietor, partnership, corporation, etc.); the general nature of the business; the date the business started and/or ended in the city; and whether the business license is current;
- B. Upon written request, to federal, state or county officials regarding an action under investigation, or to the tax officials of another city or county;
- C. To a grand jury or court of law upon subpoena;
- D. Regarding particular taxpayers to a court of law in a proceeding brought to determine the amount of license tax liability to the city;

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- E. To the taxpayer or to the taxpayer's successors, receivers, trustees, executors, administrator, assignee, or guarantor, if directly interested, all after the person seeking information files a written request, with evidence of his or her authority;
- F. To another city official for collection of taxes for the purpose of administering this chapter or collecting taxes imposed by it;
- G. In a public meeting or otherwise of such information as may be necessary to the city council to permit it to be fully advised as to the facts when a taxpayer files a claim for refund of license taxes, or submits an offer of compromise with regard to a claim asserted against him or her by the city for license taxes, or when acting upon any other matter;
- H. To the public, of general statistics regarding taxes collected or business done in the city;
- I. To any other person, when required by law. (Ord. 754 § 1, 2000; 1991 code § 6-6.2)

Chapter 5.10
PURCHASING AND CONTRACTS

Sections:

Article I. General

- 5.10.010 Purpose.
- 5.10.020 Types of purchases and contracts.
- 5.10.030 Definitions.
- 5.10.040 Implementation.
- 5.10.050 Contracting authority.
- 5.10.055 Local preferences.

Article II. Goods and General Services

- 5.10.060 Purchase of goods.
- 5.10.070 General services contracts.
- 5.10.080 Procedures – Goods or general services up to \$50,000.
- 5.10.090 Procedures – Goods or general services for more than \$50,000.
- 5.10.100 Exceptions – Emergency, sole source, cooperative purchasing, negotiated purchases.

Article III. Professional Services

- 5.10.110 Professional services contracts.

Article IV. Environmental Preferences

- 5.10.150 Purpose and limitation.
- 5.10.160 Implementation.
- 5.10.170 Source reduction.
- 5.10.180 Purchases, practices and use of products.

Article I. General

5.10.010 Purpose.

The purpose of this chapter is to:

A. Provide for the authority of certain city employees to enter into contracts and to set forth procedural requirements; and

B. Establish efficient procedures for the purchase of goods and general services at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function, and to assure the quality of purchases. (Reference: Government Code sections 54201 through 54205.)

C. This chapter does not apply to public works construction contracts (see PHMC Chapter 11.10), to contracts concerning real property, franchise agreements or to labor contracts with city employees. (Ord. 807 § 1, 2005)

5.10.020 Types of purchases and contracts.

Following are the major types of purchases and contracts governed by this chapter.

A. Goods. Goods includes tangible goods, supplies, equipment, vehicles, materials, printing and insurance. An employee purchasing goods shall comply with the requirements in PHMC § 5.10.060. If the purchase of goods and general services are combined in one transaction, the requirements of a general services contract apply.

B. Services. There are two types of service contracts, each defined in PHMC § 5.10.030, with separate requirements applying to each:

1. General services contracts. An employee obtaining general services shall comply with the requirements in PHMC § 5.10.070.
2. Professional services contracts. A professional services contract includes services by architects, accountants, attorneys, engineers, planners, environmental consultants, technicians, and similar services. An employee obtaining professional services shall comply with the requirements in PHMC § 5.10.110. (Ord. 807 § 1, 2005)

5.10.030 Definitions.

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

Best value means the best value to the city based on all factors, including: cost; contractor's ability, capacity or skill; ability to perform within the time required; character, integrity, reputation, judgment, experience and efficiency; quality of contractor's performance on previous purchases or contracts, if applicable; and the ability of the contractor to provide future maintenance, repair, parts and services, if necessary.

Contract and agreement are synonymous. They include, but are not limited to, a purchase order, a contract for services, an addendum or change order, a letter agreement or a memorandum of understanding.

Emergency means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. (This does not include a self-created emergency resulting from delay or inaction.)

Goods includes tangible goods, supplies, equipment, vehicles, materials, printing and insurance.

Public project means (1) construction, reconstruction, erection, alteration, renovation, improvement, demolition or repair work involving any publicly owned, leased, or operated facility; or (2) painting or repainting of any publicly owned, leased or operated facility. Public project does not include maintenance work: (1) routine, recurring, and usual work for the preservation or protection of any publicly owned or operated facility for its intended purposes; (2) minor repainting; (3) resurfacing of streets and highways at less than one inch thickness; or (4) landscape maintenance. (Public Contract Code section 22002.)

Services involve the furnishing of labor, time or effort by an independent contractor who is specially trained to perform the services.

General services includes any work performed or services rendered, with or without the furnishing of materials, including, but not limited to:

1. Repair, modification and maintenance of city equipment;
2. Licensing software;
3. Repair, modification and maintenance of software;
4. Cleaning, analysis, testing, moving, removal or disposal of city supplies and equipment (other than by sale);
5. Providing temporary personnel services which are not professional services;
6. Performing repair, demolition or other work required to abate a nuisance;
7. Leasing or rental of equipment, and related maintenance agreements;
8. Maintenance work on city property including: (a) routine, recurring, and usual work for the preservation or protection of any publicly owned or operated facility for its intended purposes; (b) minor repainting; (c)

resurfacing of streets and highways at less than one inch; or (d) landscape maintenance. *General services* does not include work defined as a public project. (See PHMC Chapter 11.10.)

Professional services or *consultant services* means the services of an attorney, architect, accountant, financial consultant, planning or environmental consultant, investment advisor, bank or trustee officer, or other professional. (Ord. 807 § 1, 2005)

5.10.040 Implementation.

The finance director is authorized to implement this chapter. This implementation includes, among other things, the preparation and circulation of purchasing procedures. (Ord. 807 § 1, 2005)

5.10.050 Contracting authority.

The city manager, or his or her designee, is authorized to enter into and sign on behalf of the city the following contracts. At the discretion of the city manager, any contract may be submitted to the city council for its approval.

A. Goods and services contracts. A purchase or contract for goods or services if funds have been appropriated in the budget. The manager may also enter into change orders or amendments which, cumulatively, do not exceed 20% of the original contract price.

B. Professional services contracts. A purchase or contract for professional services for up to \$25,000 if funds have been appropriated in the budget. The manager may also enter into change orders or amendments which, cumulatively, do not exceed 20% of the original contract price.

C. Contracts with no cost to the city. Contracts which have no cost to the city, including:

1. Community services. Contracts for community, social or recreational services, or for the use of city property or facilities, in accordance with established administrative guidelines, which require no payment of money by the city or which provide for payment of money to the city in an amount not in excess of \$50,000 under each contract.

2. Professional services contract paid for by developer. Contracts for professional services in an amount up to \$100,000 if (a) a developer has deposited the full amount of the contract into a trust fund account (or made a deposit with a written promise to pay the balance when due), and (b) the funds are to be used for a city-managed professional services contract, such as an environmental impact report.

3. Public agencies and utilities. Contracts with public agencies or public utility companies regarding construction or use of public improvements or utility facilities, which require no payment of money by the city or which provide for payment of money to the city in an amount not in excess of \$50,000 under each contract.

4. Other. Any other contract when there is no cost to the city.

D. Settlement agreements. Agreements documenting the settlement of litigation against the city for an amount not to exceed \$20,000, in consultation with the city attorney.

E. Emergency contracts. In an emergency endangering the lives, property or welfare of the people of the city or the property of the city, the city manager may authorize the expenditure of any unencumbered moneys in the emergency reserve fund, notwithstanding the fact that such moneys may not have been appropriated for such purpose, to the extent that other moneys have not been appropriated or are otherwise unavailable. (See also PHMC § 11.10.100 regarding public projects in an emergency.) (Ord. 807 § 1, 2005)

5.10.055 Local preferences.

Purchasing goods and services from local vendors is desired because it stimulates the local economy, recognizes that our local vendors are valued members of our community, and provides additional sales tax revenue

to the city. If factors such as quality, previous performance, and availability are substantially equal among vendors, a vendor whose business is located in Pleasant Hill shall be awarded a contract if his or her quote or bid is within 5% of the low bid (including shipping costs). (Ord. 835 § 2, 2008)

Article II. Goods and General Services

5.10.060 Purchase of goods.

Each transaction for the purchase of goods shall conform with this section and with the procedural requirements in PHMC §§ 5.10.080 through 5.10.100.

A. Requirements. An employee purchasing goods shall make appropriate use of purchase orders, request for proposals, notice inviting sealed bids, vendor letters, credit card purchases, petty cash, or a combination of them, under the city's purchasing policy. (See PHMC §§ 5.10.080 through 5.10.110.)

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B. Keeping records of purchase transactions. Each employee purchasing goods shall keep records of the purchase as required by his or her department. When quotations, request for proposals or notice inviting sealed bids is required, those records shall be kept in the department responsible for the transaction.

C. Leasing. Leasing of equipment shall be in accordance with PHMC §§ 5.10.080, 5.10.090 or 5.10.100, depending upon the cost of an annual lease. Each contract for the leasing or rental of equipment for the city shall contain a provision permitting the city to terminate the contract at the end of any fiscal year during the term of the contract upon not less than 30 days' written notice to the other party. (Cal. Const. art. XVI § 18.) (Ord. 807 § 1, 2005)

5.10.070 General services contracts.

Each contract for general services shall conform to the following procedural requirements:

A. Requirements. An employee contracting for general services shall make appropriate use of purchase orders, request for proposals, notice inviting sealed bids, vendor letters, credit card purchases, petty cash, or a combination of them, under the city's purchasing policy. (See PHMC §§ 5.10.080 through 5.10.100.)

B. Service contract. The employee purchasing general services shall obtain written confirmation of: the contractor's license number (when applicable), automobile and general liability insurance coverage, workers' compensation insurance, and a city business license.

A written agreement is required for services of \$10,000 or more. Each general services contract must: (1) be in writing, (2) be signed by an employee having the authority to sign (See PHMC § 5.10.050); (3) include appropriate insurance and indemnification provisions; and (4) be approved as to form by the city attorney, either individually or by approval of a standard form.

C. Keeping original contracts. A signed original of each general services contract entered into must be kept by the department handling the contract matter for as long as the contract is in effect, plus three years.

D. Indemnity and insurance. A contractor engaged in services on city property shall hold the city harmless, and maintain commercial general liability, automobile and workers' compensation insurance in the amounts and form determined by the city attorney. The department handling the general services matter is responsible for reviewing and monitoring insurance requirements, both initially and during the term of the contract.

E. Keeping records of purchase transactions. Each employee purchasing services shall keep records of the purchase as required by the city's purchasing policy and by his/her department. When quotations, a request for proposals or notice inviting sealed bids is required, those records shall be kept in the department responsible for the transaction. (Ord. 807 § 1, 2005)

5.10.080 Procedures – Goods or general services up to \$50,000.

A. Quotation. A department may purchase goods or general services of a value of up to \$50,000 (in a one-year period) according to the following procedures.

Whenever possible and practical, the purchase shall be based on at least three quotations. The department shall solicit quotations by written request (including facsimile or electronic mail) or by telephone to prospective vendors. The department shall keep a record of all orders and quotes for a period of one year after the submission of quotes or placing of orders.

For a purchase of up to \$10,000, the quotations may be verbal or written. For a purchase in an amount between \$10,000 and \$50,000, the quotations shall be written (including facsimile and electronic mail). The department shall award the contract to the quotation representing the best value as defined in PHMC § 5.10.030. If no bid, or no responsive bid, is received after inviting quotations under this section, the department head may, with

the city manager's approval, proceed to hire or have services performed or purchase the goods in the open market.

B. Exceptions. The quotation procedure under this section may be dispensed with under any exception set forth in PHMC § 5.10.100. (Ord. 807 § 1, 2005)

5.10.090 Procedures – Goods or general services for more than \$50,000.

A. Bidding procedures. A department shall purchase goods or general services for more than \$50,000 (in a one-year period) by the formal bid procedures prescribed in this section.

1. Notice. The notice inviting bids shall include a general description of the articles or general services to be purchased; state where bid forms and specifications may be secured; and state the final time and place for submitting bids. The notice shall be published 10 days before the bid opening date at least once in a newspaper of general circulation. The department shall also solicit sealed bids from responsible prospective suppliers.

The department may require bidders' security or a performance bond, or both, and that requirement shall be included in the notice. A bidder is entitled to the return of bid security upon execution of the contract or upon the readvertisement for bids. A successful bidder forfeits the bid security upon refusal or failure to execute the contract within 10 days after the notice of award of contract has been mailed, unless the city is responsible for the delay.

2. Bid opening procedure. Bidders shall submit sealed bids to the department director, and shall identify them as bids on the envelope. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening.

In his or her discretion, the department director may reject any and all bids presented, and may readvertise for bids. If no bid, or no responsive bid, is received after inviting bids under this section, the department director may, with the city manager's approval, proceed to hire or have services performed or purchase the supplies in the open market.

3. Award of contract. The department director shall award the contract to the bid representing the best value as defined in PHMC § 5.10.030. The basis upon which the award is made shall be in writing.

B. Exceptions. The bidding procedure under this section may be dispensed with under any exception set forth in PHMC § 5.10.100.

C. No splitting. Splitting the purchase of goods or general services into smaller orders for the purpose of evading the competitive bidding provisions of this section is not permitted. (Ord. 807 § 1, 2005)

5.10.100 Exceptions – Emergency, sole source, cooperative purchasing, negotiated purchases.

The department may dispense with quotation or bidding procedures for purchasing goods or general services in any of the following circumstances:

A. Emergency. In an emergency situation as defined in PHMC § 5.10.030.

B. Sole or limited source. Occasionally, required goods are unique, of a proprietary nature, or of specific design or construction. Examples include hardware, software or communications equipment. In these cases, quotation or bidding procedures could be meaningless. The department shall keep a written record of the basis for this determination.

C. Cooperative purchasing. If such purchases are based on an agreement or cooperative purchasing program entered into by any of the following, regardless of whether the city is a named party to the agreement or an actual participant in such a program: (a) any public agency situated within the state, if the underlying purchase was made using quotation or bid procedure substantially similar to the city's; or (b) the California Multiple Award Schedules (CMAS).

D. Other. Where goods or general services are purchased through negotiations. This exception applies when the purchase is for: (1) a specialized technology product; (2) an addition to, or repair or maintenance of, existing equipment which can be more efficiently added to, repaired or maintained by a particular company or manufacturer; or (3) equipment which must be compatible with existing equipment, by reason of the training of the personnel or an inventory of existing replacement parts kept by the city.

The affected department head shall state in writing the basis for a determination that this section applies. (Ord. 807 § 1, 2005)

Article III. Professional Services

5.10.110 Professional services contracts.

Each professional services contract shall: (1) be in writing, (2) be signed by an employee having the authority to sign (See PHMC § 5.10.050); (3) include the nature and scope of services, total amount, and time for performance; (4) include appropriate insurance and indemnification provisions; and (5) be approved as to form by the city attorney. However, a department director may enter into a simpler agreement, on a form prepared by the city attorney, if the agreement has a value of \$10,000 or less.

A contractor engaged in service on city property shall hold the city harmless, and maintain property damage, general liability and workers' compensation insurance in the amounts and form determined by the city attorney.

Soliciting quotes, estimates or requests for proposals (RFP) for a professional service contract is advisable, depending on the circumstances, but is not required. (Ord. 807 § 1, 2005)

Article IV. Environmental Preferences

5.10.150 Purpose and limitation.

A. Purpose. It is the city's intention to:

1. Institute practices that reduce waste by increasing product efficiency and effectiveness; and
2. Purchase products that minimize environmental impacts, toxics, pollution and hazards to workers and the community to the greatest extent practicable; and
3. Purchase products that: use less oil to produce and transport; include recycled content; are durable and long-lasting; conserve energy and water; use agricultural fibers and residues; reduce greenhouse gas emissions; use unbleached or chlorine-free manufacturing processes; are lead- and mercury-free; and use wood from sustainably harvested forests.

B. Limitation. Nothing in this article requires a department, purchaser or contractor to obtain products that do not perform adequately or are not available at a reasonable price in a reasonable period of time. The city intends to purchase environmentally preferable products when it is technically and economically feasible to do so. The sections of this article shall be interpreted subject to the provisions of this section. (Ord. 835 § 1, 2008)

5.10.160 Implementation.

The city manager shall implement this article in coordination with all city departments by amending the city's purchasing procedures to include more detailed information regarding environmental preferences. The manager shall report to the city council annually regarding the effectiveness of this article. (Ord. 835 § 1, 2008)

5.10.170 Source reduction.

The city will institute practices that reduce waste and result in the purchase of fewer products, without reducing safety, quality or effectiveness. This includes:

- A. Purchase of remanufactured products;
- B. Evaluating long-term costs in comparing product alternatives;
- C. Preferring products that are durable, long lasting, reusable, refillable or recyclable;
- D. Reducing packaging or preferring packaging that is reusable, recyclable or compostable;
- E. Requiring suppliers of electronic equipment to take back equipment for reuse or recycling;
- F. Using energy efficient, and water efficient, equipment and lighting; and
- G. Using products that use less oil to produce and transport. (Ord. 835 § 1, 2008)

5.10.180 Purchases, practices and use of products.

A. Recycled content. The city will purchase products made from recycled content. This includes, but is not limited to: office paper; janitorial paper supplies; construction materials; landscaping materials; lubricating and industrial oil; asphalt concrete, aggregate base or Portland cement; and transportation products such as signs, cones, parking stops, delineators and barricades.

B. Landscaping. The city will undertake landscape renovations, construction and maintenance using sustainable materials and techniques, including: integrated pest management; grasscycling; drip irrigation; composting; use of mulch; use of native and drought-tolerant plants; use of hardscape made of recycled content; and minimizing the amount of impervious surface.

C. Toxics and pollution.

1. The city will use products that do not include: cleaning and disinfecting products that contain ingredients which are carcinogens, mutagens or teratogens; products containing chlorofluorocarbons, phosphates, volatile organic compounds (VOCs) and formaldehyde, lead or mercury (except for fluorescent lights containing mercury); or products that contribute to the formation of dioxins and furans.

2. The city will use products that do include: biodegradable surfactants and detergents; physical, mechanical and biological pest controls; and fuel-efficient vehicles (including electric, hybrid, natural gas and bio-based fuels). (Ord. 836 § 1, 2008; Ord. 835 § 1, 2008)

Chapter 5.15**DISPOSITION OF PROPERTY**

Sections:

- 5.15.010 Disposal of surplus property.
- 5.15.020 Lost property.

5.15.010 Disposal of surplus property.

This section affects surplus city property, including goods, supplies and equipment. (See also PHMC § 5.15.020, Lost property.)

The finance director is responsible for the disposal of surplus property. A department wishing to dispose of surplus, damaged or inoperative goods, supplies or equipment should contact the finance director. Disposal of fixed assets must be preceded by a fixed asset disposal form in order for the asset to be taken off the books. ("Fixed assets" are tangible personal property where the cost of acquisition is at least \$1,500 and the asset has a useful or functional life of at least three years.)

The finance director has the authority to dispose of surplus property by sale, transfer, exchange or donation to other governmental agencies, nonprofit organizations or at auction, or by discarding or destroying the property. Surplus property may not be sold or transferred to city employees other than at auction open to the general public or with approval by the city council. (Ord. 807 § 2, 2005)

5.15.020 Lost property.

The storage and disposition of lost or unclaimed personal property which comes into the possession of the police department or other city department is governed by Civil Code sections 2080.1 through 2080.6. Any proceeds from the sale of such property (after deducting expenses) shall be deposited in the general fund. (Ord. 807 § 2, 2005)

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Chapter 5.20**TAX ASSESSMENT AND COLLECTION DUTIES¹**

Sections:

5.20.010 Transfer designated.

5.20.010 Transfer designated.

The assessment and tax collection duties and the collection of special assessments levied for municipal purposes are transferred to the assessor and tax collector of the county for the purpose of property assessment and collection of ad valorem property taxes that become a lien after January 1, 1962, and the collection of special assessments levied for municipal purposes becoming due and payable after January 1, 1962. (1991 code § 4-1.1)

1. **Editor's note:** For statutory provisions regarding the transfer of city tax functions to county, see Government Code sections 51500 through 51520.

Chapter 5.25

UNIFORM LOCAL SALES AND USE TAX¹

Sections:

- 5.25.010 Title.
- 5.25.020 Purpose.
- 5.25.030 Definitions.
- 5.25.040 Contract with State Board of Equalization.
- 5.25.050 Sales tax imposed.
- 5.25.060 Use tax imposed.
- 5.25.070 Tax rate.
- 5.25.080 Determination of place of sale.
- 5.25.090 Adoption of state law.
- 5.25.100 Legal process against collection prohibited.
- 5.25.110 Seller's permit.
- 5.25.120 Exclusions and exemptions.

5.25.010 Title.

This chapter may be cited as the uniform local sales and use tax regulations of the City of Pleasant Hill. (1991 code § 4-2.1)

5.25.020 Purpose.

The city council declares that this chapter is adopted to achieve the following purposes among others, and directs that its provisions be interpreted in order to accomplish those purposes.

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

B. To adopt sales and use tax regulations which incorporate provisions identical to those of the Sales and Use Tax Law of the State of California 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 sales and use tax regulations which impose a tax and provide a measure 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 sales and use tax regulations which can be administered in a manner that will, to the degree possible be 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 record keeping upon persons subject to taxation under the provisions of this chapter. (1991 code § 4-2.2)

5.25.030 Definitions.

As used in this chapter:

Operative date means January 1, 1962. (1991 code § 4-2.3)

1. **Editor's note:** For statutory provisions regarding sales and use tax generally, see Revenue and Taxation Code sections 6001 and 7176.

5.25.040 Contract with State Board of Equalization.

Before January 1, 1962, the city shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this chapter; provided, that if this city has not contracted with the State Board of Equalization before January 1, 1962, it shall nevertheless so contract and in such a case the operative date is the first day of the first calendar quarter following the execution of such a contract rather than the date stated in PHMC § 5.25.030. (1991 code § 4-2.4)

5.25.050 Sales tax imposed.

For the privilege of selling tangible personal property at retail, a tax is imposed upon all retailers in the city at the rate stated in PHMC § 5.25.070 of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in this city on and after January 1, 1962. (1991 code § 4-2.5)

5.25.060 Use tax imposed.

An excise tax is 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 PHMC § 5.25.070 of the sales price of the property. The sales price includes delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. (1991 code § 4-2.6)

5.25.070 Tax rate.

The rate of sales tax and use tax imposed by this section is 1.0%. (1991 code § 4-2.7)

5.25.080 Determination of place of sale.

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 or her 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. (1991 code § 4-2.8)

5.25.090 Adoption of state law.

A. By reference. Except as otherwise provided in this chapter, and except insofar as it is inconsistent with Part 1.5 of Division 2 of the Revenue and Taxation Code, Part 1 of Division 2 of the Revenue and Taxation Code is adopted and made a part of this chapter as though fully set forth in it.

B. Amendments. All 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.

C. Limitations. In adopting 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. 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 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 of California, 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 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 provisions of that code; the substitution shall not be made in Revenue and Taxation Code sections 6701, 6702 (except in the last sentence), 6711, 6715, 6737, 6797, or 6828; 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. (1991 code § 4-2.9)

5.25.100 Legal process against collection prohibited.

No injunction, writ of mandate, or other legal or equitable process shall issue in a suit, action, or proceeding in a court against the state or this city or against an 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. (1991 code § 4-2.10)

5.25.110 Seller’s permit.

If a seller’s permit has been issued to a retailer under Revenue and Taxation Code section 6068, an additional seller’s permit is not required by this chapter. (1991 code § 4-2.11)

5.25.120 Exclusions and exemptions.

A. General provisions.

1. The amount subject to tax shall not include any sales or use tax imposed by the State of California upon a retailer or consumer.
2. 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 county or city in this state shall be exempt from the tax due under this chapter.
3. 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.
4. In addition to the exemptions provided in Revenue and Taxation Code sections 6366 and 6366.1, 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.

B. Special provisions.

1. The amount subject to tax shall not include any sales or use tax imposed by the State of California upon a retailer or consumer.
2. 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 county or city in this state shall be exempt from the tax due under this chapter.
3. 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.

4. 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.
5. 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.
6. In addition to the exemptions provided in Revenue and Taxation Code sections 6366 and 6366.1 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.

C. Alternating operability.

1. Subsection A of this section shall be operative January 1, 1984.
2. Subsection B of this section shall be operative on the operative date of any amendment to Revenue and Taxation Code section 7202 or which repeals and reenacts Revenue and Taxation Code section 7202 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 Revenue and Taxation Code sections 78202(i)(7) and (i)(8) as those sections read on October 1, 1983. (Ord. 531 §§ 1 – 4, 1983; 1991 code § 4-2.12)

Chapter 5.30**UNIFORM TRANSIENT OCCUPANCY TAX¹**

Sections:

- 5.30.010 Short title.
- 5.30.020 Definitions.
- 5.30.030 Tax imposed.
- 5.30.040 Exemptions.
- 5.30.050 Transient occupancy registration certificate.
- 5.30.060 Duty of operator.
- 5.30.070 Reporting and remitting.
- 5.30.080 Noncompliance, assessment.
- 5.30.090 Collection by court action.
- 5.30.100 Delinquent payment – Penalties.
- 5.30.110 Refunds.
- 5.30.120 Appeals.

5.30.010 Short title.

This chapter may be cited as the uniform transient occupancy tax regulations of the City of Pleasant Hill. (1991 code § 4-3.1)

5.30.020 Definitions.

As used in this chapter:

Hotel a structure, or a portion of a structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes a 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.

Occupancy means the use or possession, or the right to the use or possession, of a room or portion of a room in a hotel for dwelling, lodging, or sleeping purposes.

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 or her functions 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 or her principal. Compliance with this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

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.

Tax administrator means the finance officer.

Transient means a 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 29 consecutive calendar days or less, counting por-

1. **Editor's note:** For statutory provisions authorizing a city to levy a tax on the occupancy of a hotel room, see Revenue and Taxation Code section 7280.

tions of calendar days as full days. A person who so occupies space in a hotel is a transient until the period of 29 days expires 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 before and after June 10, 1965, may be considered. (1991 code § 4-3.2)

5.30.030 Tax imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount specified by city council resolution of the rent charged by the operator. The 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 tax administrator may require that such tax shall be paid directly to the tax administrator. (1991 code § 4-3.3)

5.30.040 Exemptions.

A. No tax shall be imposed upon:

1. A person as to whom, or an occupancy as to which, it is beyond the power of the city to impose the tax;
2. A federal or state officer or employee when on official business;
3. An officer or employee of a foreign government who is exempt by express provision of federal law or international treaty.

B. No exemption may be granted except upon a claim made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator. (1991 code § 4-3.4)

5.30.050 Transient occupancy registration certificate.

A. Required. Within 30 days after beginning business, each operator of a hotel renting occupancy to transients shall register the hotel with the tax administrator and obtain a transient occupancy registration certificate, to be at all times posted in a conspicuous place on the premises.

B. Contents. The certificate shall, among other things, state the following:

1. The name of the operator;
2. The address of the hotel;
3. The date upon which the certificate was issued.

C. Compliance. This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the uniform transient occupancy tax regulations by registering with the tax administrator for the purpose of collecting from transients the transient occupancy tax and remitting the tax to the tax administrator. This certificate does not authorize a person to conduct an unlawful business or to conduct a lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from the city. This certificate does not constitute a permit. (1991 code § 4-3.5)

5.30.060 Duty of operator.

A. Collection. Each operator shall collect the tax to the same extent and at the same time as the rent is collected from every transient. The amount of 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 that the tax or any part of it 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 provided in this chapter.

B. Record keeping. It is the duty of every operator liable for the collection and payment to the city of the tax to keep and preserve for a period of three years all records as may be necessary to determine the amount of the tax as he or she may have been liable for the collection of and payment to the city. The tax administrator may inspect these records at all reasonable times. (1991 code § 4-3.6)

5.30.070 Reporting and remitting.

A. 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 tax administrator, each operator shall make a return to the tax administrator, on a form provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies.

B. At the time the return is filed, the full amount of the tax collected shall be paid to the tax administrator. The tax administrator may establish shorter reporting periods for a certificate holder if he or she considers it necessary in order to ensure collection of the tax and he or she may require further information in the return. Returns and payments are due immediately upon cessation of business. All taxes collected by an operator shall be held in trust for the account of the city until payment is made to the tax administrator. (1991 code § 4-3.7)

5.30.080 Noncompliance, assessment.

A. If an operator fails or refuses to collect the tax and to make any report and remittance of the tax, the tax administrator shall proceed in such manner as he or she considers best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the tax administrator obtains such facts and information upon which to base the assessment of the tax payable by an operator who has failed or refused to collect it and to report and pay it, he or she shall determine and assess against the operator the tax, interest and penalties provided for.

B. In case such determination is made, the tax administrator shall give a notice of the amount assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator at his or her last known place of address.

C. The operator may within 10 days after the serving or mailing of the notice apply in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties determined by the tax administrator become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five days' written notice in the manner prescribed in this subsection to the operator to show cause at a time and place fixed in the notice why the amount specified should not be fixed for such tax, interest and penalties.

D. At the hearing the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed. After the hearing the tax administrator shall determine the proper tax and shall give written notice to the person in the manner prescribed in this subsection of his or her determination and the amount of the tax, interest and penalties. The amount determined to be due is payable after 15 days unless an appeal is taken as provided in PHMC § 5.30.120. (1991 code § 4-3.8)

5.30.090 Collection by court action.

The tax required to be paid by a transient is a debt owed by the transient to the city. The tax collected by an operator which has not been paid to the city is a debt owed by the operator to the city. A person owing this debt is liable to an action brought in the name of the city for the recovery of the debt. (1991 code § 4-3.9)

5.30.100 Delinquent payment – Penalties.

- A. An operator who fails to remit the tax within the time required shall pay a penalty of 10% of the amount of the tax in addition to the amount of the tax.
- B. An operator who fails to remit a delinquent payment 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% of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed.
- C. If the tax administrator determines that the nonpayment of any remittance due under this section is due to fraud, a penalty of 25% 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. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this section shall pay interest at the rate of 0.5% 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. Every penalty imposed and the interest as accrues under this subsection becomes a part of the tax required to be paid. (1991 code § 4-3.10)

5.30.110 Refunds.

- A. Whenever the amount of a tax, interest or penalty is overpaid, paid more than once, or is erroneously collected or received by the city, it may be refunded as provided in subsections B and C of this subsection if a claim in writing stating, under penalty of perjury, the specific grounds 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. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a transient. However, neither a refund nor a credit is 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, paid more than once, or erroneously 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 tax administrator, or when the transient, after paying the tax to the operator, establishes to the satisfaction of the tax administrator that the transient is unable to obtain a refund from the operator who collected the tax.
- D. No refund may be paid unless the claimant establishes his or her right to it by written records showing entitlement to it. (1991 code § 4-3.11)

5.30.120 Appeals.

An operator aggrieved by a decision of the tax administrator with respect to the amount of the tax, interest, or penalties may appeal to the 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 for hearing the appeal, and the city clerk shall give notice in writing to the operator at his or her last known place of address. The findings of the council are final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due is due and payable upon the service of notice. (1991 code § 4-3.12)

Chapter 5.35**REAL PROPERTY TRANSFER TAX¹**

Sections:

- 5.35.010 Short title and authority.
- 5.35.020 Administration.
- 5.35.030 Tax imposed.
- 5.35.040 Exception.
- 5.35.050 Exemption of public agencies.
- 5.35.060 Partnership interest.
- 5.35.070 Tax liability.
- 5.35.080 Refunds.

5.35.010 Short title and authority.

This chapter may be cited as the real property transfer tax regulations of the city. It is adopted under the authority of Part 6.7 of Division 2 of the Revenue and Taxation Code of the State of California, beginning with § 11901. (1991 code § 4-4.1)

5.35.020 Administration.

The county recorder shall administer this chapter in conformity with Part 6.7 of Division 2 of the Revenue and Taxation Code and a county ordinance adopted pursuant to it. (1991 code § 4-4.2)

5.35.030 Tax imposed.

There is imposed on each instrument or writing by which land, tenement, or other realty sold within the city is transferred or conveyed to the purchaser or other grantee when the consideration or value of the interest conveyed (exclusive of the value of an encumbrance remaining at the time of sale) a rate as set by city council resolution and consistent with state law. (Amended during 2005 recodification; 1991 code § 4-4.3)

5.35.040 Exception.

- A. Security agreement. The tax imposed does not apply to an instrument in writing given to secure a debt.
- B. Conveyance.
 - 1. The tax imposed does not apply to a conveyance to make effective a plan of reorganization or adjustment:
 - a. Confirmed under the Federal Bankruptcy Act;
 - b. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;
 - c. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or
 - d. Whereby a mere change in identity, form, or place of organization is effected.
 - 2. Subsection B.1 of this section only applies if the filing of instrument of transfer or conveyance occurs within five years from the date of confirmation, approval, or change.

1. **Editor's note:** For statutory provisions regarding real property transfer tax, see Revenue and Taxation Code section 11901 et seq.

C. Order of securities and exchange commission. The tax does not apply to the making of conveyances to make effective an order of the Securities and Exchange Commission, as defined in § 1083(a) of the Internal Revenue Code of 1954 if:

1. The order of the Securities and Exchange Commission recites that the conveyance is necessary or appropriate to carry out Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935; and
2. The order specifies the property which is ordered to be conveyed. (1991 code § 4-4.4)

5.35.050 Exemption of public agencies.

The United States or its agency or instrumentality, a state, territory, or political subdivision, or the District of Columbia is not liable for the tax imposed with respect to the instrument or writing to which it is a party, but the tax may be collected from any other party liable for it. (1991 code § 4-4.5)

5.35.060 Partnership interest.

A. In the case of realty held by a partnership, no levy is imposed by reason of transfer of an interest in a partnership if:

1. The partnership is a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and
2. The continuing partnership continues to hold the realty concerned.

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

C. Not more than one tax may be imposed by reason of a termination described in subsection B of this section, and any transfer pursuant to it, with respect to the realty held by the partnership at the time of termination. (1991 code § 4-4.6)

5.35.070 Tax liability.

The tax imposed under PHMC § 5.35.030 shall be paid by the person who makes, signs, or issues the instrument subject to the tax, or for whose use or benefit the instrument is made, signed, or issued. (1991 code § 4-4.7)

5.35.080 Refunds.

A claim for refund of the tax imposed is governed by Revenue and Taxation Code section 5096 and following. (1991 code § 4-4.8)

Chapter 5.40**BEDROOM TAX**

Sections:

- 5.40.010 Findings.
- 5.40.020 Definitions.
- 5.40.030 Applicability.
- 5.40.040 Tax imposed.
- 5.40.050 When due – Delinquent tax.
- 5.40.060 Exceptions.
- 5.40.070 Payment required.
- 5.40.080 Fund created.
- 5.40.090 Tax liability and enforcement.
- 5.40.100 Refunds.

5.40.010 Findings.

The city council finds that the increasing development of land in the city creates a need for the acquisition of public improvements and facilities, which cannot be met by the ordinary revenues of the city. The need for public property and public improvements and facilities results directly from the increase in density by the development of land that has been vacant, and by the construction of additional residential and commercial units on land heretofore undeveloped. The most practical and equitable method of collecting the funds necessary for such acquisition and public improvements and facilities is to impose a tax upon the construction and occupancy of residential and commercial units or buildings in the city. To the extent collection of this tax together with any other would constitute double taxation, the director of finance shall approve an appropriate reduction in the tax amount. (1991 code § 4-5.1)

5.40.020 Definitions.

As used in this chapter:

Bedroom means and includes a room designated or used for sleeping.

Commercial unit means any space in a building or structure designated or intended to be occupied or used for business or commercial purposes and includes a sleeping room in a hotel or motel without a kitchen or kitchen facilities.

Residential unit means a single-family dwelling, a mobile home, a dwelling unit in a duplex, apartment house, or dwelling group, or any other place designed for human occupancy which contains a kitchen. (1991 code § 4-5.2)

5.40.030 Applicability.

The tax imposed by this chapter applies to all new residential and commercial units or structures for which a building permit is issued on or after January 1, 1972. It also applies to structures which are constructed outside the city and then relocated into the city; provided, however, that payment of the tax to the city for any new prefabricated structure situated within a mobile home park, for which a city building permit is not required, shall be made concurrently with payment of the mobile home park sewer connection fee and shall be a condition precedent to the issuance of an encroachment permit. (1991 code § 4-5.3)

5.40.040 Tax imposed.

- A. An excise tax is imposed upon the construction and occupancy of each residential unit and/or commercial unit in the city.
- B. The rates of the excise tax imposed are as set by city council resolution. (Ord. 523 § 1, 1983; 1991 code § 4-5.4)

5.40.050 When due – Delinquent tax.

The tax due hereunder shall be determined at the time a building permit is sought for construction and the tax is due and payable concurrently with the application for the building permit. If the tax is not paid on or before the date the permit is issued, the tax becomes delinquent. When the tax becomes delinquent, there shall be added a penalty of 25% which shall hereupon become payable in the same manner as the tax. The tax and penalty shall bear interest at the rate of 0.5% per month or portion of a month until paid. (Ord. 523 § 1, 1983; 1991 code § 4-5.5)

5.40.060 Exceptions.

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

- A. The construction and occupancy of a residential or commercial unit which is a replacement equivalent in size for a unit being removed from the same parcel of land;
- B. The construction and occupancy of any building or unit by a bank, including national banking associations;
- C. The construction and occupancy of a building by an *insurer*, as that term is defined in Article XIII, Sections 14-4/5, of the California Constitution;
- D. The construction and occupancy of a building by a nonprofit corporation exclusively for religious, educational, hospital, or charitable purposes;
- E. The construction and occupancy of a building by the federal, state, or a local government. (1991 code § 4-5.6)

5.40.070 Payment required.

- A. Construction permit. No person may begin the construction of a residential or commercial unit or building in the city without first paying the tax.
- B. Occupancy permit. No occupancy permit may be issued for, and no person may occupy or offer for occupancy, a residential or commercial unit or building in the city unless the tax imposed upon the construction and occupancy by this chapter is paid. (1991 code § 4-5.7)

5.40.080 Fund created.

There is created a fund entitled “Capital Outlay Fund for Acquiring, Constructing and Equipping of Public Property, Improvements, and Facilities.” The proceeds from the tax, penalty and interest collected under this chapter shall be paid into the fund. The fund shall be used only for the purpose of acquiring, building, improving, expanding and equipping public property, and public improvements and facilities. (1991 code § 4-5.8)

5.40.090 Tax liability and enforcement.

The tax is due from the person by or on behalf of whom a residential or commercial unit or building is constructed, whether the person is the owner or a lessee of the land upon which the construction is to occur. The director of finance shall collect the tax, penalty and interest due. The full amount due under this chapter is a debt to the city. The city may bring an action for the collection of it. (1991 code § 4-5.9)

5.40.100 Refunds.

The tax paid to the city under this chapter 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. (1991 code § 4-5.10)

Chapter 5.45**UTILITY USERS TAX**

Sections:

- 5.45.010 Definitions.
- 5.45.020 Administration and enforcement.
- 5.45.030 Telephone users tax.
- 5.45.035 Exemptions.
- 5.45.040 Duty to collect.
- 5.45.050 Refusal to collect and report tax.
- 5.45.060 Delinquent taxes.
- 5.45.070 Actions to collect.
- 5.45.080 Refunds.
- 5.45.090 Records.
- 5.45.100 Appeal procedure.
- 5.45.110 Constitutional exemptions.

5.45.010 Definitions.

As used in this chapter:

Charges means the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telephone service. Charges shall not include:

1. Any tax imposed by the United States or by any charter city;
2. Amounts billed to nonsubscribers for coin shortages;
3. Amounts billed for any nonrecurring, installation, or service connection service charges; or
4. Amounts billed by a hotel or motel for service rendered in placing calls for its guests.

Intrastate telephone service means all telephone communications services or telephone services where the point or points of origin and the point or points of destination of the service are all located in this state.

Person means any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society or individual.

Service supplier means a person required to collect and remit a tax imposed by this chapter.

Service user means a person required to pay a tax imposed by this chapter.

Tax administrator means the finance director of the city.

Telephone communications services or *telephone services* refers to that service which provides access to a telephone system and the privilege of telephonic quality communication with substantially all persons having telephone stations which are part of such telephone system.

Telephone corporation shall have the same meaning as California Public Utilities Code section 234. (Ord. 813 § 1, 2006; Ord. 524 § 1, 1983; 1991 code § 4-6.1)

5.45.020 Administration and enforcement.

A. The tax administrator shall have the power and duty, and is directed to enforce, each and all of the provisions of this chapter.

B. The tax administrator shall have power to adopt rules and regulations not inconsistent with provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations shall be on file in the tax administrator's office.

C. The tax administrator may make administrative agreements to vary the strict requirements of this chapter so that collection of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier so long as the agreements result 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 in the tax administrator's office. (Ord. 524 § 1, 1983; 1991 code § 4-6.2)

5.45.030 Telephone users tax.

A. Tax imposed. There is imposed a tax on the amounts paid for any intrastate telephone services by every person in the city using each service. The tax imposed by this section shall be at the rate of 1% of the charges made for such services and shall be paid by the person paying for such services. The telephone users tax is intended to, and does, apply to all charges billed to a telephone account having a situs in the city, irrespective of whether a particular communication service originates or terminates within the city.

B. Collection. The tax imposed by this section shall be collected from the service user by the person providing the intrastate telephone communication services, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the tax collector on or before the last day of the following month; or, at the option of the person required to collect and remit the tax, an estimated amount of tax collected, measured by the tax billed in the previous month, shall be remitted to the tax collector on or before the last day of each month. (Ord. 813 § 2, 2006; Ord. 524 § 1, 1983; 1991 code § 4-6.3)

5.45.035 Exemptions.

Notwithstanding the provisions of PHMC § 5.45.030, the tax imposed under this chapter shall not be imposed on any of the following:

A. Certain coin-operated service. Service paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents; 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 subject to the tax.

B. News services. No tax shall be imposed, except with respect to local telephone service, on any payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

C. International organizations or Red Cross. No tax shall be imposed on any payment received for services furnished to an international organization, or to the American National Red Cross.

D. Servicemen in combat zone. No tax shall be imposed on any payment received for any toll telephone service which originates within a combat zone from a member of the Armed Forces of the United States performing service in such combat zone, provided a certificate, setting forth such facts as the secretary may by regulations prescribe, is furnished to the person receiving such payment.

E. Items otherwise taxed. Only one payment of tax under PHMC § 5.45.030 shall be required with respect to the tax on any service, notwithstanding the lines or stations of one or more persons are used in furnishing such service.

F. Common carriers and communications companies. No tax shall be imposed on the amount paid for any toll telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

G. Installation charges. No tax shall be imposed on so much of any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

H. Nonprofit hospitals. No tax shall be imposed on any amount paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term “nonprofit hospital” means a hospital which is exempt from income tax under Internal Revenue Code section 501(a).

I. State and local governmental exemption. No tax shall be imposed on any payment received for services or facilities furnished to the government of any state, or any political subdivision thereof, or the District of Columbia.

J. Exemption for nonprofit educational organizations. No tax shall be imposed on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term “nonprofit educational organization” means an educational organization which is exempt from income tax under Internal Revenue Code section 501(a). The term also includes a school operated as an activity of an organization which is exempt from income tax under section 501(a), if the school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

K. Life-line service. No tax shall be imposed on service users subscribing to the life-line service as set by the California Public Utilities Commission.

L. Land mobile or maritime mobile services. No tax shall be imposed on telephone communications services that are land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as the section existed on January 1, 1970.

M. Other service or equipment. Any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation. (Ord. 813 § 3, 2006)

5.45.040 Duty to collect.

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 the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid except in those cases where a service user pays the full amount of the charges but notifies the service supplier of his or her refusal to pay the tax imposed on the charges.

B. The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions 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. 524 § 1, 1983; 1991 code § 4-6.4)

5.45.050 Refusal to collect and report tax.

A. If any supplier shall refuse 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 tax administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the tax administrator shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any service supplier who has

refused to make such report and remittance, he or she shall proceed to determine and assess against such service supplier the tax, interest and penalties provided for by this chapter.

B. In case such determination is made, the tax administrator shall give notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the service supplier so assessed at his or her last known place of address.

C. Such service supplier may, within 10 days after the serving or mailing of such notice, make application in writing to the tax administrator for a hearing on the amount assessed. If the application by the service supplier for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such an application is made, the tax administrator shall give not less than 10 days' written notice in the manner prescribed herein to the service supplier to show cause at a time and place fixed in the notice why the amount specified herein should not be fixed for such tax, interest and penalties. At such hearing, the service supplier may appear and offer evidence why such specified tax, interest and penalties should not be so fixed.

D. After such hearing the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the service supplier in the manner prescribed above of such determination and the amount, if any, of the tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in PHMC § 5.45.100. (Ord. 524 § 1, 1983; 1991 code § 4-6.5)

5.45.060 Delinquent taxes.

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.

1. Interest and penalties for delinquency in remittance of any tax collected and not remitted shall be assessed as follows:

a. Any service supplier who fails to remit any tax imposed by this chapter within 10 days after receipt or written notice from the city of such failure shall pay a penalty of 10% of the amount of the tax.

b. In addition to the penalties imposed in this subsection, any service supplier who fails to remit any tax imposed by this chapter shall pay interest at the rate of 1% 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.

c. Every penalty imposed upon a service supplier, and such interest as accrues, under the provisions of subsection A.1.b of this section shall become a part of the tax required to be remitted.

B. The tax administrator may make an assessment for taxes not remitted by a person required to remit:

1. Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by him or her from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of the tax to such person, or whenever the tax administrator deems it in the best interest of the city, he or she may relieve such person of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.

2. The service supplier shall provide the city with amounts refused along with the names, addresses and reasons of the service users refusing to pay the tax imposed under provisions of this chapter.

3. The tax administrator shall notify the service user that he or she has assumed responsibility to collect the taxes due for the stated periods and demand payment for such taxes. The notice shall be served on the service user by handing it to him or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have changed his or her address, to his or her last known address. If the service user fails to remit the tax to the tax administrator within 15 days from the date of the service of the notice upon him or her, which shall be the date of mailing if service is not accomplished in person, a penalty of 25% 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. (Ord. 524 § 1, 1983; 1991 code § 4-6.6)

5.45.070 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. 524 § 1, 1983; 1991 code § 4-6.7)

5.45.080 Refunds.

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter it may be refunded as provided in this section.

B. Notwithstanding the provisions of subsection A of this section, a service supplier may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; 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 service user or credited to charges subsequently payable by the service user to the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of the tax imposed by this chapter and actually due from a service user may refund such amount to the service user and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, providing such credit is claimed in a return dated not later than three years from the date of overpayment.

C. No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

D. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded service charges shall also be refunded to service users by the service supplier to the extent that the service supplier can claim credit for such refunded taxes against the amount of tax which is due upon any other monthly returns. In the event this chapter is repealed, amounts of any refundable taxes will be borne by the city. (Ord. 524 § 1, 1983; 1991 code § 4-6.8)

5.45.090 Records.

It shall be the duty of every person 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 as he or she may have been liable for the collection of and remittance to the tax administrator, which records the tax administrator shall have the right to inspect at all reasonable times. (Ord. 524 § 1, 1983; 1991 code § 4-6.9)

5.45.100 Appeal procedure.

A. A person aggrieved by a decision of the tax administrator or of any other officer in the city made under this chapter may appeal from the decision to the city manager.

B. A person appealing a decision shall file written notice of the appeal with the city manager within 15 days after notice of the decision. The notice shall state the grounds relied upon for appeal.

C. The city manager shall set the hearing within 45 days from the date of the receipt of the notice of appeal, giving the appellant not less than 10 days' notice in writing of the time and place of hearing.

D. The findings and determination of the city manager at the hearing are final and conclusive. Within three days after the findings and determinations are made, notice shall be sent to the appellant.

E. If no appeal is taken, the decision of the tax administrator or other officer is final and conclusive on expiration of the time fixed for appeal. (Ord. 846 § 4, 2010; Ord. 524 § 1, 1983; 1991 code § 4-6.10)

5.45.110 Constitutional 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 in violation of the Constitution of the United States or that of the State of California. (Ord. 524 § 1, 1983; 1991 code § 4-6.11)

Chapter 5.50

GAS TAX STREET IMPROVEMENT FUND

Sections:

- 5.50.010 Created.
- 5.50.020 Accumulation of funds.
- 5.50.030 Use of funds.

5.50.010 Created.

To comply with the provisions of Article 5, Chapter 1, Division 1 of the Streets and Highways Code, there is created in the city treasury a special fund for one or more special gas tax street improvement funds. (1991 code § 4-7.1)

5.50.020 Accumulation of funds.

All money received by the city from the state under the Streets and Highways Code for the acquisition of real property or interests in real property, or the construction, maintenance, or improvements of streets or highways other than state highways shall be paid into the fund. (1991 code § 4-7.2)

5.50.030 Use of funds.

All money in the fund shall be expended exclusively for the purposes authorized by, and subject to all of the provisions of, Article 5, Chapter 1, Division 1 of the Streets and Highways Code. (1991 code § 4-7.3)

Chapter 5.55**TRAFFIC MITIGATION FEE**

Sections:

- 5.55.010 Intent and purpose.
- 5.55.020 Findings.
- 5.55.030 Definitions.
- 5.55.040 Applicability – Time of payment.
- 5.55.050 Establishing the fee – Fee amount – Annual adjustment.
- 5.55.060 Exemptions.
- 5.55.070 Use of funds.
- 5.55.080 Refunds.
- 5.55.090 Accounting.
- 5.55.100 Appeals.
- 5.55.110 Supplementary provisions.

5.55.010 Intent and purpose.

A. It is the policy of the city, as set forth in the growth management element, that new development pay for the cost of the improvements to the citywide circulation system which are necessary to accommodate the traffic volumes generated by new development. Program 1.5 of the growth management element states: “Continue to require developers to pay costs necessary to mitigate impacts of their projects on the local and regional transportation system, including establishment of trails and other alternatives to vehicle use.” (City of Pleasant Hill General Plan 2003, adopted July, 2003.)

B. A fair and equitable method of securing some of the revenues necessary to construct the required street system improvements is to impose a traffic mitigation fee based on the extent to which new development generates additional traffic volumes.

C. The City of Pleasant Hill is about 95% built out under its general plan. Approaching build-out has implications for the type of facilities needed to accommodate growth. Large capacity-increasing projects such as street extensions and widenings and interchange improvements are no longer a practical method for accommodating growth. Rather, a range of upgrades to the existing system of street improvements, including bicycle and pedestrian facilities, better represent the remaining improvements needed to complete the street system.

D. Many types of improvement projects can accommodate new development by upgrading the street improvements and facilitating new trips across all modes (vehicle, transit, bicycle and pedestrian). Examples of upgrades needed to accommodate new development include but are not limited to: minor intersection improvements such as adding turn lanes; upgrades to traffic control devices (traffic signals) and improved interconnects; completion of gaps in the street, transit, bicycle and pedestrian network; and improvements to substandard street, transit, bicycle and pedestrian facilities.

E. The traffic mitigation fee must fairly apportion to new development a fair share of the city’s costs for street improvements. New development’s fair share should be based on the capital projects needed to accommodate the additional demand placed by it on the city’s system of street improvements. Under the street improvement system equity approach, new development will contribute to the cost of street improvements in proportion to the level of investment made to date by existing development. Thus, new development would add to the existing equity in the city’s system of street improvements in proportion to growth in demand as measured by the number of new trips on city streets.

F. The equity approach allows traffic mitigation fee revenues to be used for street improvement projects that upgrade and increase the value of the entire system of street improvements. The use of revenues is not limited

to a specific project list. At the same time, this approach ensures new development is treated fairly by requiring contributions to these improvements only up to the level of investment made by existing development.

G. In the absence of this chapter imposing a traffic mitigation fee, existing and future sources of revenue will be inadequate to fund the necessary street system improvements which are necessary to avoid unacceptable levels of congestion and related adverse impacts created by expected development within the city.

H. To properly evaluate the impacts of new development and the fair apportionment of costs, the city retained MuniFinancial to undertake a study of the traffic mitigation fee. The study, entitled "Traffic Mitigation Fee Update, City of Pleasant Hill," dated July 10, 2003, provides the analytical basis for the fee. A copy is on file in the public works and community development department.

I. It is the intent of the city council to adopt by this chapter a fair and equitable method of securing some of the revenues necessary to fund the construction and implementation of improvements to the citywide street system sufficient to accommodate the traffic volumes generated by new development and preserve acceptable levels of service throughout the city.

J. The city council intends to impose fees under this chapter that do not exceed the estimated reasonable cost of new development's share of improvements, that implement the growth management element to reduce the traffic congestion which will be created by new development, and that are based upon the trip generation rates for the land uses permitted under the city's general plan, assuring that the fee applicable to a particular development bears a fair and reasonable relationship to each such development's burden on, and benefit from, the citywide street system improvements. (Ord. 779 § 1, 2003; 1991 code § 30-1.1)

5.55.020 Findings.

Consistent with AB 1600 (Govt. Code § 66000 and following), the city council finds as follows:

A. Purpose. The purpose of the traffic mitigation fee is to fund street system improvements to accommodate new development in the city.

B. Use of fee. The traffic mitigation fee revenues will be used for upgrades, expansions or additions to the city's system of street improvements and related transit, bicycle and pedestrian facilities. The city determines the exact use of these revenues through the capital improvement program. The allowable use of fee revenues includes but is not limited to:

1. Street widenings and extensions;
2. Construction of minor intersection improvements;
3. Upgrades to traffic control devices (traffic signals) including interconnects;
4. Completion of gaps in the street, transit, bicycle and pedestrian facilities;
5. Improvements to substandard street, transit, bicycle and pedestrian facilities.

C. Relationship between fee's use and type of development. There is a reasonable relationship between the fee's use and the type of development projects on which the fee is imposed. Fee revenues will only fund upgrades, expansions or additions to the city's system of street improvements, including related transit, bicycle and pedestrian facilities. All residential and nonresidential development generates trips that use the system of street improvements citywide.

D. Relationship between need for improvements and type of development. There is a reasonable relationship between the need for the street improvements and the type of development projects on which the fee is imposed. Existing development has net equity invested in the city's system of street improvements equal to the current depreciated value of that system. The current facility standard equals this existing equity investment per unit of demand. Demand is based on the trips generated by existing development. New development needs to maintain that equity investment per unit of demand to maintain this same facility standard. The use of trip

rates by land use category (single-family residential, multifamily residential, commercial, office, industrial) ensures a reasonable relationship between the type of development and the need for the fee.

E. Relationship between amount of fee and cost of improvements. There is a reasonable relationship between the amount of the fee and the cost of the improvements or portion of the improvements attributable to the new development on which the fee is imposed. The traffic mitigation fee is based on the existing facility standard multiplied by the trip generation rate associated with each land use category. Each development project pays its fair share of the cost of facilities required to accommodate it based on the number of trips it generates. (Ord. 779 § 1, 2003; 1991 code § 30-1.2)

5.55.030 Definitions.

In this chapter:

A. *Development* means:

1. Any new construction, or any addition, extension, or enlargement of an existing structure or unit, which includes a dwelling unit for residential use or the gross floor area of commercial, office or industrial use; or
2. Any conversion or change in use of an existing structure requiring city approval, including a building permit, which would result in a change in the land use category (resulting in an increase in the trip demand factor applicable to the structure).

B. *Gross floor area* means the sum of the square footage of the floor area at each floor level included within the exterior walls of a building or portions thereof, including mezzanines and lobbies. It excludes floor area devoted to vehicle parking, necessary interior driveways and ramps.

C. *Land use category* means any of the following specific land uses:

1. Residential:
 - a. Single-family;
 - b. Multifamily (attached residential units).
2. Nonresidential:
 - a. Commercial;
 - b. Office;
 - c. Industrial.

D. *Street improvements, system of street improvements and facilities* mean the range of transportation-related improvements, including upgrades, expansions or additions to the city's system of street improvements and related transit, bicycle and pedestrian facilities. These include but are not limited to:

1. Street widenings and extensions;
2. Construction of minor intersection improvements;
3. Upgrades to traffic control devices (traffic signals) including interconnects;
4. Completion of gaps in the street, transit, bicycle and pedestrian facilities;
5. Improvements to substandard street, transit, bicycle and pedestrian facilities.

These also include the architectural, administrative, engineering, legal, planning, environmental and other services required in connection with the implementation of this chapter and the construction of the street improvements.

E. *Traffic fee study* means the "Traffic Mitigation Fee Update," dated July 10, 2003, prepared by MuniFinancial, on file in the city offices. (Ord. 779 § 1, 2003; 1991 code § 30-1.3)

5.55.040 Applicability – Time of payment.

A. Applicability. Except as provided in PHMC § 5.55.060, Exemptions, this chapter applies to each development within the city for which a building permit or other entitlement for development is issued.

B. Time of payment. The traffic mitigation fee is due:

1. For residential development, before the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. (Govt. Code § 66007(a).)
2. For nonresidential development, before the issuance of the building permit. (Ord. 779 § 1, 2003; 1991 code § 30-1.4)

5.55.050 Establishing the fee – Fee amount – Annual adjustment.

A. Establishing the fee. The traffic mitigation fee is established by determining the value of the city’s existing equity in its street improvement system and dividing that amount by the existing trip demand. The result is the equity value per trip. This rate is then multiplied by the trip demand factor, based upon the standard trip demand factor of each land use category (using trip demand factors from the San Diego Association of Governments, “Brief Guide of Vehicular Generation Rates for the San Diego Region,” July, 1998).

B. Fee amount. The amount of the traffic mitigation fee required of the development shall be determined by the director of public works and community development or his or her designee in accordance with this section, which is based on the traffic fee study.

Land Use Category	Equity Value Per Trip	Trip Demand Factor	Traffic Mitigation Fee
Residential			(per dwelling unit)
Single-Family	\$190.00	11.1	\$2,109
Multifamily	\$190.00	8.9	\$1,691
Nonresidential			(per 1,000 sq. ft.)
Commercial	\$190.00	28.7	\$5,453
Office	\$190.00	24.4	\$4,636
Industrial	\$190.00	9.0	\$1,710

In determining the land use category for which a fee applies, the fee shall be charged on the basis of the primary use of the building as a whole. For other land use development or if an ambiguity arises in determining the land use category, the equity value per trip will be multiplied by the trip demand factor. The city shall use the category which in its judgment most nearly fits the proposed use. The director of public works and community development may refer to specific uses described in the zoning ordinance and to the Standard Industrial Classification Manual (SIC).

For development consisting of an addition, extension, or enlargement of an existing structure or unit, the traffic mitigation fee shall be paid only on any additional dwelling units or additional gross floor area resulting from the addition, extension, or enlargement.

For development consisting of a conversion or change in use of an existing, repaired or rebuilt structure or unit to a different land use category, the traffic mitigation fee shall be the difference between the fee applicable to the entire structure or unit for the new use and the fee applicable to the entire structure or unit for the prior use.

C. Annual adjustment of the rate based on construction cost index. The fee shall be automatically increased annually, beginning January 1, 2005, based on the Engineering News Record 20-city construction cost index listed in the prior October 1st issue, as published by McGraw-Hill Publishing Company. (Ord. 779 § 1, 2003; 1991 code § 30-1.5)

5.55.060 Exemptions.

The following development projects are exempt, in whole or in part, from the traffic mitigation fee otherwise required by this chapter:

- A. Capital improvements and/or buildings or structures related to the operation of city, Contra Costa County, state or federal governments including, but not limited to, police and fire stations, Pleasant Hill recreation and park district facilities, parking lots, offices, equipment yards, sanitation facilities, parks and similar facilities in or through which general government operations are conducted. This section does not create an exemption for private commercial or industrial activities conducted on public lands.
- B. Temporary uses less than 12 months in duration.
- C. Churches, temples, and other properties used primarily for religious worship.
- D. Public elementary and secondary schools.
- E. Additions, extensions or enlargements of an existing residential structure which, in any two-year period, increase the gross floor area by less than 800 square feet.
- F. A secondary dwelling unit approved under PHMC § 18.20.100.
- G. Additions, extensions or enlargements of an existing commercial or industrial structure which, in any one calendar year, increase the gross floor area of such structure by 200 square feet or less.
- H. Parking structures.
- I. Development within a designated redevelopment project area if the redevelopment agency approves the exemption and provides that the amount of the fee which would otherwise apply is paid by the redevelopment agency into the city's traffic mitigation fee fund.
- J. No fee is due if a traffic mitigation fee was previously paid in full for the property, unless there is a change of use which requires a use permit or tenant improvements. In that case, the person shall pay the incremental difference between the applicable fee for the prior use and the fee for the proposed new use. (See PHMC § 5.55.050.B.) (Ord. 779 § 1, 2003; 1991 code § 30-1.6)

5.55.070 Use of funds.

The fees paid under this chapter, and interest income earned, shall be used solely for the purpose of constructing or providing street improvements. (Ord. 779 § 1, 2003; 1991 code § 30-1.7)

5.55.080 Refunds.

- A. The chief building official may authorize a refund if all of the following occur:
 - 1. The building permit expires and no extension has been granted for a development for which the fee has been collected;
 - 2. No substantial work has been done; and
 - 3. The claim for the refund is filed within one year after the expiration date of the building permit or any extension of it.
- B. The city council may authorize a refund by resolution, under Government Code sections 66001(d). (Ord. 779 § 1, 2003; 1991 code § 30-1.8)

5.55.090 Accounting.

The city shall deposit, invest, account for, and expend the fees in accordance with this chapter and Government Code section 66006. (Ord. 779 § 1, 2003; 1991 code § 30-1.9)

5.55.100 Appeals.

A developer may appeal to the city council any determination made under this chapter. The developer must file an appeal within 15 days of the date of the determination appealed from. The appeal must be in writing, stating the reasons for the appeal. The city council shall set the matter for hearing within 45 days of the date of receipt by the city clerk of notice of the appeal. In making its determination on the appeal, the city council shall follow the standards set forth in this chapter.

If the appeal is based on a challenge to the amount of the fee based on the equity value per trip established by the traffic fee study, the developer shall include a professional analysis showing how the rate is erroneous. (Ord. 846 § 5, 2010; Ord. 779 § 1, 2003; 1991 code § 30-1.10)

5.55.110 Supplementary provisions.

It is the intent of the city council that the fees required by this chapter shall be supplementary to the fees, dedications or conditions imposed upon development under the provisions of the Subdivision Map Act, California Environmental Quality Act, and other state laws and city ordinances or policies which may authorize the imposition of fees, dedications or conditions. (Ord. 779 § 1, 2003; 1991 code § 30-1.11)