

Ordinance No. _____
Ordinance of the Council of the City of Palo Alto
Amending Chapter 2.30 (Contracts and Purchasing Procedures) and Chapter
2.37 (Business Tax) of the Palo Alto Municipal Code to Correct Clerical
Errors and Clarify Procedures for Administering the Business Tax

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. In November 2022, Palo Alto voters approved Measure K, adopting a general tax on businesses operating in the City of Palo Alto. The business tax is codified at Chapter 2.37 of the Palo Alto Municipal Code.

B. Section 2.37.270(a) of Chapter 2.37 allows the Council to amend Chapter 2.37 without the approval of the electorate, provided the amendment does not increase the amount of tax that any person would pay.

C. The Council finds it appropriate to amend Chapter 2.37 to correct clerical errors and clarify procedures to administer the tax. The Council also finds it appropriate to amend Chapter 2.30 to authorize the City Manager to approve contracts implementing business tax offsets, and to adopt an uncodified provision clarifying how the business tax cap will be calculated for calendar year 2023. None of these amendments will increase the amount of tax any person would pay.

SECTION 2. Section 2.30.210 (City Manager Contract Award Authority) of Chapter 2.30 (Contracts and Purchasing Procedures) of the Palo Alto Municipal Code is amended to read as follows:

2.30.210 City Manager contract award authority.

The City Manager may award and sign the following contracts:

(a) Public Works Contracts. Public works contracts, where the term does not exceed three years, and the contract price and any price contingency established for change orders, but excluding sales tax or use tax, do not exceed \$250,000.00 in the first contract year, and do not exceed the sum of \$250,000.00 and any unexpended monies carried forward from a prior contract year, in any subsequent contract year.

(b) Contracts for Goods. Contracts to purchase goods, where the term does not exceed three years and the contract price and any contingency established for change orders, but excluding sales tax or use tax, do not exceed \$250,000.00 in the first contract year, and do not exceed the sum of \$250,000.00 and any unexpended monies carried forward from a prior contract year, in any subsequent contract year.

(c) General Services Contracts. Contracts for services associated with the leasing or licensing of personal property other than hardware or software, where the term does not exceed seven years, and the contract price and any price contingency established for change orders, but

excluding sales tax or use tax, do not exceed \$85,000.00 in the first contract year, and do not exceed the sum of \$85,000.00 plus any unexpended monies carried forward from a prior contract year, in any subsequent contract year.

(d) Contracts for Studies and Services Related to Private Development. Professional services contracts for: (1) the preparation of environmental assessments or other studies deemed necessary by the director of planning and development services for the processing of applications for private development projects, or (2) inspection and plan review services deemed necessary by the director of planning and development services to evaluate conformity of private development projects with applicable building codes, regardless of the cost or term thereof, provided the applicant for the private development project agrees, in writing, to bear responsibility for the entire contract cost, and the contract does not require the expenditure of city funds in any amount.

(e) Rewards. The City Manager may offer and pay rewards where the amount of the reward does not exceed \$25,000.00, in accordance with the procedures of Section 2.30.800.

(f) Emergency Contracts. The City Manager is authorized to expend city funds for emergency contracts, as defined in Section 2.30.160, without limitation on the contract cost or amount and without following the contract solicitation and award procedures otherwise required by this chapter, provided that any procurement of goods and services obtained during an emergency declared by the Federal Emergency Management Agency shall comply with applicable FEMA Public Assistance Program's procurement orders, rules, regulations, guidelines and control procedures for cost reimbursement purposes. Expenditures made during an emergency must be reported to the Council at the next regular meeting if approval for such expenditures would otherwise have been made by the Council. The City Manager may issue a verbal report to the Council before a written report is delivered.

(g) Contracts to Rent, Lease, License, Acquire, Transfer or Purchase Interests in Real Property from Other Parties. Contracts for the rental, leasing, licensing, or purchase by installment interests in real property from other parties for a term of seven years or less, where the contract price does not exceed \$85,000.00 per year, or to encumber or transfer any interest in real property from other parties for any term of years. The City Manager may enter into and sign a contract to acquire or purchase an interest in real property, where the contract price does not exceed \$85,000.00.

(h) Contracts to Rent, Lease, or License City Real Property to Other Parties. The authority granted under this Section is distinct from the authority of the director of community services to grant individuals and groups permits for the exclusive temporary use of buildings and facilities located in, and the areas of, city parks and open spaces, as described in Chapter 22.04 of this municipal code or in the park and open space regulations. The City Manager may award and sign contracts to rent, lease or license city real property to other parties regardless of the price for a term not exceeding three years. Notwithstanding the preceding sentence, the City Manager may enter into and sign contracts for the rental, lease or licensing of real property at the Cubberley Community Center for terms of up to five years.

(i) Contracts to Provide Municipal Services to other Public Entities or Utilities. A contract to provide municipal services and functions to any other public agency, public utility or other public entity in any amount for a term not exceeding three years, provided the contract is in compliance with all Council-adopted policies covering such contracts. The authority granted herein does not include the authority of the City Manager to add permanent employee positions.

(j) Contracts Providing for Indemnity or Risk of Loss. The City Manager, with the

concurrence and approval of the City Attorney and the insurance risk manager, may enter into and sign contracts, otherwise within the limits of his or her authority under Section 2.08.140 of this municipal code, that provide for the city or its officers or employees to defend, indemnify, or assume the risk of damage, loss, or liability for, or subrogate to any other contracting party respecting claims, demands, actions, losses or liabilities arising from the city's performance or non-performance under the contract.

(k) Wholesale Utility Commodities and Services Contracts. Wholesale utility commodities and services contracts, where the term does not exceed five years and the contract price does not exceed \$250,000.00 in any contract year.

(l) Software and Hardware Purchase, Licensing, Maintenance and Support Contracts. Notwithstanding Subsection 2.30.210(c), the City Manager may award and sign contracts other than general services agreements, including, without limitation, vendor-based standard form hardware and software purchase and licensing contracts, for the purchase of hardware and software, the licensing of software, and the maintenance and support of hardware and software, where the term of licensing or maintenance and support services does not exceed seven years and the contract price, excluding sales tax or use tax, does not exceed \$85,000.00 per year in the first contract or fiscal year and does not exceed the sum of \$85,000.00 and any unexpended monies carried forward from a prior fiscal year, in any subsequent contract or fiscal year. The contracts referred to herein may include contracts for data storage services, which shall be subject to the city's information security policies, terms, conditions and other requirements established by the chief information officer with the concurrence and approval of the City Attorney.

(m) Contracts with a business operator implementing business tax offsets under Section 2.37.080.

(n) Other Contracts. All other types of contracts for which the contract term does not exceed three years and the total expenditure by the city does not exceed \$85,000.00 in the first contract or fiscal year, and does not exceed the sum of \$85,000.00 and any unexpended monies carried forward from a prior fiscal year, in any subsequent contract or fiscal year.

SECTION 3. Section 2.37.070 (Exemptions from Tax) of Chapter 2.37 (Business Tax) is amended to read as follows:

2.37.070 Exemptions from tax.

- (a) The following businesses are exempt from the tax imposed by this chapter:
- (1) Any business exempt from the tax by the laws of the United States or the State of California;
 - (2) Grocery stores;
 - (3) Businesses that occupy or use 10,000 square feet or less in the city; and
 - (4) Transitory businesses.
- (b) If a business operator operates a single integrated business that has two or more parts, one or more of which could be exempt from the tax imposed by this chapter if operated as a separate business, the city may, at its discretion, exempt from the tax any part of the business that would be exempt if operated as a separate business, provided the business's square footage can be reasonably allocated between the parts. If the city determines that the square footage cannot be reasonably allocated between the different parts of the business, then the entire

business shall be taxed, unless to do so would violate a law of the United States or the State of California.

(c) A business that contends it is exempt under this section must apply to the tax administrator for an exemption.

(1) The tax administrator may require a business claiming an exemption to submit additional information to support the exemption. The request for additional information must be made in writing and the information must be provided within thirty (30) days.

(2) If the tax administrator determines that the business claiming an exemption is not exempt, the tax administrator may make an initial determination of the amount of tax due under subdivision (a) of Section 2.37.150.

SECTION 4. Section 2.37.080 (Business Tax Offsets) of Chapter 2.37 (Business Tax) is amended to read as follows:

2.37.080 Business tax offsets.

(a) A business operator that operates a hotel in the city may deduct from the business tax it owes for a quarter for the business of operating the hotel an amount equal to the total transient occupancy tax collected and remitted to the city in the same quarter of the previous fiscal year from transients staying at the hotel.

(b) The business operator of a business that has discretion to determine the location of the place of sale, place of use, or principal place of negotiation for sales or use tax purposes and which exercises that discretion and designates the city as the place of sale, place of use, or principal place of negotiation for sales or use tax purposes which results in the city receiving sales or use tax revenues that it would not otherwise have received, but for the business's exercise of its discretion to designate the city as the place of sale, place of use, or principal place of negotiation for sales or use tax purposes ("discretionary sales or use tax") may deduct from the business tax it owes for a quarter an amount equal to one half of the total sales tax or use tax received by the city from the discretionary sales or use tax of that business in the same quarter of the previous fiscal year. This offset can offset up to, but no more than, 75% of the business's quarterly business tax. If any of the sales or use tax that served as a basis of an offset from business tax is subsequently reallocated to another jurisdiction, the business operator shall reimburse the City for the amount of the offset. This reimbursement shall include all offsets within the five years preceding the date that a determination or decision is made to reallocate sales or use tax, including the entirety of any quarter that falls partially within this five-year period. The city and a business operator may enter into an agreement implementing this section.

(c) A business operator of a business that has rights to property due to property ownership, a ground lease, or a lease that permits subleasing, and that is offering that property for sale or rent, may deduct from the business tax owed for the business an amount equal to the business tax associated with the square footage being offered for sale or rent, provided that the area to be sold or rented is completely vacant and available for immediate occupancy.

(d) A business claiming an offset under this section must claim the offset with its tax filing for the quarter for which the offset is claimed.

(1) If the information necessary for a business to claim an offset is not available, the business may defer claiming an offset for up to one year or for another period of time set by written agreement with the city.

(2) The tax administrator may require a business claiming an offset to submit additional information to support the claim of the offset. The request for additional information must be made in writing and the information must be provided within thirty (30) days.

(3) If the tax administrator determines that an offset claimed by a business is incorrect, the tax administrator may make an initial determination of the amount, if any, of the offset and the amount of tax due under subdivision (a) of Section 2.37.150.

SECTION 5. Section 2.37.150(b) (Administrative Procedure to Assess or Correct Tax) of Chapter 2.37 (Business Tax) is amended to read as follows:

2.37.150 Administrative procedure to assess or correct tax.

(a) If the tax administrator determines that a business operator has incorrectly reported any information to the city or has not paid all or any of the tax, penalties, or interest that are due, the tax administrator may, using any information available to the tax administrator, issue an initial determination stating what the tax administrator believes to be the correct information and, if new or additional tax, penalties, or interest are due, how much tax, penalties, or interest are due. An initial determination must be issued within five (5) years of the last day of the quarter to which the initial determination applies, except in the case of an audit conducted under Section 2.37.200, in which case it must be issued within ninety (90) days of the completion of the audit and can apply to any of the quarters that were subject to the audit. The initial determination shall be served on the business operator either personally or by U.S. mail to the most recent address for the business operator in the tax administrator's records. Service is effective upon deposit of the initial determination in the U.S. mail.

(b) A business operator affected by an initial determination may within thirty (30) days of service of an initial determination contest the initial determination and request a hearing before the tax administrator by filing with the tax administrator a written request for a hearing. The further accrual of penalties and interest shall be tolled upon the filing of a request for a hearing. If a business operator does not contest an initial determination and request a hearing with the tax administrator within ~~fifteen (15)~~ thirty (30) days of service of the initial determination, the initial determination shall become final and cannot be appealed.

(c) If a business operator timely contests an initial determination and requests a hearing, the tax administrator shall set a hearing within sixty (60) days of the filing of the request for a hearing. Notice of the hearing shall be served on the business operator either personally or by U.S. mail to the most recent address for the business operator in the tax administrator's records.

(d) At the hearing the business operator may present evidence and argument regarding the initial determination to show why the initial determination is incorrect and to show what the determination of the tax administrator should be. Within sixty (60) day after the close of the hearing, the tax administrator shall serve a final determination, setting forth the tax administrator's determination of the facts and issues that were the subject of the initial determination. The final determination shall be served on the business operator either personally or by U.S. mail to the most recent address for the business operator in the tax administrator's records. Service is effective upon deposit of the final determination in the U.S. mail. Unless an appeal of a final determination is filed under Section 2.37.170, any penalties or interest tolled under subdivision (b) of this section will resume accruing ten (10) days after the service of the final determination.

SECTION 6. Section 2.37.180 (Constitutional Apportionment) of Chapter 2.37 (Business Tax) is amended to read as follows:

2.37.180 Constitutional apportionment.

(a) No tax imposed by this chapter shall be applied to a business operator so as to constitute an undue burden on interstate commerce or intercity commerce or be violative of the equal protection or due process clauses of the United States or California constitutions.

(b) A business operator who contends that the application of a tax imposed by this chapter on the business operator constitutes an undue burden on interstate commerce or intercity commerce or violates the equal protection or due process clauses of the United States or California constitutions may apply to the tax administrator for an apportionment of the tax imposed on the business operator that would remove the constitutional violation by filing a written request with the tax administrator that explains the factual and legal basis for the claimed constitutional violation and proposes a method of apportionment that would resolve the alleged constitutional violations. The application for apportionment shall be filed in advance or within one (1) year of the date the quarterly return was due.

(c) The tax administrator, in consultation with city attorney, shall review the application and within sixty (60) days of the filing of the application, which deadline may be extended for an additional sixty (60) days, issue a decision on the application. The decision on the application shall be served on the business operator either personally or by U.S. mail to the most recent address for the challenger in the tax administrator's records. The decision can be challenged under Section 2.37.160.

SECTION 7. Section 2.37.190 (Refunds) of Chapter 2.37 is amended to read as follows:

2.37.190 Refunds.

(a) A business operator who believes that any tax, penalty, or interest has been illegally, erroneously, or mistakenly paid to, collected by, or otherwise received by the city may file a claim for a refund of the amount of tax, penalty, or interest claimed to have been improperly received by the city.

(b) The claim must be filed with the tax administrator and signed under penalty of perjury by the business operator. The claim must state:

- (1) The legal and factual basis for the refund claim;
- (2) The amount of tax, penalty, or interest allegedly improperly received by the city;
- (3) The date or dates that the improper payments were made to the city; and
- (4) The address of the claimant.

(c) The claim must be filed with the tax administrator within two (2) years of the date of the allegedly improper payment to the city.

(d) The tax administrator shall provide a written decision on the claim within thirty (30) days of the filing of the claim by serving the decision on the claimant either personally or by U.S. mail to the address provided in the claim. Service is effective upon deposit of the response in the U.S. mail.

(e) A claimant may challenge the tax administrator's decision on a refund claim under

Section 2.37.160.

(f) This section does not apply to:

(1) A claim for a refund arising out of a decision of the tax administrator, city manager, or city manager's designee under Sections 2.37.150, 2.37.160, 2.37.170, or 2.37.190; or

(2) A claim that could have been asserted by the claimant, but was not, under Sections 2.37.150, 2.37.160, 2.37.170, or ~~2.37.190~~ 2.37.180.

SECTION 8. For the period beginning January 1, 2023 and ending June 30, 2023, the maximum amount of tax any business must pay is capped at \$250,000 (two hundred fifty thousand dollars). Beginning July 1, 2023 and each fiscal year thereafter, the maximum amount of tax any business must pay is capped at \$500,000 (five hundred thousand dollars), as provided in Section 2.37.040(c).

SECTION 9. The Council finds that the adoption of this ordinance is an administrative activity of government that will not result in direct or indirect physical changes to the environment and therefore does not constitute a project under the California Environmental Quality Act. CEQA Guidelines section 15378(b)(5).

SECTION 10. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

City Attorney

City Manager

Director of Administrative
Services

NOT YET APPROVED