



CITY COUNCIL OF THE CITY OF ATWATER

ORDINANCE NO. CS 1042

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER REPEALING AND REPLACING CHAPTER 5.04, "GENERAL PROVISIONS" AND AMENDING PORTIONS OF CHAPTER 5.08, TO BE RENAMED "SCHEDULE OF LICENSE TAXES," OF TITLE 5 OF THE ATWATER MUNICIPAL CODE

WHEREAS, under the police power granted by Article XI, Section 7 of the California Constitution, cities have the power to make and enforce within their limits all ordinances and regulations with respect to municipal affairs not in conflict with state law. Such police powers include, without limitation, the ability to adopt regulations pertaining generally to the protection and promotion of the public health, safety, and welfare; and

WHEREAS, in compliance with Government Code Section 37101, which allows cities to issue business licenses for revenue and regulation, it is the intent of the City Council to maintain a strong and effective regulatory business license and tax program protecting residents, employees, and businesses by adding business license regulatory provisions to the Municipal Code; and

WHEREAS, the City Council has carefully reviewed and considered all of the evidence presented in connection with the hearing on this proposed Ordinance, including, but not limited to, the staff report, and all written and oral testimony presented; and

WHEREAS, this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") per Section 15061(b)(3) of the CEQA Guidelines in that it is not a project which has the potential to cause a significant effect on the environment; and

WHEREAS, the City Council finds that approval of this Ordinance would accomplish the following:

1. Update the City's business licensing and tax provisions to include both regulatory and revenue measures.

2. Reduce the threat to the City residents' health, peace, and safety by enhancing the enforcement of business regulations.
3. Preserve the right of due process of business license applicants by setting forth a clear application review and appeals process.

NOW, THEREFORE, be it ordained by the City Council of the City of Atwater as follows:

Section 1: The findings set forth above are applicable and incorporated herein by reference.

Section 2: Amendment of the Municipal Code. The index portion of Title 5 relating to Chapters 5.04 and 5.08, appearing in the Municipal Code just prior to Chapter 5.04, is hereby repealed and replaced in relevant part to read as follows:

"Title 5 - BUSINESS TAXES, LICENSES AND REGULATIONS

**Chapter 5.04 – GENERAL PROVISIONS; BUSINESS LICENSE REGULATIONS
AND TAXATION**

Sections:

- 5.04.010 – Purpose.
- 5.04.020 – Definitions.
- 5.04.030 – Regulation under this title not relief from other ordinances.
- 5.04.040 – Effect on past actions and previous obligations.
- 5.04.050 – No assurance of compliance with other laws.
- 5.04.060 – License – Required.
- 5.04.070 – License and taxes – Exemptions.
- 5.04.080 – License – Administration.
- 5.04.090 – License – Separate activities and branch establishments.
- 5.04.100 – License – Duplicates – Fees.
- 5.04.110 – License – Application Filing.
- 5.04.120 – License – Application Contents.
- 5.04.130 – License – Investigation of application.
- 5.04.140 – License – Issuance.
- 5.04.150 – License – Issuance – Estimate of gross receipts.
- 5.04.160 – License – Issuance – Conditions.
- 5.04.170 – License – Issuance – Contents.
- 5.04.180 – License – Term.
- 5.04.190 – License – Renewal.
- 5.04.200 – License – Renewal processing and issuance.
- 5.04.210 – License – Nontransferable – Exceptions.
- 5.04.220 – License – Posting at fixed location.
- 5.04.230 – License – Carrying for non-fixed location.
- 5.04.240 – Statements and records – Inspection and verification.
- 5.04.250 – Taxes – Imposed.

- 5.04.260 – Taxes – Dates due and payable.
- 5.04.270 – Taxes – Delinquencies – Penalties.
- 5.04.280 – Taxes – Delinquencies – Agreements for installment payments.
- 5.04.290 – Taxes – Overpayment – Refunds.
- 5.04.300 – Taxes and penalties debt to City – Actions to collect.
- 5.04.310 – Violations.
- 5.04.320 – Enforcement; Inspections.
- 5.04.330 – Suspension of license.
- 5.04.340 – Revocation of license.
- 5.04.350 – Grounds for appeal.
- 5.04.360 – Written request for appeal.
- 5.04.370 – Appeal hearing procedures.
- 5.04.380 – Finality of determination.

Chapter 5.08 – SCHEDULE OF LICENSE TAXES.

Sections:

- 5.08.010 – License tax; Wholesale and retail sales
- 5.08.020 – Tax based on flat rate.
- 5.08.030 – Application for reclassification; appeal.
- 5.08.040 – License tax; manufacturing.
- 5.08.050 – Professionals; annual license.
- 5.08.060 – Contractor.
- 5.08.070 – Rental of property.

Section 3: Amendment of the Municipal Code. Chapter 5.04 of the Atwater Municipal Code is hereby repealed and replaced in its entirety to read as follows:

“5.04.010 – Purposes.

The purposes of this title are to regulate businesses and other enterprises within the City in order to ensure compliance with City ordinances and state laws, protect the public, prevent disturbances of neighborhoods and nuisances, and otherwise protect the local health, safety, and welfare.

5.04.020 – Definitions.

Unless the context indicates otherwise, the definitions of terms contained in this Chapter are as follows:

- A. “Business” shall mean and include professions, trades, and all and every kind of occupation, whether or not carried on for profit.
- B. “City” means the City of Atwater, a municipal corporation of the State of California.

- C. "City Officer" – Whenever reference in this title is made to the City Council or any department, office, division, officer or official, the reference shall be deemed to be to, respectively, the City Council, or a department, office, division, officer or official of the City. Whenever in this title an authority or power is vested in or a duty is imposed upon an officer or official, a City employee subordinate to the officer or official to whom an appropriate delegation has been made shall be entitled to exercise the power or authority and perform the duty.
- D. "Community Development Department" shall refer to the department of the Community Development Director, or his or her designee, who is charged by the City Manager with the administration of the provisions of this Chapter.
- E. "Fixed location" shall mean a particular place where an enterprise is either regularly conducted or kept open, or is conducted or kept open on four or more days during any consecutive 30-day period. An enterprise operated from a residence shall be deemed to be conducted at a fixed location.
- F. "Gross receipts" as used in this chapter is defined as follows: The total amount of the sale price of all sales, the total amount charged or received for the performance of an act, service or employment of whatever nature it may be, whether such service act of employment is done as part of or in connection with the sale of goods, wares, merchandise or not, for which a charge is made, including all receipts, cash credits and property of any kind of nature, without any deduction therefrom on account of the costs of the property sold, the costs of the material used, labor or service cost, interests paid or payable, losses or any other expenses whatsoever; provided, the cash discounts allowed or taken on sales shall not be included, and this chapter shall not be construed to impose any tax upon any business or transaction which this City is not authorized to license or tax under any law of this State or of the United States. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser, and such part of the sales price of any property previously sold returned by the purchaser to the seller which is refunded by the seller by way of cash or credit allowances given or taken as part payment on any property so accepted for resale, shall be deducted for the purposes of determining gross receipts.
- G. "Person" shall mean and include a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture or other individual or entity carrying on an enterprise for which a permit or license must first be procured, and shall include any officer, employee, agent or other representative by or through whom the enterprise is operated or conducted, and charitable, philanthropic and other nonprofit entities and enterprises as well as those which are for profit. "Person" shall not include a public agency or any officer, employee or agent thereof while acting in the capacity as such.

- H. "Sale" shall mean and include the transfer, in any manner or by any means whatsoever, of title to property for a consideration of any property; as well as a transaction whereby the possession of property is transferred, and the seller retains the title as security for the payment of the price. Such definition shall not be deemed to exclude any transaction which is or which, in effect, results in a Sale within the contemplation of law.

5.04.030 – Regulation under this title not relief from other ordinances.

Persons required to pay a license tax for transacting and carrying on any business under this Chapter or Chapter 5.08 shall not be relieved from the payment of any license fee or tax for the privilege of doing such business required under any other ordinance of the City, and shall remain subject to the regulatory provisions of other ordinances.

5.04.040 – Effect on past actions and previous obligations.

Neither the adoption of the ordinance codified in this Chapter and Chapter 5.08 nor its superseding of any portion of any other ordinance of the City shall in any manner be construed to affect prosecution for violation of any other ordinance committed prior to the effective date hereof, nor be construed as a waiver of any license or any penal provision applicable to any such violation, nor be construed to affect the validity of any bond or cash deposit required by any ordinance to be posted, filed, or deposited, and all rights and obligations thereunto appertaining shall continue in full force and effect.

5.04.050 – No assurance of compliance with other laws.

The issuance of a business license shall not be deemed to constitute a representation that the business so licensed or the premises upon which it is situated complies with other ordinances or laws not included in this Chapter 5.04. The existence of such an unrevoked license shall also not be deemed to preclude any criminal or civil remedy for violation of such other ordinances or laws, including, but not limited to, the closure of the business if otherwise warranted under remedies sought to be invoked. The possession of a business license shall not be deemed to relieve the holder of the requirement to apply for or obtain any other license or permit required by ordinance or statute.

5.04.060 – License – Required.

- A. Except as otherwise specifically provided by this Chapter, no person shall operate or conduct within the City a business consisting of manufacturing, fabricating, processing, assembly or repair; wholesaling or storage; lodging or short term rentals of residences for a period of 30 consecutive days or less; entertainment; service; retailing; educational; hospital or other medical care; business or professional office enterprise; home occupation; facility to which members of the general public are invited; commercial cannabis activities as defined and regulated by chapter 5.60 of this code; or adult use enterprise as

defined and regulated by chapter 17.50 of this code, unless under and by authority of a valid, unexpired, and unrevoked business license issued pursuant to the provisions of this chapter authorizing the enterprise. It is intended by this chapter to license, unless expressly exempted, every enterprise operated at a fixed location which is of a type described by this section, whether the enterprise is operated for commercial, nonprofit, charitable, or other purposes, and whether the enterprise is operated or conducted independently or in association with or at the same location as an enterprise or activity for which a license is not required.

- B. No person shall operate or conduct within the City a temporary concession, whether or not the temporary concession is conducted at a fixed location, unless under and by authority of a valid, unexpired, and unrevoked business license issued pursuant to the provisions of this chapter and authorizing the concession at the location where it operates.
1. As used in this section, and except as hereinafter expressly provided, a “temporary concession” is any out-of-doors retail sales operation, whether conducted for an hour or less, one day, or a longer period, which is established for the purpose of selling flowers, produce, Christmas trees or greens, clothing, paintings or other artistic products, books or other written materials, or other goods from a table, stand, temporary sheltered enclosure, cart, motor vehicle, or similar equipment. A “temporary concession” shall not be deemed to include:
- a. The sale of Christmas trees or greens in connection with and on the same premises as a supermarket, hardware, home maintenance or repair store, or other established business, if a temporary structure and electrical wiring are not employed in connection with such sales;
 - b. “Garage sales,” as that term is defined in section 17.07.020 of this code, conducted for the purpose of marketing products formerly utilized in a home which have become surplus; provided, that such sales are conducted on the residential premises where the goods to be sold were utilized;
 - c. The sale from stands of fireworks preceding and in connection with the celebration of the Fourth of July, which stands are separately regulated by this Code;
 - d. The sale of agricultural products on the site where the product is grown; and

- e. The sale or offering for sale or distribution from public sidewalks or pedestrian circulation areas of shopping centers or malls of products to pedestrians who are traversing such areas or patrons of retail stores.
- C. The exemption of the above activities from the licensing requirement, and the exemptions set forth in Section 5.04.070, shall not be deemed to authorize any activity which is illegal under other laws or to exempt any such activities from other applicable laws, or to deprive the owner or occupant of private property of any otherwise applicable right to consent to such activity.

5.04.070 – License Taxes and Fees – Exemptions.

- A. The provisions of this Chapter and Chapter 5.08 shall not be deemed or construed to require the payment of a license fee or tax to conduct, manage, or carry on any business or activity from any institution or organization which is conducted, managed, or carried on wholly for the benefit of charitable purposes or from which profit is not derived, either directly or indirectly, by any individual; nor shall any license tax be required for the conducting of any entertainment, concert, exhibition, or lecture on scientific, historical, literary, religious, or moral subjects within the City whenever the receipts of any such entertainment, concert, exhibition, or lecture are to be appropriated to any church or school or to any religious or benevolent purpose; nor shall any license fee or tax be required for the conducting of any entertainment, dance, concert, exhibition, or lecture by any religious charitable, fraternal, educational, military, state, county, or municipal organization or association whenever the receipts of any such entertainment, dance, concert, exhibition, or lecture are to be appropriated for the purpose and objects for which such organization or association was formed and from which profit is not derived, either directly or indirectly, by any individual; provided, however, that nothing in this section shall be deemed to exempt any such organization or association from complying with any of the provisions of this Code requiring a permit from the City Council or any commission or officer to conduct, manage, or carry on any business within the City.
- B. None of the license taxes provided for by this chapter and Chapter 5.08 shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a license tax is believed by a licensee or applicant for license to place an undue burden upon such commerce, he may apply to the Community Development Department or designee for an adjustment of the tax so that it shall not be discriminatory or unreasonable as to such commerce. Such application may be made before, at, or within six months after payment of the prescribed license tax. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of said business, and such other information as the Community Development Department or designee may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The Community Development Department or designee shall then conduct an investigation, and after having first obtained the approval of the

City Attorney, shall fix as the license tax for the applicant an amount that is reasonable and nondiscriminatory, or if the license tax has already been paid, shall order a refund of the amount over and above the license tax so fixed. In fixing the license tax to be charged, the Community Development Department or designee shall have the power to base the license tax upon a percentage of receipts or any other measure which will assure that the license tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the license tax as prescribed by this chapter and Chapter 5.08. Should the Community Development Department or designee determine the gross measure of license tax to be the proper basis, they may require the applicant to submit, either at the time of termination of the applicant's business in the City, or at the end of each three-month period, a sworn statement of the gross receipts and pay the amount of license tax therefore; provided that no additional license tax during any one calendar year shall be required after the licensee has paid an amount equal to the annual license tax as prescribed in this chapter and Chapter 5.08.

- C. The provisions hereof shall not be deemed or construed to apply to any Person transacting and carrying on any business exempt by virtue of the Constitution or applicable Laws of the United States or of the State from the payment of the taxes provided for herein. Any Person claiming an exemption pursuant to the provisions of this section shall file a sworn statement with the Community Development Department stating the facts upon which an exemption is claimed. In the absence of such statement substantiating the claim, such Person shall be liable for the payment of the taxes imposed by the provisions hereof. The Community Development Department, upon a proper showing contained in the sworn statement, shall issue a license to such Person claiming such exemption without payment to the City of the license tax required by the provisions hereof. The Community Development Department, after giving notice and a reasonable opportunity for a hearing to a licensee, may revoke any license granted pursuant to the provisions of this section upon information that the licensee is not entitled to the exemption as provided in this section.
- D. The provisions hereof shall not be deemed or construed to require the payment of a tax to carry on any business performed by a public utility furnishing gas and/or electric service or cable television, which public utility pays the City a tax pursuant to a franchise agreement with the City. If the Legislature of the State should enact legislation to grant general law cities the power to levy a tax on utility service consumers, this section may be amended at such time to include provisions for the levying of such tax.
- E. Banks, savings and loans, credit unions, and loan and similar financial institutions, as defined in Section 17351 of the California Business and Professions Code (as that Section may be amended or renumbered from time to time), are exempt from needing to obtain a business license; provided that a check casher business shall be subject to the business licensing requirement, and the term "check casher," as

defined as found in Division 3, Part 4, Title 1.6F, Section 1789.31 of the California Civil Code, includes, but is not limited to, engaging in the business operation of “deferred deposits” as defined therein.

- F. Churches, to the extent of their use for worship, religious education, or the social affairs of the religious group based therein, are exempt from the provisions of this chapter. This exemption does not extend to other activities which are not undertaken primarily for members of the religious group, including, but not limited to, day schools and social service programs.
- G. Libraries, whether publicly or privately operated, are exempt from the requirements of this chapter.
- H. The following agricultural activities are exempt from the requirements of this chapter: agricultural pursuits consisting of the growing of crops, raising of livestock, and dairying, including auxiliary and ancillary uses incidental to the operation of a farm or ranch; the purchase and storage of substances, materials, supplies, animal feeds and produce for a farm or ranch; and the marketing of farm products; provided, however, that a business license shall be required in connection with any wholesaling, processing, storage, or manufacturing use which involves assembly of the products of multiple farms or ranches by a cooperative or other business enterprise for marketing distribution.
- I. Notwithstanding subdivisions A. through H. of this Section 5.04.070, a business license shall be required for any business, enterprise, or activity described by said subdivisions which is operated or conducted as a home occupation. A business license shall also be required for a family contractor’s business.
 - 1. As used in this Section, a “home occupation” shall mean and include any use as described in section 5.04.070 of this Chapter that is conducted in, at, or from a dwelling unit which is also utilized for residential purposes.
 - 2. The term “family contractor’s business” shall mean a business operated in, at, or from a residence which employs only members of the resident’s family, and which may include the storage of contractor’s equipment or supplies at the residence of one of the family members engaged in the business.
- J. Any minor under the age of 18 years shall be exempt from the business tax provisions of this Chapter.
- K. The City Manager or designee, after giving notice and a reasonable opportunity for hearing to a licensee, may revoke any license granted pursuant to the provisions of this section upon information that the licensee is not entitled to an exemption claimed pursuant to this section.

5.04.080 – License – Administration.

Except as otherwise provided, the Community Development Department is charged with the responsibility of administering business licenses, and shall be authorized from time to time to promulgate and enforce such rules or regulations consistent with the purposes, intent, and express terms of this title as he or she deems necessary to implement such purposes, intent, and express terms. No rules or regulations, if any, promulgated by the Community Development Department, or amendments thereof, shall be enforced or become effective until 30 calendar days following the date on which the proposed rules or regulations are filed with the City clerk.

5.04.090 – License – Separate Activities and Branch Establishments.

- A. A separate license must be obtained for each branch establishment or location of the business transacted and carried on, provided that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this Chapter and Chapter 5.08 shall not be deemed to be separate places of business or branch establishments. For separate types of business activities at the same location, the license shall authorize the licensee to transact and carry on the businesses licensed thereby at the location or in the manner designated in such license certificate.
- B. For any business as to which more than one flat rate business tax amount may be applicable due to coming within two or more classifications set forth in this Chapter or Chapter 5.08, as a result of separate activities, that classification of business tax which produces the greatest revenue to the City shall apply.
- C. When there are two or more separate business activities being conducted at the same location and at least one activity is subject to gross receipts, then the combined total of the gross receipts for all activities shall be used for the purposes of computing the business license tax.

5.04.100 – License – Duplicates – Fees.

A duplicate license may be issued by the Community Development Department to replace any license previously issued hereunder which has been lost or destroyed upon the licensee filing statement of such fact, and at the time of filing such statement paying a fee established by resolution of the City Council from time to time.

5.04.110 – License – Application Filing.

All applications and application fees for business licenses shall be filed in the office of the Community Development Department.

5.04.120 – License – Application Contents.

To make an application for the first license to be issued to a business pursuant to the provisions of this Chapter, the applicant shall furnish the following information to the Community Development Department:

- A. A statement of the exact nature or kind of business for which a license is requested;
- B. The place where such business is to be carried out, or if the business is not to be carried out at any fixed or permanent place, the place of residence of the owner of such business;
- C. In the event the application is made for the issuance of a license to a Person doing business under a fictitious name, the name and place of residence of the Person owning such business;
- D. In the event the application is made for the issuance of a license to a corporation or partnership, the names and places of residence of the officers or partners thereof;
- E. In all cases where the amount of license tax to be paid is measured by gross receipts, such information as may be required and necessary to determine the amount of the license tax to be paid by the applicant; and
- F. A nonrefundable license application fee in an amount established by resolution of the City Council from time to time, due and payable to the Community Development Department at the time of filing the Application for the first license.

5.04.130 – License – Investigation of application.

The Community Development Department shall review the application to determine whether the business complies with those laws identified by this Chapter, and whether conditions should be attached to the issuance of the license. Inspection of the site shall be conducted as necessary to determine applicability of and compliance with this Chapter, and the adequacy of corrections or conditions necessary to achieve compliance with such laws.

5.04.140 – License – Issuance.

- A. The Community Development Department shall act upon an application for a business license by denying the application or issuing a license not later than 45 days after the date a complete application is validly filed. An application is deemed complete and validly filed when the applicant files the application form with all information therein as provided in Section 5.04.120, and the license application fee, with the Community Development Department. The Community Development Department shall act upon the application by issuing the license unless one or more of the following situations apply:

1. The Community Development Department finds in writing that the applicant has failed to provide information as required by Section 5.04.120, and the finding cites the specific information and provision or provisions of Section 5.04.120 that is applicable; or
 2. The Community Development Department finds in writing that the enterprise is, or would be, operated or maintained in a manner, or is, or would be, located on grounds or within a building, which violates or is in violation of local, state, or federal laws, and by operation of such laws, the termination of the enterprise or denial of the application is required, and the finding cites the specific law that is applicable; or
 3. Pursuant to Section 16000, Subdivision (c), of the Business and Professions Code, as that Section may be amended or renumbered from time to time, when the applicant or enterprise holds a contractor's license, as issued by the State of California Contractors State License Board, and Community Development Department finds in writing that the applicant does not have a valid unexpired, unsuspended, unrevoked contractor's license.
- B. If an application for a business license is denied pursuant to subsections A.1. through A.3. of this Section, the denial shall be issued in writing by the Community Development Department, with the reasons for the decision stated and supported by any applicable findings required to be made by this Chapter. Written notice of the denial shall be served by the Community Development Department on the applicant or holder by mail or personal delivery. If served by mail, the date of service shall be deemed to be the date the Community Development Department placed the denial in the mail.
- C. With respect to denial of a renewal application pursuant to section 5.04.200, the immediately preceding business license shall be deemed to be in full force and effect for a period of 15 days following the date of service upon the applicant of the notice of denial. In the event the applicant files an administrative appeal from the denial of the renewal application in the manner and within the time prescribed by section 5.04.360, the immediately preceding business license shall continue in full force and effect until the administrative appeal is final as determined by sections 5.04.380, as applicable, or upon settlement or dismissal of the administrative appeal, as applicable.
- D. With respect to the denial of a new application for a business license, the denial shall be effective 15 days following the date of service of the notice of denial on the applicant as required by this section.

- E. A business license issued under this chapter shall authorize the holder thereof to operate or conduct a business enterprise only on such property the address of which is stated on the license. In the event the licensee ceases to use the property for the business, activity, or enterprise listed on the license for a period of 90 consecutive days, the license shall have no further force or effect and becomes void.

5.04.150 – License – Issuance – Estimates of Gross Receipts.

- A. If the amount of the annual license tax to be paid by the applicant is measured by gross receipts, such Person shall, within thirty (30) days after the expiration of the period for which such license was issued, furnish the Community Development Department with a sworn statement, on a form furnished by the Community Development Department, showing the gross receipts during the period of such license, and the license tax for such period shall be finally ascertained and paid in the manner provided in this Chapter. If the amount of the annual license tax to be paid by the applicant is measured by gross receipts, the period used to calculate gross receipts will be April 1 of the previous year through March 31 of the current year.
- B. The Community Development Department shall not issue to any such Person another license for the same or any other business until such Person has furnished to the Community Development Department the sworn statement and paid the license tax as required by the foregoing paragraph.
- C. If the Community Development Department is not satisfied with the information furnished by the applicant under this Chapter, the Community Development Department may by other means reasonably determine and fix the amount of the license tax. Notice of the Community Development Department's determination as to such amount must be given to the Person being assessed the tax either personally or by mail addressed to the applicant's last known address.

5.04.160 – License – Issuance – Conditions.

- A. The purpose of conditions on a business license is to ensure that the enterprise is maintained or operated in a manner that protects the public health and safety, and prevents the enterprise from disturbing the peace and tranquility of the neighborhood in which it is located.
- B. Conditions applicable to a business license issued under this Chapter may be recommended by the Community Development Department upon findings in writing that:
 - 1. The enterprise or its patrons are the cause of repeated nuisance activity or activities that disturb the peace and tranquility of the neighborhood

where the enterprise is located; or the enterprise or its patrons are the cause of a safety hazard or hazards to the public within the building, buildings, or premises of the enterprise, or in the neighborhood where the enterprise is located. Such written findings shall specify the particular nuisance disturbance or safety hazard which the condition is intended to mitigate. Such nuisances or safety hazards may include, but are not limited to, illegal parking, loud noises (particularly late at night or early morning hours), traffic violations, curfew violations, lewd conduct, police detentions, police arrests, excessive smoke, excessive fumes, excessive dust, excessive vibration, obnoxious odors, excessive glare, loitering, cruising, graffiti, excessive littering, traffic hazards, inadequate parking, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination or defecation, theft, burglary, robbery, assaults, batteries, disturbances of the peace, and acts of vandalism.

2. The condition imposed is the least detrimental to the maintenance or operation of the enterprise and is necessary in order to abate or substantially minimize such disturbance or safety hazard.
- C. Factors that shall be considered by the Community Development Department in imposing conditions are the nature of the location and its surroundings; the number of people living, working, or traversing in the immediate vicinity of the business; whether the nuisance, disturbance, or safety hazard is continual or occasional and the time of day of the occurrence thereof; and the nature and extent of the injury caused by the nuisance, disturbance, or safety hazard upon persons residing, working, or traversing in the surrounding neighborhood of the enterprise or upon patrons of the enterprise. Conditions may be imposed only where the nuisance, disturbance, or safety hazard is caused by the conduct, maintenance, or operation of the enterprise, or by the patrons thereof, and is of substantial injury to a substantial number of persons within or without the enterprise, or residing, working, or traversing in the surrounding neighborhood of the enterprise, or to patrons of the enterprise.
- D. Conditions that may be imposed include, but are not limited to:
1. Limitation of hours or days of operation of maintenance of the enterprise during which the repeated nuisance disturbance or safety hazard, or both, occurs;
 2. The provisions of adequate off-street parking;
 3. The installation of on-site improvements;
 4. The use of protective fences or gates in the interior or exterior of the enterprise, or both;

5. The requirement of exterior or interior lighting, or both;
 6. The requirement of uniformed, licensed, or other qualified security personnel, inside or outside the building or buildings, or on the premises, where the enterprise is located, or both. The term “premises” includes areas such as, but not limited to, a parking lot, walkway, patio area, grounds, or storage area;
 7. The requirement of interior or exterior signage on the building or premises where the enterprise is located, or both, to warn patrons or persons in the particular location of a repeated nuisance disturbance or safety hazard. The term “premises” includes areas such as, but not limited to, a parking lot, walkway, patio area, grounds, or storage area;
 8. The requirement of an on-site manager;
 9. A requirement that the parking area, buildings, or other locations on the premises wherever the enterprise is located be posted to prohibit consumption of alcoholic beverages. The term “premises” includes areas such as, but not limited to, a parking lot, walkway, patio area, grounds, or storage area;
 10. A requirement that the interior of the operation cannot be visible from the outside of the building;
 11. A requirement that all outside advertising and displays comply with section 313.1 of the California Penal Code, as may be amended or renumbered from time to time, concerning displays of information harmful to minors;
 12. A requirement that the applicant or holder fund any additional law enforcement services required as a result of the operation of the business; or
 13. Other conditions related to conduct, operations, maintenance, or improvements of the enterprise demonstrated under the particular circumstances to be necessary in order to prevent or substantially eliminate any repeated nuisance disturbance or safety hazard enumerated in subsection B.1. of this Section; provided, however, that such condition shall be unrelated to the content of protected expressions of speech.
- E. Conditions may be imposed at the time a business license is initially issued, upon renewal of the license, or at any time during the term of the license.

- F. Any conditions imposed pursuant to this Section shall be embodied, together with the written findings required by this Section, if any, in the text of the business license, and shall be served by the Community Development Department on the applicant or holder by mail or personal delivery. If served by mail, the date of service shall be deemed to be the date the Community Development Department placed the business license in the mail.
- G. In addition to any conditions imposed pursuant to this Section, applicants must ensure they remain in compliance with all applicable local, state, and federal laws and regulations for the term of the license issued under this Chapter.

5.04.170 – License – Issuance – Contents.

Every Person required by the provisions of this Chapter to hold a business license shall make initial application for such license to the Community Development Department in the manner described in Sections 5.04.110, 5.04.120, 5.04.130, and 5.04.140, and upon the payment of the prescribed application fee, the Community Development Department shall issue to such Person a license which shall contain the following information:

- A. The name of the Person to whom the license is issued;
- B. The name of the business that is licensed;
- C. The place where such business is to be transacted and carried out, if applicable;
- D. The date of the expiration of such license; and
- E. Such other information as may be necessary for the enforcement of the provisions of this Chapter and Chapter 5.08.

5.04.180 – License – Term.

Business licenses shall expire when the person to whom the license is issued ceases operations authorized thereby. The term of a business license shall otherwise be from the date of issuance to the end of the then-current fiscal year, at which point renewal will be required in order for the business license not to lapse.

5.04.190 – License – Renewal.

- A. An application for renewal shall be on a form issued by the Community Development Department, and shall include the following information:
 - 1. A description of any change in the type of business or enterprise functions conducted on the premises since the last license was issued to the applicant, or indication of no change;

2. The information as indicated in Section 5.04.120 A. through E.
 3. Any change in ownership of the business, with the name and address of such new owner, or indication that there is no such change;
 4. The licensee's address for notice where notice is required to the licensee pursuant to this chapter if such address has changed, or an indication that there is no such change.
- B. The licensee shall complete the application for renewal and file the same with the Community Development Department not later than the date of expiration of the immediately preceding license.

5.04.200 – License – Renewal processing and issuance.

- A. An application for renewal shall be investigated and processed in the manner prescribed by Sections 5.04.120 and 5.04.130. The Community Development Department shall act upon the application for renewal by issuing the license or denying the application not later than 45 days after the date a complete, valid renewal application is filed. The license shall automatically be granted and issued upon failure of the Community Development Department to act upon the license within such 45 days. An application for renewal is deemed complete and validly filed when the licensee files the application form, with all information therein as provided in section 5.04.200, and the associated application renewal fees, with the Community Development Department. The Community Development Department shall act upon the license renewal application within such 30 days unless the applicant has filed with the Community Development Department, before expiration of the 45 days, written notice of a request for extension of such 45-day period on grounds that additional time is required by the applicant to prepare and present plans or other information, obtain zoning variances or other permits, remodel the premises, or make other corrections necessary to comply with all applicable laws or to correct nuisance disturbances or safety hazards described in section 5.04.160 B.1. The Community Development Director may, at his or her discretion pursuant to such a written request, extend the time within which action is required by the Community Development Department on the application to such a period as the Community Development Director agrees in writing is reasonable and appropriate to accomplish the corrections. The Community Development Department shall act upon the application for renewal within the 45-day period, or the extended period of time, as applicable, by issuing the renewed license unless:
1. A finding in writing is made that one or more of the conditions identified in section 5.04.140 A.1. through 3. of this chapter apply; or

2. The Community Development Department finds in writing that the applicant has failed to provide specific information as required by section 5.04.200 of this chapter, and the finding cites the specific information and provision or provisions of section 5.04.200 that is required; or
 3. The Community Development Department finds in writing that one or more conditions applicable to the preceding license at the same location have been violated, if pursuant to provisions of sections 5.04.200, it is determined that such conditions shall also be applicable to the renewed license.
- B. With respect to any application for renewal which is filed on or before the date of expiration of the immediately preceding license, the Community Development Department shall extend the term of the immediately preceding license, without charge, during the period of any investigation required in order to determine whether the license should be renewed.

5.04.210 – License – Nontransferable – Exceptions.

No license issued pursuant to the provisions of this Chapter shall be transferable; provided, however, when a license is issued authorizing a Person to transact and carry on a business at a particular place, such licensee may, upon application and paying a fee in an amount established by resolution of the City Council from time to time, have the license amended to authorize the transacting and carrying on of such business under such license at some other location to which the business is or is to be moved; and provided, further, a transfer, whether by sale or otherwise, to another Person under such circumstances that the real or ultimate ownership after the transfer is substantially similar to the provisions of this section. For the purposes of this section, stockholders, bondholders, partnerships, or other Persons holding an interest in a corporation or other entity, defined in Section 5.04.020 to be a Person, shall be regarded as having the real or ultimate ownership of such corporation or other entity

5.04.220 – License – Posting at fixed locations.

Any licensee transacting and carrying on a business at a fixed place within the City shall keep the license posted in a conspicuous place upon the premises where such business is conducted.

5.04.230 – License – Carrying for non-fixed location.

Any licensee transacting and carrying out a business, but not operating such business from a fixed location within the City, shall keep the license upon his person at all times while transacting and carrying out the business for which such license is issued.

5.04.240 – Statements and records – Inspection and verification.

- A. All statements required by the provisions of this Chapter, and each item required by such statements, shall be subject to inspection and verification by the Community Development Director, his or her deputies, or employees of the City who are authorized to examine and inspect such books and records of any licensee or applicant for a license as may be necessary in the judgment of such Community Development Director, deputies, or authorized employees, to verify or ascertain the amount of license tax due; provided, however, such inspection and verification shall be limited to those books and records necessary to establish gross receipts. A certificate executed by a certified public accountant licensed in California shall establish a rebuttable presumption that the gross receipts of such licensee are as stated in the statements required by the provisions of this Chapter.
- B. All Persons subject to this Chapter shall maintain complete records of business transactions, including sales, receipts, and purchases, and shall retain all such records for examination by the Community Development Department for a period of at least three (3) years. No Person required to keep records pursuant to this Section shall unreasonably refuse to permit an authorized City representative to examine such records at reasonable times and places and in a reasonable manner.

5.04.250 – Taxes – Imposed.

License taxes may be imposed upon all businesses regulated by this Chapter, except for those expressly exempted by Section 5.04.070, in the amount set forth in Chapter 5.08.

5.04.260 – Taxes – Dates due and payable.

- A. Annual. Unless otherwise specifically provided in this Chapter or Chapter 5.08, all annual license taxes imposed by the provisions of this Chapter or Chapter 5.08 shall be due and payable in advance on the first day of July of each fiscal year; provided, however, license taxes for new operations commenced after the first day of July may be prorated on a quarterly basis, a fraction of which shall be considered a whole quarter, for the balance of the license period.
- B. Weekly. Unless otherwise specifically provided in this Chapter or Chapter 5.08, all weekly license taxes imposed by the provisions of this Chapter or Chapter 5.08 shall be due and payable retroactively (covering the week prior) on Monday of each week. License taxes for new operations which commence in the middle of a week must pay in advance the full amount of the tax for the first week in operation and each week thereafter.
- C. Daily. Unless otherwise specifically provided in this Chapter or Chapter 5.08, all daily license taxes imposed by the provisions of this Chapter or Chapter

5.08 shall be due and payable retroactively (covering the day prior) at 9:00 a.m. each day.

- D. No refund of any tax or fee paid under this chapter shall be made by virtue of discontinuance, dissolution or other termination of a business.

5.04.270 – Taxes – Delinquencies – Penalties.

- A. For failure to pay a license tax when due, the Community Development Department shall automatically add a penalty of 15 percent of the license tax at 9:00 a.m. on the first day delinquent. License taxes shall be considered delinquent as follows:
 - 1. Annual license taxes shall be delinquent on August 1 of each year.
 - 2. Weekly license taxes shall be delinquent on the Monday following the Monday on which the tax was due.
 - 3. Daily license taxes shall be delinquent on the day following the day on which the tax was due.
- B. For the purposes of this section, if the last day of the month falls on a Saturday, Sunday, or holiday, the penalty shall not be added until the next regular business day on which the City Hall is open to the public. Payments postmarked on this date shall be accepted in the same manner as if payment was received in the City Hall. If the license tax remains unpaid 60 days after the due date thereof, the amount of the tax plus the 15 percent penalty may be sent to a collection agency for collection immediately after conclusion of the sixtieth day or collection may be pursued in any legal manner provided for in the Atwater Municipal Code and State and federal laws, including citing and closure of the business for operating without a current business license.

5.04.280 – Taxes – Delinquencies – Agreements for installment payments.

- A. No business license or associated sticker, tag, plate, or symbol shall be issued, nor shall one which has been suspended or revoked be reinstated or reissued, to any Person who, at the time of applying therefor, is indebted to the City for any delinquent license taxes unless such Person, with the consent of the Community Development Department, enters into a written agreement with the City, through the Community Development Director, to pay such delinquent taxes, plus eight percent simple annual interest upon the unpaid balance, in weekly or monthly installments, extending over a period of not to exceed one year.
- B. In any agreement so entered into, such Person shall acknowledge the obligation owed to the City and agree that, in the event of failure to make timely payment of any installment, the whole amount unpaid shall become

immediately due and payable and any current license shall be revocable by the Community Development Department upon thirty days' notice. In the event legal action is brought by the City to enforce collection of any amount included in the agreement, the prevailing party shall recover from the other party all costs of suit incurred including reasonable attorney's fees. The execution of such an agreement shall not prevent the prior accrual of penalties on unpaid balances at the rate provided herein; provided, however, no penalties shall accrue on account of taxes included in the agreement after the execution of the agreement and the payment of the first installment and during such time as such Person shall not be in breach of agreement.

5.04.290 – Taxes – Overpayment – Refunds.

No refunds of an overpayment of taxes imposed by the provisions hereof shall be made in whole or in part unless a claim for a refund is filed with the Community Development Department within a period of three years from the last day of the calendar month following the period for which the overpayment was made, and all such claims for a refund shall be on forms furnished by the Community Development Department and in the manner prescribed by the Community Development Department. Upon the filing of such claim, and if it is determined that an overpayment has been made, the Community Development Department may refund the amount overpaid.

5.04.300 – Taxes and penalties debt to City – Actions to collect.

The amount of any license tax and penalty imposed by the provisions hereof shall be deemed a debt to the City. An action for the amount of any delinquent license tax and penalties may be commenced in the name of the City in any court of competent jurisdiction.

5.04.310 – Violations – Administrative citation.

- A. In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to Section 1.01.110 of this Code. Each and every violation of the provisions of this Chapter constitutes a misdemeanor and is hereby deemed unlawful and a public nuisance.
- B. If a person is in violation of this Chapter by virtue of failing to have a valid business license, the City's Code Enforcement division may cause the party to be issued an administrative citation at the time of discovery of the violation, and require the cessation of business activities conducted without the benefit of a valid business license. Said citation shall identify the date, time, and circumstance of the violation; state the amount of the penalty fee to be imposed; and advise the person of their appeal rights as provided in Sections 5.04.350 – 5.04.380 herein. All penalties imposed by citation pursuant to this

section shall be payable to the City, unless otherwise directed on the citation. The amount of the penalty imposed shall be as follows:

1. \$100.00 for a first violation.
 2. \$200.00 for a second violation within 12 months of the first violation.
 3. \$500.00 for the third and each subsequent violation within 12 months of the first violation.
 4. For all delinquent, unpaid administrative citation penalties, there shall be a penalty imposed in the amount of ten percent of the penalty amount and an additional one percent per month of the total amount of such penalty for each month during the time that said penalty remains unpaid after its delinquency date. The delinquency date for an administrative citation penalty shall be sixty days following the imposition of the penalty, or the appeal determination of the administrative hearing officer, whichever is later. The failure of any person to pay the fines assessed by an administrative citation within the time specified on the citation may result in the director referring the matter to the Finance Department or other designated agent for collection.
- C. The City reserves the right to pursue any other available legal remedy to address violations of this Chapter.

5.04.320 – Enforcement; Inspections.

- A. The Finance Director, the Chief of Police, and Community Development Director are collectively responsible for enforcing the provisions of this title, and to that end may inspect any and all types or classes of businesses which are licensed and regulated by the City pursuant to this title. The Finance Director, Chief of Police, and Community Development Director and their deputies or subordinate personnel may enter any place of business which is subject to the provisions of this title for the purpose of inspection for compliance with this title.
- B. The Community Development Department and police department may, during the term of a license, require the licensee to complete a license information update form for the purpose of ensuring continued compliance with this title. The licensee shall, within 15 calendar days of the date the City mails such an information form, return the completed form to the Community Development Department or to the police department, whichever officer has requested the information update form.

5.04.330 – Suspension of license.

- A. Any business license issued pursuant to this Chapter may be suspended for not longer than one year during its term if the Community Development Department finds in writing that one or more of the following grounds exists:
 - 1. The enterprise is operated or maintained in a manner or is located on grounds or within a building which violates or is in violation of local, state, or federal laws, and by operation of such laws the termination of the enterprise is required, and the findings specify the specific provision or provisions of law violated;
 - 2. That conditions applied to the business license pursuant to sections 5.04.160 have been violated, and that the violations are likely to continue, based on the prior history of the business and compliance with the existing conditions.
 - 3. That the business cannot, during the time of the proposed suspension, be operated in a manner that does not cause nuisance by disturbing the peace and quiet of neighborhoods, occupants of adjacent property, or endanger or create disturbances for patrons of the business.
- B. With respect to any enterprise required by the provisions of this Chapter to possess a business license, suspension of the business license shall terminate only the privilege of doing business at the location to which the license relates for the duration of the suspension. The suspension of a business license shall remain in effect until the cause for suspension is corrected or cured, or until expiration of the stated period of suspension.
- C. Upon receipt of findings as required by this Section, the Community Development Department may issue a written notice of suspension, stating the reasons therefor as indicated in such findings. The notice shall be served by the Community Development Department upon the holder of the license by mail or personal delivery. If served by mail, the date of service shall be deemed to be the date the Community Development Department placed the notice in the mail. The suspension shall become effective 15 days after the date of service, unless the holder of the license files an administrative appeal within the time and in accordance with the provisions of section 5.04.360. If such an administrative appeal is filed, the suspension shall not become final until the administrative appeal is final as determined in sections 5.04.380, as applicable, or upon settlement or dismissal of the administrative appeal, as applicable.

5.04.340 – Revocation of license.

- A. Any business license issued pursuant to this Chapter may be revoked during its term if the Community Development Department finds in writing that one or more of the following grounds exists:

1. The enterprise is operated or maintained in a manner or is located on grounds or within a building which violates or is in violation of local, state, or federal laws, and by operation of such laws the termination of the enterprise is required, and the findings specify the specific provision or provisions of law violated;
 2. The holder of the license has violated one or more conditions imposed pursuant to sections 5.04.160 upon which the license has been issued, and the findings specify the particular condition or conditions violated;
 3. The holder of the business license has failed in the license application or renewal application to provide information that is required by sections 5.04.120 or 5.04.200, as applicable, and such information is necessary to a determination respecting compliance with local, state, or federal laws; or
 4. The enterprise is that of a contractor as defined in Division 3, Chapter 9, Article 2, Section 7026 et seq. of the Business and Professions Code, and the Community Development Department finds that the licensee is not licensed by the State of California Contractors State License Board to engage in the business as a contractor with a valid, unexpired, unsuspended, unrevoked license issued by the State of California Contractors State License Board, or that the licensee fails to provide sufficient proof, as determined by the finance director, that such contractor's license is valid, unexpired, unsuspended, and unrevoked.
- B. Upon receipt of findings as required by section 5.04.370, the Community Development Department may issue a written notice of revocation, stating the reasons for such revocation as indicated in such findings. The notice shall be served by the Community Development Department upon the holder of the license by mail or personal delivery. If served by mail, the date of service shall be deemed to be the date the Community Development Department placed the notice in the mail. The revocation shall become effective 15 days after the date of service, unless the holder of the license files an administrative appeal within the time and in accordance with the provisions of section 5.04.360. If such an administrative appeal is filed, the revocation shall not become effective until the administrative appeal is final as determined in sections 5.04.380, as applicable, or upon settlement or dismissal of the administrative appeal, as applicable.

5.04.350 – Grounds for appeal.

Appeals may be heard in relation to actions by the City to deny issuance of an initial business license or renewal of a business license, actions by the City to revoke or suspend a business license, or action by the City to impose additional or changed terms

upon an existing business license. Such appeals shall be conducted as prescribed in this Chapter.

5.04.360 – Written request for appeal.

- A. Within ten (10) calendar days after the date of a decision to deny issuance of an initial business license or renewal of a business license, to revoke or suspend a business license, or to add or change conditions to an existing business license, an applicant may appeal such action by filing a written appeal with the City Clerk setting forth the reasons why the decision was not proper. The written appeal shall be in writing and signed by the person making the appeal or their legal representative, and shall contain the following:
 - 1. Name, address, and telephone number of the appellant;
 - 2. Specification of the decision, action, or a particular part thereof that is the subject of the appeal;
 - 3. A true and correct copy of the notice issued by the City which the appellant is appealing;
 - 4. Specification of the reasons and grounds for making the appeal, including, but not limited to, a statement of facts upon which the appeal is based in sufficient detail to enable the hearing officer to understand the nature of the controversy, the basis of the appeal, and the relief requested; and
 - 5. All documents or other evidence pertinent to the appeal that the appellant requests the hearing officer or body to consider at the hearing.
- B. At the time of filing the appeal, the appellant shall pay the designated appeal fee that is established by resolution of the City Council from time to time.
- C. Failure of the City Clerk to receive a timely appeal constitutes a waiver of the right to appeal a notice issued by the City. In this event, the City's notice of denial, nonrenewal, revocation, suspension, or change or addition of permit terms shall be final.
- D. A hearing officer, as appointed by the City Manager or his/her designee, shall hear appeals under this Chapter.

5.04.370 – Appeal hearing procedures.

- A. Appellants who file a timely written appeal will be entitled to an administrative hearing before the hearing officer.

- B. Upon receipt by the City Clerk of a timely-filed appeal pertaining to a denial, nonrenewal, revocation, suspension, or change or addition of permit terms, the City Clerk shall schedule a hearing within forty five days (45) days or as soon as reasonably possible thereafter, or upon any other date that the City and appellant shall mutually agree upon.
- C. The appellant listed on the written appeal form shall be notified in writing of the date, time, and location of the hearing at least ten (10) days before the date of the hearing ("Notice of Hearing").
- D. A request by an appellant to continue a hearing must be submitted to the City Clerk in writing no later than three (3) business days before the date scheduled for the hearing. The City may continue a hearing for good cause, or on its own motion. However, in no event may the hearing be continued for more than thirty (30) calendar days, unless there is a stipulation by all parties to do so.
- E. At the date, time, and location set forth in the Notice of Hearing, the hearing officer shall hear and consider the testimony of the appellant(s), City staff, and/or their witnesses, as well as any documentary evidence properly submitted for consideration.
- F. The following rules shall apply at the appeal hearing:
 - 1. Appeal hearings are informal, and formal rules of evidence and discovery do not apply. However, rules of privilege shall be applicable to the extent they are permitted by law, and irrelevant, collateral, undue, and repetitious testimony may be excluded.
 - 2. The Appellant shall bear the burden of proof by a preponderance of the evidence.
 - 3. The hearing officer may not accept and consider late evidence not submitted initially with the Notice of Appeal unless the appellant demonstrates the lateness was due to his or her mistake, inadvertence, surprise, or excusable neglect. The hearing officer shall make such determinations on a case-by-case basis.
 - 4. The appellant may bring a language interpreter to the hearing at their sole expense.
 - 5. The City may, at its discretion, record the hearing by stenographer or court reporter, audio recording, or video recording. If the appellant requests from the City that a court reporter, stenographer, or videographer be used, appellant shall bear the costs of same and shall

deposit such fees prior to commencement of the administrative hearing.

- G. If the appellant, or their legal representative, fails to appear at the appeal hearing, the hearing officer may open the appeal hearing, allow the City to present its prima facie evidence in support of the challenged decision, and ask the hearing officer to make a determination as to the appeal on the record. The hearing officer shall then send a notice of its determination to the appellant by certified, first class mail to the address(es) stated on the Notice of Appeal. A cancellation of a hearing due to non-appearance of the appellant shall constitute the appellant's waiver of the right to appeal and a failure to exhaust all administrative remedies. In such instances, the hearing officer's notice of decision is final and binding.
- H. Final Decision. Following the conclusion of the administrative hearing, the hearing officer shall issue a written decision within a reasonable time which (i) determines if the action appealed from is affirmed or overturned and (ii) specifies the reasons for the decision.
- I. A copy of the written decision shall be served by certified, first class mail on the appellant, unless other service method shall be agreed to between the parties. Failure of a person to receive a properly addressed final decision shall not invalidate any action or proceeding by the City pursuant to this Chapter.

5.04.380 – Finality of determination.

With respect to an administrative appeal from the denial of a new application for a business license, the decision by the hearing authority shall become final upon the date of filing of the decision with the Community Development Department and service thereof on the applicant or licensee."

Section 4: Amendment of the Municipal Code. Chapter 5.08 – Schedule of License Fees is hereby renamed as Chapter 5.08 – Schedule of License Taxes.

Section 5: Amendment of the Municipal Code. Existing Section 5.08.010 of the Atwater Municipal Code, "Gross receipts defined" is hereby deleted in its entirety, and replaced with a new Section 5.08.010, "License tax; Wholesale and retail sales," to read in full as follows:

"5.08.010 - License tax; Wholesale and retail sales.

- A. Every person who sells or offers for sale any goods, wares, or merchandise, except as herein otherwise provided, either as principal or agent, whether on commission or otherwise, and whether for present or future delivery, or whether said goods, wares or merchandise are owned or consigned to the person, and every person carrying on or conducting the business or

occupation as set forth in this section, and every person engaged in any kind of lawful business not otherwise mentioned in this chapter, shall pay an annual license tax based upon total gross receipts at the following rates: \$60.00 for the first \$50,000.00 in gross receipts and \$0.28 for each \$1,000.00 in gross receipts or portion thereafter. The period used to calculate gross receipts will be April 1 of the previous year through March 31 of the current year.

- B. In computing gross receipts under this section, there may be deducted the amount of gross receipts which has been the measure of a license tax paid to any other City.
- C. Each new business starting in the gross receipts category shall pay for the year based on a figure for its estimated gross receipts."

Section 6: Amendment of the Municipal Code. Existing Section 5.08.020 of the Atwater Municipal Code, "License fee – Wholesale and retail sales" is hereby deleted in its entirety. Existing Section 5.08.030 of the Atwater Municipal Code, "Tax based on flat rate – Fixed place of business" is hereby renumbered as Section 5.08.020, retitled "Tax based on flat rate," and amended in full to read as follows:

"5.08.020 - Tax based on flat rate.

Every person transacting or carrying on business enumerated in this section providing personal and business services within the City shall pay an annual license tax as follows:

Advertising, signs	\$60
Alterations, dressmaking, etc.	\$60
Ambulance	\$60
Auctioneer	\$100
Auction, fire sale, etc.	\$480
Barbershop	\$60
Beauty shop	\$60
Billboard advertising	\$60
Billiard or pool hall	\$60
Book, encyclopedia, magazine sales	\$60
Car wash	\$60
Card room – first table	\$120
Card room – each additional table	\$60
Child nursery	\$60
Christmas tree sales	\$60
Cleaning services	\$60
Collection agency	\$60
Dance school or studio	\$60
Dry cleaners	\$60
Equipment rental	\$60

Funeral parlor	\$100
Gardener	\$60
Hauling and delivery services	\$60
Hotel or motel	\$60
Jukebox – per machine	\$10
Laundries or Laundromats	\$60
Locksmith and sharpeners	\$60
Magazine sales	\$60
Mechanical games – per machine	\$10
Mobilehome park	\$60
Moving and storage	\$60
Music teacher	\$60
Newspaper – daily	\$100
Newspaper – other than daily	\$60
Office equipment sales or rentals	\$60
Photography studio (no merchandise sold)	\$60
Photostat & blueprinting	\$60
Reducing salon	\$60
Selling ice cream, etc.—1 vehicle	\$60
Selling ice cream, etc.—each additional vehicle	\$20
Shoe repair	\$60
Signs	\$60
Skating rink	\$80
Soliciting orders for sewing machines	\$60
Telephone companies	\$500
Theaters, etc.—1 to 500 seats	\$60
Theaters, etc.—501 to 1,000 seats	\$120
Title company	\$120
Tree trimming	\$60
Towing service	\$60
Traveling photographer	\$500
Vending machines—first machine	\$60
Vending machines—each additional machine	\$4
Warehousing	\$60
Business, trades, etc., otherwise not covered	\$60

“

Section 7: Existing Section 5.08.030 of the Atwater Municipal Code, “Tax based on flat rate – Fixed place of business” is renumbered as Section 5.08.020 and amended as set forth in the preceding section. A new Section 5.08.030 of the Atwater Municipal Code, “Application for reclassification; appeal” is hereby added in full to read as follows:

“5.08.030 - Application for reclassification; appeal.

- A. In any case where a licensee or an applicant for a license believes that his individual business is not assigned to the proper classification under this Chapter because of circumstances peculiar to it, as distinguished from other businesses of the same kind, he may apply to the Community Development Department for reclassification. Such application shall contain such information as the Community Development Department may deem necessary and require in order to determine whether the applicant's individual business to the classification shown to be proper on basis of such investigation.
- B. The Community Development Department shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office in Atwater, California, postage prepaid, addressed to the applicant at his last known address. Said applicant may, within 15 days after the mailing or serving of such notice, make written request to the Community Development Department for a hearing on his application for reclassification. If such request is made within the time prescribed, the Community Development Department shall cause the matter to be set for hearing before the a hearing officer, as that term is defined in Chapter 5.04, within 15 days. The hearing officer shall give the applicant at least ten days' notice of the time and place of the hearing in the manner prescribed above for serving notice of the action taken on the application for reclassification. The hearing officer shall consider all evidence adduced and its findings thereon shall be final. Written notice of such findings shall be served upon the applicant in the manner prescribed above for serving notice of the action taken on the application for reclassification. No further administrative appeal may be had once the hearing officer's final determination on the application for reclassification has been made.”

Section 8: Amendment of the Municipal Code. Existing Section 5.08.040 of the Atwater Municipal Code, “Tax based on flat rate – no fixed place of business” is hereby deleted in its entirety.

Section 9: Amendment of the Municipal Code. Existing Section 5.08.050 of the Atwater Municipal Code, “Tax based on weekly flat rate” is hereby renumbered as Section 5.08.040.

Section 10: Amendment of the Municipal Code. Existing Section 5.08.060 of the Atwater Municipal Code, “Tax based on daily flat rate” is hereby renumbered as Section 5.08.050.

Section 11: Amendment of the Municipal Code. Existing Section 5.08.070 of the Atwater Municipal Code, "Delivery by vehicle, wholesale and retail" is hereby renumbered as Section 5.08.060.

Section 12: Amendment of the Municipal Code. Existing Section 5.08.075 of the Atwater Municipal Code, "License fee – manufacturing" is hereby renumbered as Section 5.08.070, renamed "License tax; manufacturing," and amended to read in full as follows:

"5.08.070 – License tax; manufacturing.

- A. Every person engaged in the business of manufacturing or processing of any goods, wares, merchandise, articles, or commodities at a fixed place of business within the City of Atwater shall pay \$60.00 for the first \$50,000.00 in gross receipts and \$0.28 for each \$1,000.00 in gross receipts or portion thereafter. The period used to calculate gross receipts will be April 1 of the previous year through March 31 of the current year.
- B. Whenever there are no gross receipts within the City of Atwater, the method of calculation for the license fee shall be based on the total of all expenses incurred in the manufacturing process at the business location with the City of Atwater for payroll, utilities, depreciation and/or rent.
- C. No license fee for a business taxed under this section shall exceed \$500.00. "

Section 13: Amendment of the Municipal Code. Existing Section 5.08.080 of the Atwater Municipal Code, "Professionals – annual license" is hereby renumbered as Section 5.08.080 and renamed "Professionals; annual license." The text of this section is retained in its entirety.

Section 14: Amendment of the Municipal Code. Existing Section 5.08.090 of the Atwater Municipal Code, "Contractor" is hereby renumbered as Section 5.08.090. The title and text of this section are retained in their entirety.

Section 15: Amendment of the Municipal Code. Existing Section 5.08.095 of the Atwater Municipal Code, "Rental of property" is hereby renumbered as Section 5.08.100 and amended to read as follows:

"5.08.100 – Rental of Property.

- A. Every person engaged in the business of managing the rental of homes or apartments within the City for periods of longer than 30 consecutive days, and which rental units total five or more, shall pay a license tax of \$60.00 per year.

- B. Every person engaged in the business of managing the rental of commercial, industrial, or other business property within the City shall pay a license tax of \$60.00 per year.
- C. Notwithstanding the foregoing, this section shall not apply to owners of real property who also manage said properties.
- D. This section shall not apply to persons engaged in managing short term rentals of residences for a period of 30 consecutive days or less.”

Section 16: Amendment of the Municipal Code. Existing Section 5.08.100 of the Atwater Municipal Code, “Prorated quarterly license tax” is hereby renumbered as Section 5.08.105.

Section 17. Effective Date. Within fifteen (15) days from and after adoption, this Ordinance, or a summary thereof, shall be published once in a newspaper of general circulation printed and published in Merced County and circulated in Atwater, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

Section 18: Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the Ordinance be enforced.

Section 19: CEQA. Approval of the amendments to the Atwater Municipal Code set forth in this Ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (“CEQA”) Guidelines section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

INTRODUCED: September 26, 2022
ADOPTED: October 10, 2022
AYES: Ambriz, Button, Cale, Raymond, Creighton
NOES: None
ABSENT: None

APPROVED:

PAUL CREIGHTON, MAYOR

ATTEST:

LUCY ARMSTRONG, CITY CLERK