

Title 5

BUSINESS TAXES, LICENSES AND REGULATIONS

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Chapter 5.04

BUSINESS LICENSES AND TAXES

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Unless it is apparent from the context that another meaning is intended, the following words and/or phrases, when used in this chapter, shall have the meaning respectively ascribed to them and shall be interpreted and construed accordingly. As

used in this chapter, the following words or phrases mean:

A. "Agricultural producers" means the actual grower and producer of ranch, farm, orchard, vineyard or poultry produce or products who, by himself or by an agent or employee, sells or delivers to the market or at a loading platform such produce or products actually produced or grown by him.

B. "Beer bar" means all places of business where beer, but not distilled spirits, is sold or served to the public for consumption on the premises, which place of business is not licensed by the Department of Alcoholic Beverage Control as a bona fide public eating place, as defined in Section 23038 and 23038.1 of the Business and Professions Code of the state.

C. "Blind" means any business conducted, carried on or managed solely by a totally blind person.

D. "Bona fide restaurant serving beer and/or wine" includes all places of business licensed by the Department of Alcoholic Beverage Control as a bona fide public eating place, as defined in Sections 23038 and 23038.1 of the Business and Professions Code of the state, where beer and/or wine, but not distilled spirits, are sold or served to the public for consumption on the premises.

E. "Bona fide restaurant serving distilled spirits" includes all places of business licensed by the Department of Alcoholic Beverage Control as a bona fide public eating place, as defined in Sections 23038 and 23038.1 of the Business and Professions Code of the state, where distilled spirits are sold or served to the public for consumption on the premises.

F. "Business" means all professions, trades and occupations and all and every kind of calling carried on for profit or livelihood.

G. "Business district" means any area zoned for business purposes by the zoning regulations of the city.

H. "Cocktail bar" means all places of business where distilled spirits are sold or served to the public for consumption on the premises, which place of business is not licensed by the Department of Alcoholic Beverage Control as a bona fide public

eating place, as defined in Sections 23038 and 23038.1 of the Business and Professions Code of the state.

I. "Commission broker" means one who, for a commission or fee, handles the buying and/or selling of commodities, or an agent or an agency for marketing manufactured goods or other commodities, but who does not take ownership of commodities sold.

J. "Contractor" means any person who is required to be licensed as a contractor by the state, or any person who undertakes to or offers to undertake to or purports to have the capacity to undertake to or submits a bid to, or does himself or by through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. The term "contractor" includes specialty contractor, and further includes any person who contracts to hire out trucks, tractors, excavating or other equipment in connection with a construction project, whether at rates by the hour or day or for a contract amount.

K. "Director" means the director of finance, or his duly authorized deputies or assistants who may be charged with the collection of license taxes and the issuance of licenses.

L. "Fixed place of business" means a place of business in the city occupied for the particular purpose of conducting the business thereat and regularly kept open for that purpose with a competent person in attendance for the purpose of attending to the business.

M. "Gross receipts" includes the total of amounts actually received or receivable from sales and the total amounts actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not the act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise. Included in "gross receipts" are all receipts, cash,

credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from "gross receipts" are the following:

1. Cash discounts allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
4. Amounts collected for others where the business is acting as an agent or trustee to the extent that the amounts are paid to those for whom collected;
5. Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded;
6. As to a commission sales agent or commission broker, the sales price of goods or services sold for the account of others except that portion which represents the total gross commission or other income to the agent or broker;
7. As to a retail gasoline dealer, a portion of his receipts from the sale of motor vehicle fuels equal to the motor vehicle fuel license tax imposed by and previously paid under the provisions of Part 2 of Division 2 of the Revenue and Taxation Code of the state;
8. As to a retail gasoline dealer, the special motor fuel tax imposed by Section 4041 of Title 26 of the United States Code if paid by the dealer or collected by him from the consumer or purchaser.

N. "Hawker or peddler" means any person who travels from house to house or apartment to apartment or office to office or place to place or from person to person upon the streets for the purpose of selling, offering for sale or soliciting orders for goods, wares or merchandise by sample or otherwise at retail, but shall not include selling and delivering or offering to sell and deliver items of food and drink for human consumption by a vendor to

regular customers along established routes where the sales and deliveries and offers of sale and delivery are made only to such regular customers in accordance with invitations previously made to the vendor to make regular calls at specific intervals at the premises for the purpose of making sales and deliveries of the items of food and drink for human consumption. A hawker or peddler shall not include any authorized agent or representative or a person having a fixed place of business in the city.

O. "Itinerant merchant" means and includes all persons, both principal and agent, who engage in a temporary and transient business for a period of less than ninety days in the city selling goods, wares or merchandise, and who, for the purpose of carrying on the business, hire, lease or occupy any room, building or structure, lot or premises, for the exhibition or sale of such goods, wares and merchandise; provided, that this shall not apply to commercial travelers or selling agents selling their goods to merchants, dealers or traders, where it is to become a part of the merchant's, dealer's or trader's stock in trade in his regular place of business, whether selling for present or future delivery by sample or otherwise as they are defined in this chapter.

P. "Manufacturing" means one who engages in the business of manufacturing, fabricating or processing any materials, raw or partly wrought, into goods, wares or merchandise, or assembling or packaging any manufactured or processed material, whether the manufactured or processed goods are sold or distributed to wholesalers, brokers or other channels for the purpose of resale.

Q. "Minimum entertainment" includes any act, presentation or performance available to the customers of the premises for their pleasure, amusement or benefit, including but not limited to live performances, whether of a musical nature or otherwise, and motion picture presentations, but not including entertainment provided by the public airways of the television medium; provided, that no more than one individual entertainer is engaged in the entertainment.

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

S. "Processor" means one who engages in the business of converting an article, substance or commodity into marketable form for the purpose of resale by changing its physical or chemical composition.

T. "Public utility" means any person furnishing the public with communication, water, light, heat, power or other public utility or service subject to regulation by the Public Utilities Commission of the state or a franchise agreement with the city.

U. "Regular entertainment" includes the availability of dancing facilities for use by customers of the premises, or any act, presentation or performance available to the customers of the premises for their pleasure, amusement or benefit, including but not limited to live performances, whether of a musical nature or otherwise, and motion picture presentations, but not including entertainment provided by the public airways of the television medium; provided, that more than one individual entertainer is engaged in the entertainment.

V. "Sale" includes the transfer, in any manner or by any means whatsoever, of title to property for a consideration; the serving, supplying or furnishing for a consideration of any property; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price shall likewise be deemed a sale. The foregoing definitions shall not be deemed to exclude any transaction which is or which, in effect, results in a sale within the contemplation of law.

W. "Square footage" means all of the space at the business location designed for use by or contributing to serving the customers of the business concerned regardless of use.

X. "Sworn statement" means an affidavit sworn to before a person authorized to take oaths, or a

declaration or certification made under penalty of perjury.

Y. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway.

Z. "Wholesaler" means one who engages in the business of selling or soliciting the sale of goods, wares, merchandise or services for the purpose of resale and not to consumers or users thereof. (Ord. 356 § 1, 1978)

5.04.020 Purpose.

This chapter is enacted solely to raise revenue for municipal purposes, and is not intended for regulation. (Ord. 356 § 2, 1978)

5.04.030 Effect on other ordinances.

Persons required to pay a license tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any license tax for the privilege of doing such business required under any other ordinance of the city, and shall remain subject to the regulatory provisions of other ordinances. (Ord. 356 § 3, 1978)

5.04.040 License—Required.

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

B. This section shall not be construed to require any person to obtain a license prior to doing business within the city if the requirement conflicts with applicable statutes of the United States or of the state.

C. Persons not required to obtain a license prior to doing business within the city because of conflict with applicable statutes of the United States or of the state shall be liable for payment of the li-

cense tax imposed by this chapter. (Ord. 356 § 4, 1978)

5.04.050 License—Not to permit prohibited activity.

The payment of a license tax required by the provisions of this chapter, and its acceptance by the city, and the issuance of the license to any person shall not entitle the holder of the license to carry on any business unless he has complied with all the requirements of this code and all other applicable laws, nor to carry on any business in any building or on any premises designated in the license in the event that the building or premises are situated in a zone or locality in which the conduct of the business is in violation of any law. (Ord. 356 § 5, 1978)

5.04.060 Not to relieve from other tax measures.

Persons required to pay a tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any license tax for the privilege of doing the business required under any other provisions of this code. (Ord. 356 §6, 1978)

5.04.070 Exemptions.

The provisions of this chapter shall not be deemed or construed to require the payment of a license tax to conduct, manage or carry on the following businesses or occupations:

A. Charitable Institutions, Etc. 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 person; nor shall any license be required for the conducting of any entertainment concert, exhibition or lecture on scientific, historical, literary, religious or moral subjects, whenever the receipts of the entertainment, concert, exhibition or lecture are to be appropriated to any church or school, or to any religious or benevolent purpose within the city; nor shall any license 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 purposes and objects for which profit is not derived, either directly or indirectly by any person; provided, however, that nothing contained in this section shall be deemed to exempt any such institution or organization from complying with the provisions of any law of the city requiring the institution or organization to obtain a permit from the proper board or officer to conduct, manage or carry on any profession, trade, calling or occupation; provided, that the institution or organization shall file with the director satisfactory proof by affidavit that the receipts of the business are to be used for the purposes specified in this section.

B. Interstate Commerce. In any case where the payment of a license tax would cast an undue burden upon the right to engage in commerce with foreign nations or among the several states, or conflicts with the regulations of the United States Congress respecting interstate commerce, but any applicant claiming exemption upon that ground shall file a verified statement with the director disclosing the interstate or other character of his business entitling it to such exemption, which statement shall contain the name and location of the company or firm for which orders are to be solicited or secured, the name and address of the nearest local or state manager, the kind of goods, wares and merchandise to be delivered, the place from which they are to be shipped or forwarded, the method of solicitation or taking orders, the location of any warehouse, factory or plant within the state, the method of delivery, the name and location of the residence of the applicant, and any other facts necessary to establish the claim of exemption. A copy of the order blank, contract form or other papers used by the person in taking orders shall be attached to the affidavit for the information of the director. If it appears that the applicant is entitled to the exemption, the director shall forthwith issue a free license.

C. Disabled Veterans. Any disabled veteran who is physically unable to obtain a livelihood by manual labor and having honorable discharge or release papers showing disability incurred while in service in the armed forces of the United States shall have the right to distribute circulars and hawk, peddle and vend any goods, wares or merchandise owned by him without the payment of any license or tax upon the following terms and conditions:

The applicant shall furnish evidence satisfactory to the director that he is physically unable to obtain a livelihood by manual labor, an honorably discharged or released member of the armed forces of the United States and that he sustained disability while serving in the armed forces of the United States during a war or military campaign in which the United States was engaged.

D. Agricultural Producers. The actual grower and producer of ranch, farm, orchard, vineyard or poultry produce or products who, by himself or by an agent or employee sells or delivers to the market or at a loading platform such produce or products actually produced or grown by him.

E. Blind. Any business conducted, carried on or managed solely by a totally blind person.

F. Part-Time Occupations. Any part-time occupation conducted or carried on solely by any natural person under the age of eighteen years, or seventy years of age or older. "Part-time occupation," as used in this subsection, means an occupation in which the annual gross receipts do not exceed five thousand dollars. (Ord. 356 § 7, 1978)

5.04.080 Exclusions.

A. Except as may be otherwise specifically provided in this chapter, the terms of this chapter shall not be deemed or construed to apply to any of the following persons:

1. Banks, including national banking associations, to the extent that a city may not levy a license tax upon them under the provisions of Article 13, Section 27, subdivision l(a) of the State Constitution;

2. Insurance companies and associations to the extent that a city may not levy a license tax upon them under the provisions of Article 13, Section 28 of the State Constitution;

3. Any person who the city is not expressly authorized to license under any law or constitution of the United States or the state.

B. The director may require the filing of a verified statement from any person claiming to be excluded by the provisions of this section, which statement shall set forth all facts upon which the exclusion is claimed. (Ord. 380 § 4, 1982; Ord. 356 § 8, 1978)

5.04.090 Evidence of doing business.

When any person by use of signs, circulars, cards, telephone book or newspapers, advertises, holds out or represents that he is in business in the city, or when any person holds an active license or permit issued by a governmental agency indicating that he is in business in the city, and the person fails to deny by a sworn statement given to the director that he is not conducting a business in the city, after being requested to do so by the director, then these facts shall be considered prima facie evidence that he is conducting a business in the city. (Ord. 356 § 9, 1978)

5.04.100 License—Application.

Each applicant for a license shall complete and sign an application on forms provided by the city, except as otherwise provided in this chapter. Such forms shall require such information as the director deems necessary to determine the proper license tax to be paid by the applicant, including the name and address of the individual if a single proprietor, the names and addresses of all owners if a firm, or the names and addresses of all principal officers if a corporation, the name of the business, the address at which the business is to be conducted, the type of business, and the activities to be carried on for which the license is being sought. Upon determining the license tax due, the director shall indicate the amount on the application form, and upon

payment of the tax, shall issue to the applicant a receipt for taxes paid. (Ord. 356 § 10, 1978)

5.04.110 License—Separate for each location.

A. A separate license must be obtained for each branch establishment or location of the business transacted and carried on and for each separate type of business at the same location, and each license shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in the license; provided, that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this chapter shall not be deemed to be separate places of business or branch establishments; and provided further, that any person conducting two or more types of businesses at the same location and under the same management, or at different locations, but which businesses use a single set of books and records, may at his option pay only one tax calculated on all gross receipts of the businesses of the person which requires the highest total payment on the gross receipts.

B. Vehicles, coin-operated machines or any other type of operation incidental to the licensed business, fall with the gross receipts schedule designated for the business. However, wherein two or more businesses are operated under the same ownership or management that are licensed under the flat-rate section of this chapter, the flat rate for each type of business shall apply. (Ord. 356 § 11, 1978)

5.04.120 Determination of classification.

A. The determination of which business or businesses, or type or class of business or businesses, a licensee or applicant for a license is engaged in, or about to engage in, shall be an administrative function of the director.

B. In any case where a licensee or applicant for a license believes that he is placed in the wrong business or class of businesses he may apply to the director for a change in his classification. The ap-

plication may be made within three months after payment of the prescribed license tax. The applicant shall by affidavit and supporting testimony show such information as the director may deem necessary in order to determine the proper classification. The director may conduct his own investigation and shall have the administrative duty of determining the proper classification. Any applicant or licensee aggrieved by the decision of the director shall have the right of appeal to the city council in accordance with Section 5.04.310. (Ord. 356 § 12, 1978)

5.04.130 License—When payable and delinquent.

A. All license taxes due under this chapter shall be paid in advance at the office of the director unless otherwise expressly provided, and shall be due and payable and delinquent as follows:

1. Daily License. Due on its effective date and delinquent at five p.m. of due day.

2. Weekly License. Due on Monday of each week and delinquent at five p.m. on Friday of the week.

3. Monthly License. Due on the first day of each month for which the license is sought and delinquent at five p.m. on the last day of the month.

4. Quarterly License. Due on the first day of October, January, April and July and delinquent at five p.m. on the last day of the first month in which the quarterly license is due.

5. Quarterly Gross Receipts Tax. Due on the first day of October, January, April and July for the preceding quarterly period and delinquent at five p.m. on the last day of the month following the quarterly license period.

6. Semiannual License. Due on the first day of July and January and delinquent at five p.m. on the last day of the first month in which the semiannual license is due.

7. Annual License. Due on the first day of July and delinquent at five p.m. on the last day of July.

B. In lieu of paying the license taxes at the office of the director as specified in subsection A of this section, the license taxes may be deposited in

the United States mail, postage prepaid, on the due date, provided the transmitting envelope contains a postage cancellation stamp showing cancellation not later than twelve p.m. on the due date.

C. If the due day falls on Saturday, Sunday or a holiday, the due day shall be the next regular business day on which the city hall is open to the public.

D. The director may, for good cause, extend for not more than thirty days the time for filing any report or paying any sum required to be paid under this chapter. The extension may be granted at any time provided a written request therefor is filed with the director prior to the delinquency date. (Ord. 356 § 13, 1978)

5.04.140 License—Delinquency penalty and collection.

A. Delinquency. To all delinquent license taxes there shall be added a penalty of twenty-five percent of the amount of taxes due.

B. Fraud. If the director determines that the nonpayment of any license tax due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsection A of this section.

C. Penalties Merged with Tax. Every penalty imposed under the provisions of this section shall become a part of the tax required in this chapter to be paid. (Ord 356 § 14, 1978)

5.04.150 License—Prorating tax.

Except as otherwise provided in this chapter, no proration of any license tax due under this chapter shall be made for any portion of the period for which a license is payable. For the purpose of proration a fractional part of a month shall be considered as a full month. (Ord. 356 § 15, 1978)

5.04.160 Declaration of gross receipts.

Every person conducting, carrying on or managing a business who is required to pay a business license tax measure by gross receipts shall file a quarterly declaration of gross receipts for the pre-

vious quarter on or before the last day of the first month of the following quarter with the director on forms prescribed by the city or at any other such interval the director may establish; provided, that a licensee after having a valid business license for the same business for one full fiscal year may elect to file the gross receipts statements on a fiscal year basis. Provided further, that a person paying the maximum tax under Sections 5.04.370, 5.04.380, 5.04.390, 5.04.400 and 5.04.580 shall not have to file a gross receipts statement. (Ord. 356 § 16, 1978)

5.04.170 Closing or change of ownership.

In the event any business subject to a license tax measured by gross receipts closes or changes ownership, the business shall file a closing return with the city and pay the business license tax due thereon within thirty days from the time of closing or change in ownership of the business. A closing return shall be considered delinquent if not filed within the specified time. (Ord. 356 § 17, 1978)

5.04.180 License—Withholding for verification of information.

No statement required to be filed by the applicant or licensee shall be conclusive upon the city or the director whenever it appears to the satisfaction of the director that the statement does not set forth the true facts of the business for which a license is required. The director may thereupon withhold the issuance of a license until the applicant has furnished satisfactory evidence of the truth of the statement. (Ord. 356 § 18, 1978)

5.04.190 Determination of amount of tax.

If the evidence is not furnished to the director within a reasonable time, or if it at any time appears to the director that by reason of errors, misrepresentation, fraud, or for any other cause whatsoever the license tax has not been properly fixed for any license issued, he shall give not less than five days' written notice to the licensee to show cause, at the time and place fixed in the notice, why a tax to be determined by the director and specified

in the notice shall not be fixed for such a license. At the hearing, the licensee shall appear and offer evidence why the specified tax should not be fixed as a license tax. After the hearing the director shall determine the proper tax to be charged and forthwith give notice to the licensee of the determination and the amount of the tax. (Ord. 356 § 19, 1978)

5.04.200 Appeal of amount of tax.

The licensee may appeal from the determination of the director made pursuant to Section 5.04.300. (Ord. 356 § 20, 1978)

5.04.210 License—Posting and exhibition.

Every person having a license issued under the provisions of this chapter, and carrying on a trade, calling, profession, or occupation at a fixed place of business, shall keep the license posted and exhibited while in force in some conspicuous part of the place of business. Every person having a license and not having a fixed place of business shall carry the license with him at all times while carrying on the trade, calling, profession or occupation for which it was granted. Every person having a license under the provisions of this chapter shall produce and exhibit it whenever requested to do so by any police officer, or by any officer or employee authorized to issue, inspect or collect licenses. (Ord. 356 § 21, 1978)

5.04.220 License—Nontransferable and new location.

No license issued pursuant to this chapter shall be transferable; provided, that where a license is issued authorizing a person to transact and carry on a business at a particular place, the licensee may upon application therefor (and at no additional charge) be issued a new license to authorize the transacting and carrying on of the business under the license at some other location to which the business is or is to be moved. Any change in type of business will be construed as a new business and subject to the provisions of Section 5.04.030. (Ord. 356 § 22, 1978)

5.04.230 License—Duplicate issuance.

A duplicate license may be issued by the director to replace any license previously issued under this chapter which has been lost or destroyed upon the licensee filing statement of such fact, and at the time of filing the statement paying to the director a service charge of three dollars. (Ord. 356 § 23, 1978)

5.04.240 License—Renewal.

Every person licensed under the provisions of this chapter shall, if he wishes to continue to carry on, conduct or manage the business in the city upon expiration of the license, renew the license by paying the taxes required in this chapter as provided in the section under which the original license was issued. It shall be the responsibility of the licensee to advise the director of any changes in the type of business, the activities carried on, or changes in ownership from that shown on the original license. Any change in type of business or business activities conducted, or change in ownership, will require a new application to be prepared and the appropriate license tax to be paid. No license shall be renewed if the licensee is delinquent in any charges imposed by this chapter or delinquent in filing reports required by this chapter. (Ord. 356 § 24, 1978)

5.04.250 License—Revocation.

Any license issued under the provisions of this chapter may be revoked by the director upon the failure on the part of the licensee to pay the charges imposed by this chapter or to file reports as required by this chapter within six months after the charges or reports become delinquent. (Ord. 356 § 25, 1978)

5.04.260 Records examination.

A. The director is authorized to examine, audit and inspect such books and records of any licensee or applicant for a license, as may be necessary to verify or ascertain the amount of license tax due.

B. All license taxes, applicants for licenses, and persons engaged in business in the city are required

to permit an examination of the books and records for the purpose aforesaid.

C. It is unlawful for any person to fail, neglect or refuse to produce the books and records for examination by the director when requested so to do. The director may, by the issuance of a subpoena duly signed by the city clerk, order any person carrying on any profession, trade, calling or occupation in the city to produce all of the person's records of accounts, invoices, receipts or other papers or documents showing the gross receipts of the person for the taxable period, at the office of the city clerk for examination by the director; provided, that a person shall not be subject to an examination of records for any quarter in which the person pays the maximum tax under the provisions of Sections 5.04.370, 5.04.380, 5.04.390, 5.04.400 or 5.04.580. (Ord. 356 § 26, 1978)

5.04.270 Information confidential.

Financial information furnished or secured pursuant to this chapter, the disclosure of which would result in unfair or competitive disadvantage to the person supplying the information, shall be deemed confidential in character, and shall not be subject to public inspection and shall be kept so that the contents thereof shall not become known except to the persons charged with the administration and enforcement of this chapter. (Ord. 356 § 27, 1978)

5.04.280 Revealing confidential material prohibited.

No officer or deputy officer or employee of the city shall in any manner reveal the contents of any part or portion of the contents of any confidential information except in a legal action to enforce the provisions of this chapter or pursuant to a court order. (Ord. 356 § 28, 1978)

5.04.290 Right of entry for inspection.

The director and each and all of his assistants and any police officer shall have the power and authority to enter, free of charge, and at any reasonable time, any place of business required to be licensed in this chapter, and demand an exhibition

of its license certificate. Any person having the license certificate theretofore issued in his possession or under his control who wilfully fails to exhibit it on demand shall be guilty of a misdemeanor and subject to the penalties provided for by the provisions of this code. It shall be the duty of the director and each of his assistants to cause a complaint to be filed against any and all persons found to be violating any of the provisions. (Ord. 356 § 29, 1978)

5.04.300 Sales and use tax return filing.

Every person requiring a license pursuant to the provisions of this chapter shall file with the city clerk a copy of the sales tax and use tax return showing the gross amount of business as reported by the person to the Board of Equalization of the state. (Ord. 356 § 30, 1978)

5.04.310 Appeal of license issuance or denial.

Any person aggrieved by any decision of the director with respect to the issuance or refusal to issue the license, or claim for a refund of payment of any penalty charges, may appeal to the council by filing a notice of appeal with the clerk of the council. The appeal must be filed by the taxpayer in writing with the city clerk within thirty days after payment in the case of a claim for refund, or within thirty days from the date of mailing of written notice to taxpayer of penalty charges, in the case of a waiver and shall state the specific grounds upon which the appeal claim is founded. The council shall thereupon fix a time and place for hearing the appeal. The clerk of the council shall give notice to the person of the time and place of hearing by serving it personally or by depositing it in the United States Post Office at Lindsay, California, postage prepaid, addressed to the person at his last known address. The council shall have authority to determine all questions raised on the appeal. No such determination shall conflict with any substantive provision of this chapter. (Ord. 356 § 31, 1978)

5.04.320 Refunds.

A. Except as otherwise provided in Section 5.04.310, license taxes, penalties and costs collected or received by the city may be refunded as provided in this section and not otherwise if a signed and verified claim therefor is filed with the director within three years after the date of payment. The refund may be made only under the following conditions:

1. Where a refund is specifically authorized by the provision of law requiring payment of the license, permit or application tax;
2. Where the money is paid to secure a license or permit not required by law;
3. Where the amount paid was in excess of the amount required by law;
4. Where the money paid was not required by law;
5. Where the applicant for any license has not, at any time after the commencement of the period or term during which the requested license would have been effective, commenced or engaged in the business or occupation, or performed any act, for which the license was required;
6. Where the money paid was not required by law, or was erroneously or illegally collected or received by the city through mistake, inadvertence or error of law or of fact, and whether paid or charged under color of any provision of this chapter, or otherwise.

B. If the refund is for two hundred fifty dollars or more it shall be made only by the council. If it is less than two hundred fifty dollars it may be made after approval in writing by the director of finance.

C. This section is remedial in purposes. Its terms and requirements shall not be deemed to limit or qualify the lawful right of any person to bring or maintain an action or proceeding based upon the general law of this state for any remedy provided by law. (Ord. 356 § 32, 1978)

5.04.330 Enforcement.

A. It shall be the duty of the director, and he is directed to enforce each and all of the provisions of this chapter, and the chief of police shall render

such assistance in the enforcement of this chapter as may from time to time be required by the director or the council.

B. The director in the exercise of the duties imposed upon him under this section, and acting through his deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the city, to ascertain whether the provisions of this chapter have been complied with. (Ord. 356 § 33, 1978)

5.04.340 Tax amount constitutes debt to city.

The amount of any license tax and penalty imposed by the provisions of this chapter shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent license tax and penalties. (Ord. 356 § 34, 1978)

5.04.350 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter. (Ord. 356 § 35, 1978)

5.04.360 Misrepresentation prohibited.

No person shall knowingly or intentionally misrepresent to any officer or employee of this city any material fact in procuring the license or permit provided for in this chapter. (Ord. 356 § 36, 1978)

5.04.370 Fees—Classification A.

1. Accountants, C.P.A.'s
2. Appraisers
3. Architects (all types)
4. Attorneys
5. Chemists
6. Chiropractors
7. Chiropodists
8. Consultants (all types)
9. Dentists
10. Electrologists

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11. Engineers (all types)
12. Geologists
13. Laboratories or technicians
14. Oculists
15. Opticians
16. Optometrists
17. Osteopaths
18. Physicians (all types)
19. Physical therapists
20. Surveyors
21. Veterinarians
22. Brokers and agents (all types except agents for licensed brokers)

These and other businesses or person not listed, which are considered to be of a professional nature, shall be considered as being in classification A. The license tax for classification A shall be one dollar and twenty-five cents per one thousand dollars of gross receipts, or fractional part thereof, per professional; the minimum tax is ten dollars per quarter per professional and the maximum tax is thirty dollars per quarter per professional. (Ord. 356 § 50, 1978)

5.04.380 Fees—Classification B.

1. Advertising agencies
2. Barber shops
3. Beauty shops
4. Burglar alarms, sales, service, repair
5. Business managers, firms
6. Car washes
7. Cleaning and janitorial services
8. Collection agencies
9. Cosmetologists
10. Designers, draftsmen
11. Detectives
12. Dressmakers
13. Employment agencies
14. Finance and loan companies
15. Escrow services
16. Gardeners
17. Lapidaries
18. Laundries and cleaning
19. Locksmiths and gunsmiths
20. Masseurs and masseuses

21. Motion picture theaters
22. Newspapers, radio and television stations
23. Patrol services
24. Private schools (all types)
25. Public stenographers
26. Pawnshops
27. Photographers
28. Repair service (all types, other than vehicle)
29. Sign painters, makers
30. Travel agencies
31. Ticket agencies
32. Tree trimmers
33. Window cleaning
34. Private teachers, instructors (all types)
35. Shoeshine service
36. Upholstery shops (all types)
37. Real estate developers
38. Real estate subdividers

These and other businesses or persons not listed, which are considered to be of a service nature, shall be considered as being in classification B. The license tax for classification B shall be one dollar per one thousand dollars of gross receipts, or fractional part thereof; the minimum tax is ten dollars per quarter and the maximum is fifty dollars per quarter. (Ord. 356 § 51, 1978)

5.04.390 Fees—Classification C.

1. Vehicle, boat and equipment parts
2. Apparel stores
3. Bakeries
4. Caterers
5. Bowling alleys
6. Convalescent and rest homes
7. Coin-operated machines (all types)
8. Bookstores
9. Pool halls/billiard rooms
10. Department stores
11. Drugstores
12. Florists
13. Furniture and appliance stores
14. Funeral parlors
15. Gift, novelty shops
16. Glass and/or china shops

17. Hardware, supply stores
18. Hotels, motels, apartments, roominghouses, mobile home parks (four or more units excluding an owner-occupied unit)
19. Hospitals
20. Jewelry, watch stores
21. Lunch wagons
22. Printers and reproduction
23. Public scales
24. Retailing
25. Service stations
26. Secondhand dealers
27. Restaurants, eating places
28. Shoe stores
29. Tailors
30. Tobacco, periodicals stores
31. Skating rinks (all types)
32. Variety stores
33. Liquor stores
34. Nursery, garden shops

These and other businesses or person not listed which are considered to be of a retailing nature shall be in classification C. The license tax for classification C shall be seventy cents per one thousand dollars of gross receipts, or fractional part thereof; the minimum tax is ten dollars per quarter and the maximum is two hundred seventeen dollars per quarter. (Ord. 356 § 52, 1978)

5.04.400 Fees—Classification D.

1. Automobile wreckers
2. Vehicle sales, rentals and leasing
3. Vehicle repair and/or service
4. Beverage bottlers (all types)
5. Canneries (all types)
6. Dairy product manufacturers
7. Heavy equipment dealers
8. Foundries
9. Manufacturing
10. Mining (rock, gravel, sand, etc.)
11. Meat processors, packers
12. Oil, gasoline distributors
13. Petroleum refineries
14. Grocery stores
15. Wholesalers

16. Mills (all types)
17. Public utilities
18. Storage, warehouses

These and other businesses or persons not listed which are considered to be of a wholesale, manufacturing nature, shall be considered as being in classification D. The license tax for this class shall be forty cents per one thousand dollars of gross receipts, or fractional part thereof; the minimum tax is ten dollars per quarter, and the maximum tax is one hundred twenty-four dollars per quarter. No business license tax payable under this section shall be payable by any public utility operating in the city under a franchise requiring franchise payments to the city, except for retail merchandising not covered by franchise. (Ord. 356A § 1, 1978; Ord. 356 § 53, 1978)

5.04.410 Christmas tree dealers.

Every person engaged in the business of selling Christmas trees or holly berries shall pay an annual tax of fifteen dollars. (Ord. 356 § 54, 1978)

5.04.420 Fire, quitting business, wreck or bankrupt sales.

A. Every person conducting, carrying on or managing a fire sale, wreck sale or bankrupt sale shall pay a license tax in the sum of one hundred fifty dollars per month.

B. For the purpose of this section, a "fire sale or wreck sale" is defined to be and include the sale of goods, wares and merchandise salvaged from a fire, wreck or other calamity; and a "bankrupt sale" is defined to be and include the sale of goods, wares and merchandise which have been previously purchased from a trustee or receiver in bankruptcy, or trustee or receiver in insolvency, or trustee for the benefit of creditors; provided, that no license shall be required under the provisions of this section for the sale of goods, wares and merchandise salvaged from any fire, wreck or other calamity in the city, or from any bona fide sale of goods, wares and merchandise in any bankrupt, receiver's, trustee's or assignee's sale within the city. (Ord. 356 § 55, 1978)

5.04.430 Auctioneer for hire.

For the business of acting as an auctioneer for hire, the sum of forty dollars per quarter shall be paid. (Ord. 356 § 56, 1978)

5.04.440 Outside businesses.

Every person not having a fixed place of business within the city who engages in business within the city and is not subject to the provisions of Sections 5.04.460, 5.04.520 and 5.04.590 shall pay a business tax at the same rate prescribed in this chapter for persons engaged in the same type of business from and having a fixed place of business within the city. (Ord. 356 § 57, 1978)

5.04.450 Advertising—Distribution of printed matter.

A. Every person conducting, carrying on or managing the business of advertising, by means of distributing dodgers, handbills, circulars, printed advertisements, cards, tickets or advertising samples of merchandise shall pay a license tax in the sum of seventy-five dollars per year or fraction thereof, payable in advance.

B. For the purpose of this section, the words “conducting,” “carrying on,” or “managing the business” are defined to be and are construed to mean the doing of any act or series of acts of distributing or advertising by means or in a manner specified in this section.

C. Provided, however, that nothing contained in this section shall be construed to permit the carrying on of business defined in this section in violation of any other provision of this code.

D. Provided further, that nothing in this section shall require any person to pay a license tax for the right to distribute cards, pamphlets, or other advertising matter distributed in the business district of the city, where and if the cards, pamphlets or other advertising matter are handed by the distributor thereof directly to the recipient of the same. (Ord. 356 § 58, 1978)

5.04.460 Advertising—Outdoor.

A. Every person not having a fixed place of business in the city, carrying on or engaged in the business or occupation of providing outdoor advertising for others by which they hold, maintain, rent or lease signs, electric signs, billboards, bulletin boards; fences or structures, or space upon any signs, electric signs, billboards, bulletin boards, fences or structures, shall pay a license tax in the sum of thirty-five dollars per quarter if paid quarterly, or one hundred twenty-five dollars per year if paid annually.

B. For the purpose of this section, “outdoor advertising” shall be construed to include the placing upon any sign, billboard, bulletin board, fence or structure and poster, bill, printing, handbill, card, banner, sign, poster, advertising or notice of any kind. (Ord. 356 § 59, 1978)

5.04.470 Boxing and wrestling matches.

Every person conducting, carrying on or managing sparring, boxing or wrestling exhibitions or matches shall pay a license tax in the sum of twenty-five dollars per day. (Ord. 356 § 60, 1978)

5.04.480 Carnivals.

A. Every person conducting, carrying on or managing a carnival activity shall pay a license tax in the sum of three dollars per day for each and every separate show, entertainment, game, merry-go-round, ferris wheel, device, amusement, vaudeville or dramatic performance, game of chance or skill, shooting gallery, for which a separate charge is made for admission, seats or standing room, or to operate or play at the game of chance or skill; or if only one charge is made for admission, or seat or standing room, or to play at any such games of chance or skill. The license tax per day shall be ascertained by multiplying the number of each of the shows, exhibitions and entertainments for which a charge is made, by the amount fixed in this section for each separate exhibition, show or game.

B. For the purpose of this section, the words “carnival activity” are defined to mean and include one or more shows, entertainments, games, de-

vices, amusements, vaudeville, dramatic or minstrel performances, or games, tricks, devices, or wheels, the result of the operation of which is dependent upon chance or skill and/or as a result of the operation of which things representing value may be given or paid; provided, however, that this section shall not apply to bowling alleys, skating rinks or circuses. Provided, that nothing in this section shall be construed to license or authorize the conduct of any gambling or any game or device prohibited by the laws of the state or the laws of the city.

C. For the purpose of this section, if the carnival activity is managed and carried on wholly by a nonprofit institution or organization for the benefit of charitable, religious, or benevolent purposes, and if the nonprofit institution or organization will derive, both directly and indirectly, any and all profits to be derived from the carnival activity, then the business license tax imposed by this section shall be waived; but no person, firm or corporation engaged in the business of conducting any carnival activity shall be relieved of the business license tax imposed by this section solely by reason of the sponsorship of the carnival activity in the city by an institution or organization which might itself be exempt from the business license tax. (Ord. 356 § 61, 1978)

5.04.490 Circuses.

A. Every person conducting, carrying on or managing a circus shall pay a license tax according to the following schedule:

1. Maximum seating capacity (tent or arena) 0—500 persons, \$25.00 per day;
2. Maximum seating capacity (tent or arena) 501—1,000 persons, \$50.00 per day;
3. Maximum seating capacity (tent or arena) more than 1,000 persons, \$75.00 per day.

B. For the purpose of this section, if the circus is managed and carried on wholly by a nonprofit institution or organization for the benefit of charitable, religious or benevolent purposes, and if the nonprofit institution or organization will derive, both directly and indirectly, any and all profits to

be derived from the circuses, then the business license tax imposed by this section shall be waived; but no person, firm or corporation engaged in the business of conducting any circuses shall be relieved of the business license tax imposed by this section solely by reason of the sponsorship of the circus in the city by an institution or organization which might itself be exempt from the business license tax. (Ord. 356 § 62, 1978)

5.04.500 Musical performances.

For any person conducting, carrying on or managing any concert, minstrel show, band concert, musical performance or exhibition or entertainment, or other public exhibition, where a charge is made for admission or seats, the license tax shall be the sum of fifteen dollars per day, or one hundred dollars per month. If for a longer period than one month, where the seating capacity of the auditorium or hall is three hundred or less, the license tax shall be the sum of one hundred fifty dollars per quarter; and for each one hundred additional seats or fraction thereof over and above three hundred seats, the sum of fifteen dollars per quarter; provided, that this section shall not apply to public dances or to circuses. (Ord. 356 § 63, 1978)

5.04.510 Public dance.

For every person carrying on a single public dance, or managing a public dance, the license tax shall be the sum of fifteen dollars per day. (Ord. 356 § 64, 1978)

5.04.520 Hawker, peddler, solicitor or canvasser.

Any person who does not maintain a fixed place of business in the city, not otherwise specifically licensed under other sections of this chapter, conducting, carrying on or managing a business of peddling merchandise of any class or character to persons not regularly engaged in or carrying on such lines of business shall pay a business license tax in the sum of seven dollars per day or fifty dollars per month. (Ord. 356 § 65, 1978)

5.04.530 Taxicab or bus.

For every person carrying on the business of operating any automobile or motor vehicle for transportation of passengers for hire at rates per unit of distance or time, the license fee will be determined in accordance with rates prescribed in Section 5.04.400. (Ord. 356 § 66, 1978)

5.04.540 Beer bar.

	<u>Quarterly Tax</u>
Less than 1,000 square feet:	
No entertainment	\$10.00
Minimum entertainment	25.00
Regular entertainment	40.00
1,000 square feet to 2,000 square feet:	
No entertainment	15.00
Minimum entertainment	35.00
Regular entertainment	50.00
More than 2,000 square feet:	
No entertainment	20.00
Minimum entertainment	40.00
Regular entertainment	60.00

(Ord. 356 § 67, 1978)

5.04.550 Cocktail bar.

	<u>Quarterly Tax</u>
Less than 1,000 square feet:	
No entertainment	\$20.00
Minimum entertainment	40.00
Regular entertainment	60.00
1,000 square feet to 2,000 square feet:	
No entertainment	25.00
Minimum entertainment	45.00
Regular entertainment	75.00
More than 2,000 square feet:	
No entertainment	45.00
Minimum entertainment	75.00
Regular entertainment	90.00

(Ord. 356 § 68, 1978)

5.04.560 Restaurant serving beer or wine.

	<u>Quarterly Tax</u>
Less than 1,000 square feet:	
No entertainment	\$20.00
Minimum entertainment	35.00

Regular entertainment	50.00
More than 1,000 square feet but less than 2,000 square feet:	
No entertainment	\$25.00
Minimum entertainment	45.00
Regular entertainment	60.00
More than 2,000 square feet:	
No entertainment	30.00
Minimum entertainment	50.00
Regular entertainment	65.00

(Ord. 356 § 69, 1978)

5.04.570 Restaurant serving distilled spirits.

	<u>Quarterly Tax</u>
Less than 2,500 square feet:	
No entertainment	\$ 45.00
Minimum entertainment	75.00
Regular entertainment	90.00
More than 2,500 square feet:	
No entertainment	60.00
Minimum entertainment	90.00
Regular entertainment	115.00

(Ord. 356 § 70, 1978)

5.04.580 Fees for businesses not listed.

Any business or persons not otherwise listed or classified under the provisions of this chapter shall pay the license tax prescribed by Section 5.04.390. (Ord. 356 § 71, 1978)

5.04.590 Use of vehicle with no fixed place of business.

Every person not having a fixed place of business within the city who delivers goods, wares or merchandise by vehicle, or who provides any service by the use of vehicles in the city, shall pay a semiannual license tax of fifteen dollars for the first vehicle, and seven dollars and fifty cents semiannually for each additional vehicle. A trailer shall be deemed to be a separate vehicle for the purpose of this section, except that a combination of truck-tractor and semi-trailer shall be considered as one vehicle provided any person licensed under this section may pay a tax as prescribed by Section 5.04.400 at his option. (Ord. 356 § 72, 1978)

5.04.600 Contractors.

Every person engaged in the business of contracting and not otherwise licensed pursuant to the provisions of this chapter shall pay the following license tax:

A. Electrical, plumbing, mechanical and general contractor, fifty dollars semiannually;

B. All others, thirty dollars semiannually. (Ord. 356 § 73, 1978)

Chapter 5.08

**AMBULANCE SERVICE AND
CONVALESCENT TRANSPORT SERVICE**

Sections:

- 5.08.010 Definitions.**
- 5.08.020 License required.**
- 5.08.030 When service to be provided.**
- 5.08.040 Exceptions.**
- 5.08.050 Penalty for violation.**

5.08.010 Definitions.

Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

A. "Ambulance" means any vehicle certified by the California Highway Patrol that is specifically constructed, modified, equipped, designed and used and operated for transporting sick, injured, convalescent, infirm or otherwise incapacitated persons.

B. "Convalescent transport vehicle" means any vehicle that is specifically constructed, modified, equipped, designed and used and operated for transporting patients not requiring emergency services.

C. "Licensee" means any person or business entity having a valid license issued by the county to operate an ambulance and/or a convalescent transport vehicle within a defined area of the county.

D. "Patient" means a wounded, injured, sick, invalid, convalescent or otherwise incapacitated person.

E. "Person" means any individual, corporation, partnership, association, trust or estate.

F. "Service area" means the geographic area in the county in which a licensee is licensed by the county to provide ambulance and/or convalescent transport service. (Ord. 363 § 1:00, 1981)

5.08.020 License required.

It is unlawful for any person, either as an owner, agent, employee or otherwise, to operate, conduct or otherwise be engaged in the business of providing ambulance services or convalescent transport

services in the city, or to transport patients in the city by means of an ambulance or convalescent transport vehicle or to operate them upon the public streets within the city without having a license or permit issued by the county authorizing the licensee or permittee to provide such services within the service area of the county within which the city is located. (Ord. 363 § 1:01, 1981)

5.08.030 When service to be provided.

Any licensee of the county may provide ambulance or convalescent transport services within the city under the following circumstances:

A. Upon request by any person, public safety agency or other licensee, when an ambulance or convalescent transport vehicle licensed by the county for the service area in which the city is located, is not immediately available;

B. To provide ambulance or convalescent transport service to any person from a point outside the city to a point inside the city;

C. To provide return ambulance or convalescent transport service to any person who initially used the licensee's services for transportation to a destination inside the city from a point outside the city;

D. To provide standby ambulance or convalescent transport services on a contract basis for special events of limited duration, including, but not limited to, circuses, carnivals, outdoor festivals, fairs, rodeos and athletic events. (Ord. 363 § 1:02, 1981)

5.08.040 Exceptions.

This chapter shall not apply to the following:

A. Any person or organization providing ambulance or convalescent transport services on a non-profit volunteer basis;

B. Ambulance or convalescent transport services supplied by a political subdivision of the state or the United States;

C. Ambulance or convalescent transport services from a location outside the county, regardless of destination;

D. Any ambulance or convalescent transport service during any "state of war emergency," "state of emergency," or "local emergency, as those terms are defined in the Government Code of the state. (Ord. 363 § 1:03, 1981)

5.08.050 Penalty for violation.

Any person who violates any provisions of this chapter which are declared to be unlawful shall be guilty of an infraction and shall be punishable by a fine in the amount of fifty dollars. (Ord. 363 § 1:04, 1981)

Chapter 5.12

BINGO GAMES

Sections:

- 5.12.010 Authority.**
- 5.12.020 Penal Code Section 326.5 incorporated.**
- 5.12.030 License—Required.**
- 5.12.040 Participation limited to members.**
- 5.12.050 License—Posting and exhibiting.**
- 5.12.060 Bingo defined.**
- 5.12.070 Maximum prize.**
- 5.12.080 Presence required to participate.**
- 5.12.090 Hours.**
- 5.12.100 Profits to be kept in separate fund.**
- 5.12.110 Open to public.**
- 5.12.120 Located on licensee’s property.**
- 5.12.130 Minor participation prohibited.**
- 5.12.140 License—Application.**
- 5.12.150 License—Nontransferable.**
- 5.12.160 License—Inspection and records review authorized.**
- 5.12.170 License—Term.**
- 5.12.180 License—Applicant investigation.**
- 5.12.190 License—Issuance or denial.**
- 5.12.200 License—Revocation—Grounds.**
- 5.12.210 License—Revocation—Notice and hearing.**
- 5.12.220 License—Revocation—Summary.**
- 5.12.230 License—Revocation—Appeal.**
- 5.12.240 Violation may be enjoined.**

5.12.010 Authority.

Bingo games are allowed pursuant to and as restricted by Section 19(c) of Article 4 of the California Constitution, Penal Code Section 326.5 (in-

cluding future amendments thereto), and the provisions of this chapter. (Ord. 378 § 1, 1982)

5.12.020 Penal Code Section 326.5 incorporated.

The provisions of Penal Code Section 326.5 (including future amendments) are incorporated in this chapter by this reference; and “charitable organization” means an organization referred to therein. (Ord. 378 § 2, 1982)

5.12.030 License—Required.

No charitable organization shall conduct a bingo game without a currently valid, unrevoked, unsuspended license as provided for by this chapter. (Ord. 378 § 3(a), 1982)

5.12.040 Participation limited to members.

No person shall promote, supervise, operate, conduct or staff any bingo game, or participate in such activity unless he is a member of a charitable organization which is lawfully licensed to do so and which has designated him to do so and he is designated in its license to do so. (Ord. 378 § 3(b), 1982)

5.12.050 License—Posting and exhibiting.

An organization licensed pursuant to this chapter shall not conduct or permit to be conducted a bingo game unless the license is posted in a conspicuous place during the conduct of any bingo game. The licensee shall produce and exhibit the license when applying for renewal thereof, and whenever requested to do so by any peace officer or officer authorized to issue or inspect licenses. (Ord. 378 § 3(c), 1982)

5.12.060 Bingo defined.

As used in this chapter, “bingo” means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random. (Ord. 378 § 3(d), 1982)

5.12.070 Maximum prize.

The total value of prizes awarded during the conduct of any bingo games shall not exceed two hundred fifty dollars in cash or kind, or both, for each separate game which is held. (Ord. 378 § 3(e), 1982)

5.12.080 Presence required to participate.

No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place in which the bingo game is being conducted. (Ord. 378 § 3(f), 1982)

5.12.090 Hours.

No bingo games shall be conducted between the hours of two a.m. and nine a.m. (Ord. 378 § 3(g), 1982)

5.12.100 Profits to be kept in separate fund.

All profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. The licensee shall keep full and accurate record of the income and expenses received and disbursed in connection with its operation, conduct, promotion, supervision and any other phase of bingo games which are authorized by this chapter. The city, by and through its authorized officers, shall have the right to examine and audit the record at any reasonable time, and the licensee shall fully cooperate with the city by making the record available. (Ord. 378 § 3(h), 1982)

5.12.110 Open to public.

All bingo games shall be open to the public, not just to the members of the licensee organization. (Ord. 378 § 3(i), 1982)

5.12.120 Located on licensee's property.

A licensee shall conduct a bingo game only on property owned or leased by it, and which property is used by the organization for an office or for performance of the purposes for which the organization is organized. The license issued under this chapter shall authorize the holder thereof to con-

duct bingo games only on such property, the address of which is stated in the application. (Ord. 378 § 3(j), 1982)

5.12.130 Minor participation prohibited.

No person under the age of eighteen years of age shall be allowed to participate in any bingo game. (Ord. 378 § 3(k), 1982)

5.12.140 License—Application.

A. The application for a license to conduct bingo games shall be made to the chief of police on forms provided by his office.

B. The application shall include the following information:

1. The name, address, date and place of birth, physical description and driver's license number of every officer of the charitable organization;

2. The name, address, date and place of birth and physical description and driver's license number of not more than twenty members to be authorized to operate bingo games on behalf of the organization;

3. The date(s) and location(s) of the proposed bingo game(s);

4. Proof that the organization is a charitable organization as defined by Penal Code Section 326.5(a). (Ord. 378 § 4 (a), (b), 1982)

5.12.150 License—Nontransferable.

Each license shall be issued to a specific charitable organization authorizing not more than twenty named members to conduct a bingo game on its behalf at one or more named locations. This license is not transferable from one organization to another, from one member to another, or from one location to another. The license is only a temporary and nontransferable permit to act within the provisions of this chapter and all other applicable laws and regulations, and always expires no later than one year from its date. It has no validity when it has been seized, suspended or revoked by the chief of police or his agents. Any attempt to transfer, assign, pledge, mortgage or hypothecate the li-

cense, or to attach or execute on it, immediately and permanently voids it. (Ord. 378 § 4(c), 1982)

5.12.160 License—Inspection and records review authorized.

The application for or acceptance of a license constitutes:

A. Consent to the entry of any peace officer(s) to investigate the location(s) identified in the application before the issuance of a license as well as during any game(s) thereafter;

B. Consent to the chief of police or his agents reviewing or auditing the charitable organization's records relating to the conduct of bingo games and to the special account required by Penal Code Section 326.5(j), for the purpose of verifying compliance with the financial interest and special fund requirements of Penal Code Section 326.5 and with this chapter and all other applicable laws and regulations. (Ord. 378 § 4(d), 1982)

5.12.170 License—Term.

A bingo license shall be valid for one year and upon application may be renewed on a yearly basis. There are no fees for license or application. (Ord. 378 § 5(a), 1982)

5.12.180 License—Applicant investigation.

Upon receiving a completed application, the chief of police may investigate to determine whether the license should be issued. (Ord. 378 § 5(b), 1982)

5.12.190 License—Issuance or denial.

Within fourteen days after receipt of a completed application, the chief of police shall either issue the license or deny it in writing with his reasons therefor. (Ord. 378 § 5(c), 1982)

5.12.200 License—Revocation—Grounds.

The chief of police may suspend or revoke a license for any violation of the provisions of this chapter or of any applicable law or regulation, or for any false, misleading or fraudulent statement of a material fact in the application for the license or

in the promotion, supervision, operation, conduct or staffing of any bingo game. (Ord. 378 § 5(d), 1982)

5.12.210 License—Revocation—Notice and hearing.

If the chief of police determines that a bingo license should be suspended or revoked, he shall serve on the licensee a notice of his intent with his reasons therefor. The notice shall provide for a suspension or revocation of the license seven days after service of the notice upon the licensee, unless the licensee arranges to appear at a hearing before the chief of police and show cause why the action should not be taken. (Ord. 378 § 6, 1982)

5.12.220 License—Revocation—Summary.

A. The chief of police may immediately suspend or revoke a bingo license upon the licensee's refusal to:

1. Permit the entry of any peace officer to investigate the conduct of a bingo game; or

2. Permit the chief of police to review or audit the charitable organization's records relating to the conduct of bingo games under the license and to the special account required by Penal Code Section 326.5(j).

B. Upon taking such action, the chief of police shall within forty-eight hours serve on the licensee a written statement of the reasons for this action, and schedule a show cause hearing on reinstatement of the license within five days of a request to do so by the licensee.

C. The chief of police shall issue his written decision within seven days after the conclusion of a show cause hearing. (Ord. 378 § 7, 1982)

5.12.230 License—Revocation—Appeal.

A. Any holder of a license whose license is revoked under this chapter shall have the right, within ten days after receiving notice in writing of the revocation, to file a written appeal to the city council. The appeal shall set forth the specific ground or grounds on which it is based. The city council shall hold a hearing on the appeal within

thirty days after its receipt by the city, or at a time thereafter agreed upon and shall cause the appellant to be given at least ten days' written notice of the hearing. At the hearing the appellant or its authorized representative shall have the right to present evidence and a written or oral argument, or both, in support of his appeal. The determination of the city council on the appeal shall be final.

B. Any organization whose license is revoked under this section shall not conduct any bingo game in the city until such time as the city council, on appeal, determines to overrule the decision of the chief of police. (Ord. 378 § 8, 1982)

5.12.240 Violation may be enjoined.

The city may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the Penal Code or of this chapter. (Ord. 378 § 9, 1982)

Chapter 5.16

DANCES AND DANCEHALLS

Sections:

- 5.16.010 Dancehall permit required.**
- 5.16.020 Dancehall license required.**
- 5.16.030 Public dance license required.**
- 5.16.040 Gratuitous licenses authorized.**
- 5.16.050 Dancing schools exempted.**
- 5.16.060 Premises investigation.**
- 5.16.070 License—Application.**
- 5.16.080 License—Suspension grounds.**
- 5.16.090 License—Revocation authorized.**
- 5.16.100 Applicability of provisions.**
- 5.16.110 Age restrictions.**
- 5.16.120 Hours.**
- 5.16.130 Intoxicating liquor prohibited.**
- 5.16.140 Conduct prohibited.**

5.16.010 Dancehall permit required.

It is unlawful for any person to open or conduct any public dancehall within the city without first obtaining from the city council a permit so to do, and it is unlawful for any person to carry on or conduct any public dance within the city without first obtaining from the city council a permit so to do. (Prior code § 8-1)

5.16.020 Dancehall license required.

Any person desiring to open or conduct a public dancehall or any hall, room, pavilion or place in which a public dance is to be held shall first procure from the city council a license therefor, which license shall be issued by the city council or the chief of police under the direction of the city council, upon application made therefor upon the terms and under the conditions specified in this chapter, and the license shall be valid until the thirty-first day of December following its issue and the applicant shall pay therefor the sum of forty dollars per year, or fraction thereof. (Prior code § 8-2)

5.16.030 Public dance license required.

It is unlawful for any person to hold or conduct any public dance in the city without first having obtained from the city council, or of the chief of police under direction of the city council, a license to hold or conduct the public dance, and the applicant shall pay therefor the sum of five dollars for each license so granted. (Prior code § 8-3)

5.16.040 Gratuitous licenses authorized.

Gratuitous licenses for the conducting of any public dance, subject to the terms and conditions of this chapter, may be issued by the city council at its discretion where the proceeds therefor are exclusively for the treasury or use of the fire department, the American Legion or any benevolent organization, but nothing in this section is to be construed so as to exempt any person from the necessity of obtaining a permit to hold any public dance. (Prior code § 8-4)

5.16.050 Dancing schools exempted.

Nothing in the preceding sections shall be construed to require the payment of license by any reputable school of instruction in dancing for children or adults, but in no case is such business to be conducted without a permit from the city council; provided, further, that when any assembly or public dance is held at the conclusion of the dancing school session and where an admission is charged there shall be a license of two dollars charged for each dance so held. (Prior code § 8-5)

5.16.060 Premises investigation.

All certificates or permits required by this chapter are subject to cancellation as provided in this chapter and each license or permit shall so state upon its face, and no license or permit shall be granted under the terms of this chapter until the fees provided in this chapter have been paid. The applicant for any permit to carry on or conduct a public dancehall shall file with the clerk of the city council with the application a plan and complete description of the building which is to be so conducted as a public dancehall, showing toilets and

other accessories in connection therewith and if the building in the judgment of the city council is provided with proper exits and free from danger from fire and is well ventilated and in all respects sanitary, then the permit shall be issued upon the application therefor and the payment of the fees as provided in this chapter. (Prior code § 8-6)

5.16.070 License—Application.

The applicant for any license to conduct a public dance in the city shall make application on forms provided for such purpose by the city council, and no public dance shall be held in the city unless application to conduct the dance is properly made and license for the conducting of the public dance issued by the city council or by the chief of police under the direction of the council and the requisite license paid. (Prior code § 8-7)

5.16.080 License—Suspension grounds.

It shall be the duty of the manager of any public dance or of any public dancehall within the city to preserve order therein at all times and to eject or cause to be ejected from the dance or dancehall any person violating any of the provisions of this chapter or any of the rules and regulations of any such public dancehall and in the event that any person conducting any such public dance or dancehall within the city permits to be carried on therein any of the things or acts prohibited by this chapter or permits disorder in or about the public dance or dancehall, the person violating any of the provisions of this section shall not for the period of one year after the violation and forfeiture of license or permit be granted any license or permit to conduct any public dance or dancehall within the city. (Prior code § 8-8)

5.16.090 License—Revocation authorized.

The city council shall have the power to revoke the license or permit of any licensee found guilty of a violation of any of the provisions of this chapter. (Prior code § 8-9)

5.16.100 Applicability of provisions.

The provisions of this chapter shall apply to any dance carried on in any public dancehall within the city whether it is carried on or conducted for hire or for instruction or for amusement or otherwise. (Prior code § 8-10)

5.16.110 Age restrictions.

A. No person under sixteen years of age, unaccompanied by parent or guardian, shall attend any public dance or loiter at or near the doors of any public dancehall within the city while the public dance is being conducted therein.

B. It is unlawful for any person in charge of or conducting the public dance or dancehall to permit any person under sixteen years of age, unaccompanied by parent or guardian, to enter any public dancehall or any other place where a public dance is being conducted or to loiter at or near the doors of any dancehall while a public dance is being conducted therein. (Prior code § 8-11)

5.16.120 Hours.

It is unlawful to conduct within the city any public dance between the hours of one a.m. on Sunday morning and eight a.m. on the following Monday. (Prior code § 8-12)

5.16.130 Intoxicating liquor prohibited.

It is unlawful for any person to have or serve or drink any intoxicating liquor in or about any public dancehall in the city. (Prior code § 8-13)

5.16.140 Conduct prohibited.

It is unlawful for any person to indulge in boisterous or tumultuous conduct at any public dance or in any public dancehall within the city. (Prior code § 8-16)

Chapter 5.20

TAXICABS AND OTHER VEHICLES FOR HIRE

Sections:

- 5.20.010 Definitions.**
- 5.20.020 Permit—Required.**
- 5.20.030 Permit—Application and fee.**
- 5.20.040 Permit—Hearing.**
- 5.20.050 Permit—Fee payment required for issuance.**
- 5.20.060 Permit—Insurance required.**
- 5.20.070 Permit—Revocation.**
- 5.20.080 Permit—One per person and nontransferable.**
- 5.20.090 Rates—Changing.**
- 5.20.100 Driver identification.**
- 5.20.110 Stopping at railroad tracks.**
- 5.20.120 Stopping, standing or parking.**
- 5.20.130 Most direct route required.**
- 5.20.140 Mechanical condition.**
- 5.20.150 Law compliance required.**
- 5.20.160 Fraud or unfair competition prohibited.**
- 5.20.170 Rates—Posting.**
- 5.20.180 Rates—Charging in excess prohibited.**
- 5.20.190 Vehicle sanitation.**
- 5.20.200 Automobile for hire not to be identified as taxicab.**
- 5.20.210 Operator regulations.**
- 5.20.220 Drinking on duty prohibited.**
- 5.20.230 Exclusive use by passenger.**

5.20.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. "Automobile for hire," as used in this chapter, includes every automobile or motor-propelled vehicle by means of which passengers are transported for hire upon any public street in the city and not over a regular or defined route and irrespective of whether the operation extends beyond

the boundary limits of the city or not, excepting vehicles within the term "taxicab" and excepting vehicles of "transportation companies" as defined in this section.

B. "Taxicab" is every automobile or motor-propelled vehicle by means of which passengers are transported for hire upon any public street in the city and not over a regular or defined route and irrespective of whether the operations extend beyond the boundary limits of the city or not, where charge for the transportation is measured by the distance traveled, or by the time required for the transportation, or both, excepting vehicles of transportation companies as defined in this section.

C. "Transportation companies" is synonymous with the phrase "transportation company" as defined by state law, providing for the supervision and regulation of the transportation of persons and property for compensation over public highways by automobiles, jitney buses, auto trucks, stages and auto stages, and all amendments thereto. (Prior code § 21-1)

5.20.020 Permit—Required.

It is unlawful to operate or cause to be operated as an automobile for hire, or a taxicab, upon any public street within the city or to display or advertise upon any vehicle by device, design or insignia operated upon any public street within the city, whereby the vehicle is actually or apparently held out as an automobile for hire or a taxicab, or for any person to solicit charges or accept fees for the operation of the same, without first having obtained a permit so to do in accordance with the provisions of this chapter and without complying or having complied with all of the provisions of this chapter. (Prior code §21-2)

5.20.030 Permit—Application and fee.

Any person desiring to obtain the permit required by Section 5.20.020 shall pay a fee of ten dollars to the city clerk and shall make application for the permit to the city council, which application shall set forth:

A. The name and address of the applicant, and if it is a corporation, the names of its principal officers, or if it is a partnership, association or fictitious company, the names of the partners or persons comprising the association or company, with the address of each;

B. A statement of whether the permit is desired for an automobile for hire or taxicab;

C. A description of every motor vehicle which the applicant proposes to use, giving:

1. Trade name,
2. Motor and serial number,
3. State license number,
4. Seating capacity,
5. Body style;

D. The street number and exact location of the place where the applicant proposes to stand each such automobile;

E. The proposed schedule of rates or fares to be charged for carrying passengers in the automobile;

F. The distinctive color scheme, name, monogram or insignia which shall be used on the automobile. (Prior code § 21-3)

5.20.040 Permit—Hearing.

A. Upon the receipt of any application referred to in Section 5.20.030, the city clerk shall set a time of not less than ten days nor more than thirty days thereafter, for the hearing of the application before the city council and shall give notice of the time set at least five days before the date of the hearing to the applicant, at the address set out in the application.

B. At the time set for the hearing of the application, the city council may examine the applicant and any other persons interested in the matter set forth in the application, and shall determine whether or not the public interest, convenience and necessity require the issuance of the permit applied for, and if it is found by the city council that the public interest, convenience and necessity require the issuance of the permit applied for, it shall, by resolution, order the city clerk to issue a permit in accordance with the application, subject to the fil-

ing and approval of an undertaking as provided in Section 5.20.060. (Prior code § 21-4)

5.20.050 Permit—Fee payment required for issuance.

Before any permit is issued pursuant to this chapter, a license fee shall be paid to the city at the rate of five dollars per quarter for each automobile for hire and taxicab referred to in the application for a permit and failure to pay the license fee shall automatically revoke any permit issued pursuant to this chapter. (Prior code § 21-5)

5.20.060 Permit—Insurance required.

Before a permit is issued by the city clerk pursuant to this chapter, the applicant to whom a permit has been awarded by the city council shall deliver to the city council a policy of insurance, executed by a company duly authorized under the laws of the state to do an insurance business, by the provisions of which policy the company promises and undertakes to pay in full all claims for damages to persons or property resulting from the operation of the automobiles referred to in application; provided, that the minimum amount for which liability shall be assumed for injury to, or death of, one person in any one accident shall be fifteen thousand dollars and injury to, or death of, more than one person in any one accident shall be thirty thousand dollars, and the minimum amount for which liability shall be assumed for injury or destruction of property in any one accident shall be five thousand dollars. (Prior code § 21-6)

5.20.070 Permit—Revocation.

Any permit granted under the provisions of this chapter may be revoked by the city council, either as whole or as to any or either cars described in the permit, after ten days' notice to the permit holder, requiring him to appear at a certain time and place to show cause why the permit should not be revoked for any of the following reasons:

A. That the undertaking provided for in Section 5.20.060 has not been given or has been withdrawn

or lapsed for nonpayment of premium, or is not in force for any reason;

B. For the nonpayment of any license fee provided by any provisions of this code or other ordinance of the city;

C. For the failure to observe any of the rules and regulations set out in this chapter;

D. For the violation of any laws of the state, provision of this code or ordinance of the city;

E. For failure to maintain satisfactory service to the public;

F. For any cause which in the opinion of the city council makes it contrary to the public interest, convenience and necessity for the permit to be continued. (Prior code § 21-7)

5.20.080 Permit—One per person and nontransferable.

No person shall be entitled to hold more than one permit at a time, and no permit shall be transferable without the permission of the city council having been first obtained. (Prior code § 21-8)

5.20.090 Rates—Changing.

In the event that any person holding a permit pursuant to this chapter desires to change his schedule of rates, he shall make application for permission to do so from the city council. (Prior code § 21-9)

5.20.100 Driver identification.

Any person operating a taxicab shall wear a distinctive hat or cap with a badge in plain sight inscribed with the name of the person to whom the permit has been issued. (Prior code § 21-10)

5.20.110 Stopping at railroad tracks.

All taxicabs and automobile for hire shall, while carrying passengers, come to a full stop within thirty feet of the nearest rail before crossing any railroad track, where no gates are maintained. (Prior code § 21-11)

5.20.120 Stopping, standing or parking.

No taxicab or automobile for hire shall remain standing upon any portion of any public street within the city, except for loading and unloading passengers, and then not for a period of more than five minutes, excepting such stand as may be designated by the city council and described in the application for a permit. This section shall not apply to any automobile for hire or taxicab while it is engaged by and being paid by a passenger. (Prior code § 21-12)

5.20.130 Most direct route required.

The operator of any taxicab shall carry any passenger engaging him safely and expeditiously to his designation by the most direct and accessible route. (Prior code § 21-13)

5.20.140 Mechanical condition.

All automobiles for hire and taxicabs shall be kept in good mechanical condition. (Prior code § 21-14)

5.20.150 Law compliance required.

No person shall operate a taxicab or automobile for hire in violation of any law, provision of this code or other ordinance of the city. (Prior code § 21-15)

5.20.160 Fraud or unfair competition prohibited.

No owner or operator of any automobile for hire or taxicab shall indulge in unfair competition with competitors or shall commit any fraud upon the public, and the city council shall be the sole judge of what constitutes fraud or unfair competition. (Prior code § 21-16)

5.20.170 Rates—Posting.

Every taxicab shall have posted in the passenger compartment a schedule of rates and charges and a copy of Sections 5.20.100 through 5.20.230. (Prior code § 21-17)

5.20.180 Rates—Charging in excess prohibited.

No charge shall be made by any operator or owner of a taxicab or automobile for hire in excess of the rates posted in the passenger compartment of the car. (Prior code § 21-18)

engaged or while in use for another passenger without consent of the passenger first engaging it having been first obtained. A passenger engaging the automobile shall have the exclusive right to full and free use of the passenger compartment and the whole thereof, if he desires it. (Prior code § 21-23)

5.20.190 Vehicle sanitation.

No taxicab or automobile for hire shall be operated unless the passenger compartment is kept clean and in a sanitary condition. (Prior code § 21-19)

5.20.200 Automobile for hire not to be identified as taxicab.

No automobile for hire shall be designated by any word or phrase using the word "taxi" or "taxicab" in any sign or advertising matter. (Prior code § 21-20)

5.20.210 Operator regulations.

No taxicab or automobile for hire shall be operated by any person under the age of twenty-one years, or by any person who does not have a chauffeur's license issued by the state, or by any person under the influence of intoxicating liquors, or who is for any reason whatsoever unable or incompetent to safely handle the automobile, or by any person in violation of any law or provision of this code or other ordinance in force or that may be hereafter enacted. (Prior code § 21-21)

5.20.220 Drinking on duty prohibited.

The driver of any automobile for hire or taxicab in the city shall refrain from drinking spirituous, maltous, vinous or intoxicating liquors of any kind or character during the period of time which such person is on duty and subject to call in the operation of the automobile for hire or taxicab. (Prior code § 21-22)

5.20.230 Exclusive use by passenger.

No operator of any automobile for hire or taxicab shall solicit or take on or carry any passenger after the automobile for hire or taxicab has been

Chapter 5.24

TRANSIENT OCCUPANCY TAX

Sections:

5.24.010	Title.
5.24.020	Definitions.
5.24.030	Tax imposed.
5.24.040	Rate to be charged for transient occupancy tax.
5.24.050	Exemptions.
5.24.060	Operator's duties.
5.24.070	Registration of operator.
5.24.080	Reporting and remitting.
5.24.090	Remittance by mail.
5.24.100	Penalties and interest.
5.24.110	Failure to collect and report tax—Determination of tax by finance director.
5.24.120	Deficiency determinations.
5.24.130	Appeals.
5.24.140	Records.
5.24.150	Refunds.
5.24.160	Actions to collect.
5.24.170	Deposit of collections.
5.24.180	Violations of provisions.

5.24.010 Title.

This chapter shall be known as the "Transient Occupancy Tax Ordinance of the City of Lindsay." (Ord. 408 § 1 (part), 1986)

5.24.020 Definitions.

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

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

recreational vehicle park spaces, or other similar structures, facilities or portions thereof.

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

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

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

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

F. "Tax administrator" means the finance director of the city.

G. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concessions permit, right of access, license, or other agreement for a period of twenty-nine consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of twenty-nine days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted peri-

ods of time extending both prior and subsequent to the effective date of the provisions of the ordinance codified in this chapter may be considered. (Ord. 408 § 1 (part), 1986)

5.24.030 Tax imposed.

For the privilege of occupancy in any hotel, each transient shall be subject to and shall pay a tax in the amount of a percentage of the rent charged by the operator. Such tax shall constitute a debt owed by the transient to the city, which debt shall be extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax is not paid to the operator of the hotel, the finance director may require that such tax shall be paid directly to the finance director. (Ord. 408 § 1 (part), 1986)

5.24.040 Rate to be charged for transient occupancy tax.

The rate to be charged by the city for transient occupancy within the city shall be established by resolution of the city council after a duly noticed public hearing regarding the establishment of the rate. (Ord. 408 § 1 (part), 1986)

5.24.050 Exemptions.

A. No tax shall be imposed under this chapter upon:

1. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided for;
2. Any federal or state officer or employee when on official business;
3. Any officer or employee of a foreign government, which officer or employee is exempt by reason of express provision of federal law or international treaty; or
4. Any occupant whose rent is of a value of less than two dollars per day;

5. Any occupant for more than thirty successive calendar days.

B. No exemption shall be granted pursuant to subsections A1, A2 and A3 of this section except upon a claim therefor made at the time the rent is collected and under penalty of perjury, upon a form prescribed by the finance director. (Ord. 408 § 1 (part), 1986)

5.24.060 Operator's duties.

Each operator shall collect the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax, or any part thereof, will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner provided in this chapter. (Ord. 408 § 1 (part), 1986)

5.24.070 Registration of operator.

A. On or before October 1, 1986, or within thirty days after commencing business, whichever is later, each operator of any hotel renting an occupancy to transients shall register such hotel with the finance director and obtain from him/her a "Transient Occupancy Registration Certificate," which shall at all times be posted in a conspicuous place on the premises. Such certificate shall, among other things, set forth the following information:

1. The name of the operator;
2. The address of the hotel;
3. The date upon which the certificate was issued;
4. A statement as follows: "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Occupancy Tax Ordinance registering with the Finance Director for the purpose of collecting from transients the Transient Occupancy Tax and remitting such tax to the

finance director. This certificate shall not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including, but not limited to, those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit"; and

5. Such additional information as may be required by the finance director.

B. Such privilege of registration after October 1, 1986, shall not relieve any person from the obligation of the collection and payment of the tax after October 1, 1986, regardless of registration. (Ord. 408 § 1 (part), 1986)

5.24.080 Reporting and remitting.

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the finance director, make a return to the finance director, on forms provided by him/her, of the total rents charged and received, and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the finance director. The finance director may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax, and he may require further information in the return. Returns and payments shall be due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to the provisions of this chapter shall be held in trust for the account of the city until payment thereof is made to the finance director. (Ord. 408 § 1 (part), 1986)

5.24.090 Remittance by mail.

If a remittance to cover payment required by the provisions of this chapter to be made to the finance director on or before a specified date is sent through the United States mail, properly addressed, with postage prepaid, it shall be deemed to have

been received by the finance director on the date shown by the Post Office cancellation mark stamped upon the envelope containing the remittance, or on the date it was mailed if proof satisfactory to the finance director establishes that the mailing occurred on an earlier date. Nothing in this section shall be construed as constituting payment of any remittance required unless such remittance is actually received by the finance director. (Ord. 408 § 1 (part), 1986)

5.24.100 Penalties and interest.

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

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

C. Fraud. If the finance director shall determine that the nonpayment of any remittance due pursuant to the provisions of this chapter is due to fraud, a penalty in the amount of twenty-five percent of the amount of the tax shall be added thereto, in addition to the penalties set forth in subsections A and B of this section.

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

E. Penalties and Interest Merged With Tax. Every penalty imposed, and such interest as accrues pursuant to the provisions of this section, shall become a part of the tax required to be paid by the provisions of this chapter. (Ord. 408 § 1 (part), 1986)

**5.24.110 Failure to collect and report tax—
Determination of tax by finance
director.**

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

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

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

D. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties shall not be so fixed. After such hearing, the finance director shall determine the proper tax to be remitted, and shall thereafter give written notice to the operator in the manner prescribed in

this section of such determination and the amount of such tax, interest and penalties.

E. The amount determined to be due shall be payable fifteen days after the service of mailing of such notice unless an appeal is filed as provided in Section 5.24.130 of this chapter. (Ord. 408 § 1 (part), 1986)

5.24.120 Deficiency determinations.

If the finance director is not satisfied with a return filed by an operator or the amount of the tax required to be paid to the city pursuant to a return, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return, or upon the basis of any information within his possession, or that may come into his possession. One or more deficiency determinations may be made of the amount due for any period. The finance director shall give to the operator written notice of his determination in the same manner as provided in Section 5.24.110 of this chapter. The operator shall be entitled to apply for a hearing on the amount assessed to him pursuant to the procedure set forth in Section 5.24.110 of this chapter, and shall thereafter be entitled to appeal to the council in accordance with the provisions of Section 5.24.130 of this chapter. The penalties and interest provided in Section 5.24.100 of this chapter shall be applicable to the amount of deficiency established pursuant to the provisions of this section. (Ord. 408 § 1 (part), 1986)

5.24.130 Appeals.

Any operator aggrieved by any decision of the finance director with respect to the amount of such tax, interest and penalties, if any, may appeal to the council by filing a notice of appeal with the city clerk within fifteen days after the service or mailing of the determination of the tax due. The council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known address. The decision of the council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed in this chapter for the service of a

notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 408 § 1 (part), 1986)

5.24.140 Records.

It shall be the duty of every operator liable for the collection payment to the city of any tax imposed by the provisions of this chapter to keep and preserve, for a period of three years and six months, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of any payment to the city, which records the finance director shall have the right to inspect at all reasonable times. (Ord. 408 § 1 (part), 1986)

5.24.150 Refunds.

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

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

C. A transient may obtain a refund of taxes overpaid, paid more than once, or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the

transient directly to the finance director, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the finance director that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid pursuant to the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. (Ord. 408 § 1 (part), 1986)

5.24.160 Actions to collect.

Any tax required to be paid by any transient pursuant to the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city pursuant to the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Ord. 408 § 1 (part), 1986)

5.24.170 Deposit of collections.

All funds collected pursuant to the provisions of this chapter, including interest and penalties collected for delinquencies, shall be deposited in the general fund, and shall be used for the purposes for which such funds may be used. Any refunds paid pursuant to the provisions of this chapter shall be out of such fund. (Ord. 408 § 1 (part), 1986)

5.24.180 Violations of provisions.

Any operator or other person who fails or refuses to register as required, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the finance director, or who renders a false or fraudulent return or claim, shall be guilty of an infraction. Any person required to make, render, sign or verify any report or claim and who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by the provisions of this chapter to be made, shall be guilty of an infraction. (Ord. 408 § 1 (part), 1986)