



## Item No. 22 Town of Atherton

### **CITY COUNCIL STAFF REPORT – REGULAR AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS, CITY MANAGER**

**FROM: ROBERT BARRON III, FINANCE DIRECTOR**

**DATE: JULY 20, 2016**

**SUBJECT: PROVIDE DIRECTION TO STAFF AND ADOPT VARIOUS RESOLUTIONS RELATED TO THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE TOWN A BALLOT MEASURE FOR THE NOVEMBER 8, 2016 ELECTION THAT AMENDS THE TOWN'S BUSINESS LICENSE TAX ORDINANCE**

#### **RECOMMENDATION**

Provide direction to staff regarding the specific business license tax model, written arguments, and rebuttal arguments, and adopt the attached resolutions setting the same:

- 1) Resolution of the City Council of the Town of Atherton ordering the submission to the qualified electors of the Town a Measure relating to the Town's Business License Tax Ordinance to be held on November 8, 2016; and
- 2) Resolution of the City Council of the Town of Atherton setting priorities for filing written arguments regarding the Measure relating to the Town's Business License Tax Ordinance to be held on November 8, 2016; and
- 3) Resolution of the City Council of the Town of Atherton providing for the filing of rebuttal arguments regarding the Measure relating to the Town's Business License Tax Ordinance to be held on November 8, 2016.

#### **BACKGROUND**

As part of the Council's revenue alternative workshops two years ago, the business licenses tax was identified as a potential revenue augmentation to the Town's General Fund. As Council is aware, there have been several meetings focused on the business license ordinance that included reviews of the quantity of business licenses issued, types of licenses issued and categories defined within the business license ordinance. During the July 6, 2016 Study Session the City Council reviewed and discussed changes to the business license ordinance for potential inclusion on the November 2016 Municipal Election. Discussion focused on options for modifying the existing business license ordinance and tax calculation as well as modifying the coverage of the ordinance

itself. Staff presented the Council with a blended business license tax option based on gross receipts using a fractional multiplier and a minimum flat tax fee.

The current business license tax is based on five (5%) percent of gross receipts or a flat tax, whichever was lower, based on category of business. The tax ranges from \$25 to \$250. The maximum flat amount for each category is as follows:

<b>Category I</b>	\$250
<b>Category II</b>	\$150
<b>Category III</b>	\$100
<b>Category IV</b>	\$50

The existing business license tax raises approximately \$228,000 per year.

The existing business license categories are defined as:

#### **Category I Businesses – 574 Licenses Issued**

- Individual General Contractors (Sole Proprietor) and Firms with 2 or more employees (Owner plus one or more employees) doing business in the Town of Atherton. Includes: General Contractors (CLASS A & B), Alarm Installers, Private Patrol, Real Estate Firms, Maintenance Companies, Janitorial, Gardening/Landscaping, Pest Control, Tree Trimming, Pool Services, etc.

#### **Category II Businesses – 800 Licenses Issued**

- Firms with 2 or more employees (Owner plus one or more employees) doing business in the Town of Atherton. Includes: Subcontractors (CLASS C) Only.

#### **Category III Businesses – 196 Licenses Issued**

- Sole operators with no employees doing business in the Town of Atherton. Includes: Subcontractors (Class C), Home Occupations, Real Estate Brokers, Maintenance Companies, Janitorial, Gardening/Landscaping, Pest Control, Tree Trimming, Pool Services, etc. 1 Prior to commencing business for the first time, a separate Home Occupational Permit must be obtained from the Planning Department. The use of the residence must conform to the requirements outlined in Municipal Code Section 17.48.010.

#### **Category IV Businesses – 28 Licenses Issued**

- Sole operators with no employees doing business in the Town of Atherton. Includes: Handymen, Delivery Vehicles, Solicitors<sup>1</sup>, and Horseshoers. An application must first be filed with the Police Dept. for all Solicitor Permits.

Previous discussions of the Council included various graduated tax scenarios based on a minimum tax plus scenario of \$250 plus a portion of gross receipts using multipliers of \$0.25, \$0.20, or \$0.15 per \$100 of gross receipts per business license application. From the discussions, the City Council provided direction of proposed changes to the ordinance to base the business license tax on a gross receipts basis with a \$250 minimum additional tax for certain categories, refine or reduce the categories, consider a graduated tax scenario, include a “catch all” business category and exempt home occupations since these pay a permit fee under the zoning ordinance.

Staff has prepared three tax models for consideration by the Council. All of the tax models exempt home occupations from the business license and include merged categories.

**ANALYSIS**

*Tax Model No. 1 – \$250 base tax plus Gross Receipts of \$0.25/\$100*

Tax Model No. 1 combines the existing Categories I and II into a new Category I (Owner plus 1 or more employees) and combines Categories III and IV into a new Category II (sole operators – no employees). The model imposes a \$250 base tax plus gross receipts based tax (\$0.25/\$100 of gross receipts) on the new Category I and a straight gross receipt only tax for new Category II. Home occupations would be specifically exempted. The Town’s existing ordinance already includes a catch-all provision for businesses:

*“It shall be unlawful for any person to transact and carry on any business, trade or profession, calling or occupation in the City without first having procured a license from the Town to do so and without complying with any and all applicable provisions of this chapter.”*

The specific names and varieties of businesses would be removed from the ordinance.

Based on projected FY 2015/16 gross receipts shown below, total tax revenue from business licenses after the proposed amendments would be approximately \$1,012,185.

<b>Category</b>	<b>Gross Receipts</b>	<b>\$0.25/\$100</b>	<b>+ Flat (\$250)</b>	<b>Total</b>
Category I – (1,374 licenses) (Owner + 1)	\$256,705,461	\$641,764	\$343,500	<b>\$985,264</b>
Category II – (224 licenses) (sole operator – no employees)	\$10,768,420	\$26,921	\$0	<b>\$26,921</b>
<b>Totals</b>	<b>\$267,473,881</b>	<b>\$668,685</b>	<b>\$343,500</b>	<b>\$1,012,185</b>

*Tax Model No. 2 – \$100 minimum tax plus Gross Receipts of \$0.25/\$100; maximum \$25,000 business license tax*

A variant of the above for simplicity would be to eliminate all categories and impose the gross receipts requirement for all businesses operating within the Town. The tax model imposes a

minimum \$100 tax plus a gross receipts based tax based on \$0.25/\$100 of gross receipts for all businesses, with a business license tax maximum of \$25,000.

<b>Category</b>	<b>Gross Receipts</b>	<b>\$0.25/\$100</b>	<b>+ Minimum Tax (\$100)</b>	<b>Total</b>
All businesses Category – (1,598 licenses)	\$267,473,881	\$668,684	\$159,800	<b>\$828,484</b>
<b>Totals</b>	<b>\$267,473,881</b>	<b>\$668,684</b>	<b>\$159,800</b>	<b>\$828,484</b>

For comparative purposes, the Hillsborough business license tax is a more complicated version of the above; however, the basic license tax is similar to the above with a \$100 administrative fee plus \$0.75/\$100 of gross receipts.

*Tax Model No. 3 – Graduated Gross Receipts of \$0.25/\$100 for gross receipts up to \$1.5m and \$0.15/\$100 for gross receipts over \$1.5m plus a \$250 minimum*

Tax Model No. 3 is similar to Model No. 1 in combining the existing Categories I and II into a new Category I (Owner plus 1 or more employees) and combines Categories III and IV into a new Category II (sole operators – no employees). However, the tax model offers a graduated gross receipts application. The tax model imposes a gross receipts based tax on a graduated basis with \$0.25/\$100 of gross receipts up to \$1.5 million and \$0.15/\$100 of gross receipts over \$1.5 million plus a \$250 minimum tax for new Category I and a gross receipt only tax of \$0.25/\$100 of gross receipts up to \$.5 million and \$0.15/\$100 of gross receipts over \$.5 million for new Category II. Again, home occupations would be specifically exempted.

<b>Category</b>	<b>Gross Receipts</b>	<b>&lt;\$1.5 million \$0.25/\$100</b>	<b>&gt;\$1.5 million \$0.15/\$100</b>	<b>+ Flat (\$250)</b>	<b>Total</b>
<b>Category I – (1,374 licenses) (Owner + 1)</b>					
- Gross Receipts <\$1.5m	\$175,745,005	\$439,362		\$343,500	<b>\$782,862</b>
- Gross Receipts >\$1.5m	\$80,960,456		\$121,440		<b>\$121,440</b>
<b>Category II – (224 licenses) (sole operator – no employees)</b>		<b>&lt;\$.5 million \$0.25/\$100</b>	<b>&gt;\$.5 million \$0.15/\$100</b>		
- Gross Receipts <\$.5m	\$9,926,377	\$24,816			<b>\$24,816</b>
- Gross Receipts >\$.5m	\$842,043		\$1,263		<b>\$1,263</b>
<b>Totals</b>	<b>\$267,473,881</b>	<b>\$464,178</b>	<b>\$122,703</b>	<b>\$343,500</b>	<b>\$930,381</b>

This model could also have the same variant noted above to eliminate the gross receipts requirement for sole operators and only impose a base tax of \$100 (the amount of the current tax for Category III businesses). This would have minimal fiscal impact.

### Category changes

During the July 6 Study Session the Council also discussed changes to the business categories. However, while staff believes that expanding the categories is necessary, if the ordinance is pared down to the catch-all provision noting that any person transacting or carrying on any business, trade or profession, calling or occupation requires a business license (exempting home occupations) then a list of businesses within the ordinance itself is not necessary. For example, with the implementation of Tax Model 2, all businesses are in one catch all category. Staff would, however, include a wide range of business types on the website and public materials as “examples” of businesses that trigger a license requirement.

These would include, but not be limited to:

- General Contractors
- Subcontractors
- Alarm Installers
- Private Security
- Maintenance Companies
- Groundskeepers and Landscapers
- Repair Services
- Swimming Pool Cleaning and/or Maintenance Services
- Real Estate Brokers & Firms
- Farriers
- Delivery services
- Solicitors
- Artists
- Photographers
- Drone operators
- Cleaning services

Removed from the list of businesses would be home occupations which would be specifically required to obtain a zoning permit.

### Summary

Staff evaluated all three tax models and looked comparatively and specifically at the Town of Hillsborough’s Business License Ordinance.

Staff suggests the Council consider Tax Model #2 for simplicity and equitability. Home occupations are exempted. The tax is applied uniformly across all businesses. Presently, businesses in Categories III and IV (sole operators) pay a tax of \$50 or \$100. Tax Model #2 provides that the minimum tax for these businesses would be \$100 plus \$0.25/\$100 of gross receipts. For every \$25 increase in tax, gross receipts from business conducted Atherton must be \$10,000. The *average* gross receipts for all 224 licenses in the current Category III and IV is approximately \$50,000. The

business license tax would be \$225 for that average business. Thirty-two (32) of the 224 licenses in Category III and IV would be exempted as home occupations.

If adopted this evening, the measure would be added November 2016 Election Ballot. Following adoption, staff would begin to put together educational materials for the measure as well as an education program for the community, which may include, but not be limited to flyers, handouts, web information, and public forum(s).

As a general revenue tax, any measure considered must be consolidated with a regularly scheduled general election of city council members. The Council could select a tax model and postpone adoption of the measure until the November 2018 Election Ballot – the next regularly scheduled general election. In the intervening period, staff could continue with educational materials and the Council could direct professional polling, if desired.

### **POLICY FOCUS**

The City Council has reviewed various options for updates to the business license tax. The purpose of a business license tax is solely to raise revenue for the Town. It is not intended for regulation. The policy focus for the City Council is on the amount of the tax. Changes can be made to the taxing models as desired by the Council.

**Next Steps** — Assuming the Council adopts a resolution putting forth a ballot measure on this topic, are as follows:

*Primary Arguments* are due August 19, 2016, 5 pm. These may not exceed 300 in favor of and against local measures. The California Elections Code provides that the City Council, or members of the City Council as authorized by the City Council, any individual voter, or bona fide association of citizens, or combination of voters and associations may submit ballot arguments.

The City Council may wish to consider whether or not it wants to exercise its right to submit a ballot argument in favor of the measure, and if so, designate either the City Council as a whole or members of the Council to author the arguments.

*Rebuttal Arguments* are due August 29, 2016 and may not exceed 250 words for measures where a primary argument was filed both in favor and against. Impartial Analysis, not to exceed 500 words, written by the City Attorney for city measures, are also due. Rebuttals arguments tend to drive up the costs; therefore, Council has the right not to accept rebuttal arguments.

### **FISCAL IMPACT**

None at this time.

### **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also

disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

**ATTACHMENT(S)**

List of Business Licenses  
Ballot Measure Resolutions (3)

**RESOLUTION NO. 16-xx**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON, CALIFORNIA ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE TOWN OF ATHERTON A MEASURE **SIMPLIFYING AND** REVISING THE RATE OF ATHERTON'S BUSINESS LICENSE TAX AS SET FORTH IN ATHERTON MUNICIPAL CODE CHAPTER 5.12 AT THE PRESIDENTIAL GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016, AS CALLED BY RESOLUTION NO. 16-06**

**WHEREAS**, a Presidential General Municipal Election on Tuesday, November 8, 2016 has been called by Resolution No. 16-06, adopted on May 18, 2016, and

**WHEREAS**, the City Council also desires to submit to the voters at the election a question relating to simplifying and revising the rate of the current Business License Tax paid by persons and firms conducting business in the Town of Atherton; and

**WHEREAS**, the current Chapter 5.12 includes 4 categories of businesses and differing rates in what can be confusing with rates that treat categories in ways that do not reflect disparate amounts of revenues associated with the different licenses; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE TOWN OF ATHERTON CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** That the City Council pursuant to its right and authority, does order the submitted to voters at the Presidential General Election the following question (s):

Shall the current business license tax paid only by businesses conducting business in the Town of Atherton as set forth in Municipal Code Chapter 5.12 be <b>simplified to one uniform tax rate paid by all businesses</b> , exempting home occupations, of \$100 plus \$.025 per \$100	YES
dollars of gross receipts derived from such business within the Town, (exclusive of any administrative fee charged for issuance of the license) <b>but not more than \$25,000</b> . The tax shall be a general tax and the proceeds go to the General Fund.	NO

**SECTION 2.** That the full text of the proposed measure submitted to the voters is attached as Exhibit A.

**SECTION 3.** That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

**SECTION 4.** That notice of the time and place of holding the elections is given and the City Clerk is authorized, instructed and directed to give further or additional notice of election, in time, form and manner as required by law. The hours during which the polling places for the Election shall be open shall be the hours established for the Presidential General Election.

**SECTION 5.** The City Clerk is hereby directed to do all things required by law to effectuate the Presidential General Election, and to present the measure submitted herein to the electorate, including, but not limited to, required publications, postings, noticing and filings. Further the City Clerk is directed to forward a copy of this resolution to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure.

**SECTION 6.** Arguments for and against, not to exceed 300 words in length may be filed consistent with Elections Code requirements. **The City Council has chosen not to permit rebuttal arguments.**

**SECTION 7.** The City Council hereby requests the San Mateo County Registrar of Voters to provide all services necessary to conduct the Election and to conduct and canvass the results of the Election.

**SECTION 8.** The City shall reimburse the San Mateo County Registrar of Voters for services performed at the rate specified per registered voter in the City, when the work is completed and upon presentation to the City of a properly approved bill.

**SECTION 9.** That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions; and forward a copy to the San Mateo Board of Supervisors and County Clerk-Recorder.

**PASSED, APPROVED AND ADOPTED ON JULY 20, 2016.**

\_\_\_\_\_  
Elizabeth Lewis, Mayor

ATTEST:

\_\_\_\_\_  
Theresa DellaSanta, City Clerk  
(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
William B. Connors, City Attorney

Exhibit A

ORDINANCE \_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADOPTING  
A NEW CHAPTER 5.12, CREATING A NEW BUSINESS LICENSE ORDINANCE

WHEREAS, current Chapter 5.12 of the Atherton Municipal Code regulates primarily Contractors and Real Estate firms for business licenses within the Town of Atherton; and

WHEREAS, that Chapter is being updated to indicate that all persons and firms conducting business within the Town must have a business license and pay a business license tax, and to simplify and clarify the business tax rate; and

WHEREAS, staff recommends deletion of the current Chapter and replacement with a new Chapter 15.12 establishing a new Business License Required Ordinance for the Town.

NOW, THEREFORE, THE CITY COUNCIL OF THE TOWN OF ATHERTON DOES  
ORDAIN AS FOLLOWS:

SECTION 1: Current Chapter 5.12, CONTRACTORS AND REAL ESTATE FIRMS, is deleted, and in its place the following new Chapter 5.12 BUSINESS LICENSE REQUIRED is adopted:

“Chapter 5.12

Business License Required

Sections:

- 5.12.010 Definitions.
- 5.12.020 Purpose.
- 5.12.030 Constitutional exemptions.
- 5.12.040 License required.
- 5.12.050 License Collector—Enforcement.
- 5.12.060 License—Application.
- 5.12.070 License—Issuance.
- 5.12.080 Tax due and payable when.
- 5.12.090 Refund permitted when.
- 5.12.100 Town not bound by employee error.
- 5.12.110 Duplicate license—Fee.
- 5.12.120 License—Nontransferable.

- 5.12.130 Information deemed confidential.
- 5.12.140 Delinquent tax—Penalty.
- 5.12.150 Business license categories.
- 5.12.160 Tax designated.
- 5.12.170 Dispute arising from tax—Administrative procedure.
- 5.12.180 Appeal.
- 5.12.190 Effect on past actions and obligations.

This Chapter 5.12 shall be known as the Business License Required Ordinance of the Town of Atherton.

5.12.010 Definitions.

For the purposes of this chapter:

- A. “Conducting” means and includes the act of conducting, managing, carrying on a certain business or occupation or any aspect thereof, including, without limitation, showing real property for sale or lease on behalf of the property owner or a potential buyer or lessee (in the case of a realtor).
- B. “Contractor” means and includes any person conducting, managing, carrying on or engaging in the business of construction or repair work for an agreed price, or who shall hold himself out to the public as in such business, or who shall erect, construct, alter or repair any building or structure for the purpose of selling or renting the same, and who does not employ therefor a person licensed under this chapter.

Anything in this chapter to the contrary notwithstanding, “contractor” shall not include an architect holding a certificate to practice architecture in the state issued under authority of the California Business and Professions Code.

- C. “Person,” unless otherwise specifically provided in this chapter, means and includes natural persons of either sex, firms, associations, partnerships and corporations, whether acting by themselves, or by servant, agent or employee. The singular number shall include the plural and the masculine shall include the feminine.
- D. “License” shall refer to the business license required pursuant to this Chapter.

5.12.020 Purpose.

The purpose of this chapter is to provide for the establishment and levying of license taxes for the transaction and carrying on of businesses, trades, professions and occupations in the Town. This chapter is enacted solely to raise revenue for municipal purposes and is not intended for regulation.

5.12.030 Constitutional exemptions.

A. Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or of the state of California from the payment of such taxes as are provided in this chapter. The following are exempted from payment of a business license tax:

1. Persons operating pursuant to a Home Occupations Permit and who have no employees, or any charitable institution, organization, or association organized and conducted for charitable purposes only.

B. 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 Town and shall remain subject to the regulatory provisions of other ordinances. Nothing in this chapter shall be deemed to authorize the conducting of any activity otherwise prohibited under any other ordinance of the Town.

C. None of the license taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or of the state, or otherwise conflict with such Constitutions or any applicable statutes of the United States or the state.

#### 5.12.040 License required.

A. There are imposed upon all of the businesses, trades, callings and occupations specified in this chapter, carried on totally or partially within the Town of Atherton a license tax in the amounts prescribed in this chapter. It shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the Town without first having procured a business license from the Town to do so and without paying an applicable business license tax and complying with any and all applicable provisions of this chapter.

B. Persons not required to obtain a license prior to doing business within the Town because of conflict with applicable statutes of the United States or of the state of California shall, nevertheless, be liable for payment of the tax imposed by this chapter, provided that the payment of such tax is not prohibited by Section 5.12.030 of this chapter.

#### 5.12.050 License Collector—Enforcement.

A. The Finance Director or his/her designee is designated the business license fee Collector (hereinafter, the “Collector”).

B. The Chief of Police, and such police officers as he may designate, are appointed inspectors of licenses and, in addition to their several duties as police officers, are authorized to examine all persons engaged in business activities in the Town, as specified in this chapter, and to ascertain whether the provisions of this chapter have been complied with. They shall have and exercise the power to make arrests for the violation of any provisions of this chapter and shall have the right to enter, free of charge at any reasonable time, any property on which a business is being conducted and for which a license is or may be required by this chapter and to demand the exhibition of such license for the current term by any person so engaged or employed in the transaction of such

business. Any such person who willfully fails to exhibit the same on demand shall be guilty of a violation of the Atherton Municipal Code and subject to the penalties provided for by the provisions of that Code.

C. The amount of any license tax and penalty imposed by the provisions of this chapter shall be deemed a debt to the Town. An action may be commenced in the name of the Town in any court of competent jurisdiction, for the amount of any delinquent business license tax and penalties.

D. All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

#### 5.12.060 License—Application.

Every person required to have a license under the provisions of this chapter shall make application to the Collector. Such application shall be a written statement upon a form provided by such Collector and shall be written by the applicant before a person authorized to administer oaths. The application shall set forth such information as may be necessary properly to determine the amount of the license tax to be paid by the applicant. The following business license information will be required on the application:

- A. Business name for which the license will be issued;
- B. Business street address and mailing address if different from street address;
- C. Federal employer identification number (FEIN), if the business is a partnership or corporation, owner's name and social security number for all others. State employer I.D. number may be used if federal number is not known;
- D. Type of business activity—ownership type, e.g., sole proprietorship, corporation or partnership;
- E. Telephone number, including area code.

#### 5.12.070 License—Issuance.

Upon the payment of the prescribed license tax, the Collector shall issue to such person a business license which shall contain (1) the name of the person to whom the license is issued; (2) the business licensed; (3) the date of the expiration of such license; and (4) such other information as may be necessary for the enforcement of the provisions of this chapter. No statement set forth in an application shall be conclusive as to matters set forth therein.

#### A. Building Permit Limitations.

No building, grading, electrical, plumbing, pool, sewer, or heating/air conditioning permit shall be issued to a general contractor or subcontractor who has not paid the tax for and received a business license from the Town. Each general contractor shall list the names of subcontractors who will perform work for which the permit is taken.

B. No final inspection shall be performed by the city on any work for which a business license tax has not been paid for all contractors and subcontractors performing work on the job before it is complete.

5.12.080 Tax due and payable when.

A. All annual license taxes under the provisions of this chapter shall be due and payable to the Town in advance on the first day of July of each year and shall be delinquent at five p.m. on July 31st of that year. The amount of tax due shall be prorated for persons becoming subject on:

1. Any day of August, the tax shall be 11/12ths of the tax designated in Section 5.12.160.
2. Any day of September, the tax shall be 10/12ths of the tax designated in Section 5.12.160.
3. Any day of October, the tax shall be 9/12ths of the tax designated in Section 5.12.160.
4. Any day of November, the tax shall be 8/12ths of the tax designated in Section 5.12.160.
5. Any day of December, the tax shall be 7/12ths of the tax designated in Section 5.12.160.
6. Any day of January, the tax shall be 6/12ths of the tax designated in Section 5.12.160.
7. Any day of February, the tax shall be 5/12ths of the tax designated in Section 5.12.160.
8. Any day of March, the tax shall be 4/12ths of the tax designated in Section 5.12.160.
9. Any day of April, the tax shall be 3/12ths of the tax designated in Section 5.12.160.
10. Any day of May, the tax shall be 2/12ths of the tax designated in Section 5.12.160.
11. Any day of June, the tax shall be 1/12th of the tax designated in Section 5.12.160.

B. All annual business license taxes under the provisions of this chapter shall be due and payable to the Town on the first day of July and shall be delinquent at five p.m. on July 31st of that year; provided, however, that for persons who become subject to this chapter for the first time during the license tax year (after July 31st but prior to and including December 31st), the full license tax shall be due and payable immediately on the day such person becomes subject to this chapter and the license shall remain valid for a period ending on June 30th, whereupon it shall be renewable.

C. For persons who become subject to this chapter for the first time during the final six months of the license tax year (from and after January 1st and prior to June 30th), one-half of the license tax shall be due and payable immediately on the day such person becomes subject to this chapter and the license shall remain valid until the period ending on June 30th, whereupon it shall be renewable.

5.12.090 Refund permitted when.

No refunds will be made on any amount paid as a license tax except in case of an error on the part of the Town in the determination of the amount of the license tax, in the event of double payment for a license, or in case of an illegally collected license tax.

5.12.100 Town not bound by employee error.

The Town shall not be bound by the mistake of any officer or employee of the Town in issuing a license contrary to the terms of this chapter or of the terms of any zoning or other ordinance of the Town.

5.12.110 Duplicate license—Fee.

A charge of twenty-five dollars shall be made for each duplicate license issued to replace any license issued under the provisions of this chapter which has been lost or destroyed. No duplicate will be issued unless the licensee files with the Collector an affidavit satisfactory to the Collector attesting to such loss.

5.12.120 License—Nontransferable.

No license issued pursuant to this chapter shall be transferred except that when a licensee transfers his business from one location to another the license previously issued may be amended to change the address to the new location. The license transfers and amendments authorized in this chapter may be obtained upon application therefor to the license Collector and the payment of the sum of five dollars.

A. Any business license or other identifying documents issued by the Collector must be kept and posted in the following manner:

1. Any licensee engaged in business at a fixed place of business in the Town shall keep the license posted in a conspicuous place upon the premises where such business is carried on.
2. Any licensee engaged in business but not operating at a fixed place of business in the Town shall keep the license upon his person or upon a vehicle utilized by such licensee in connection with the operation of the business at all times while engaged in business within the Town.

5.12.130 Information deemed confidential.

The information furnished or secured pursuant to the provisions of this chapter shall be deemed confidential in character; shall not be subject to public inspection unless otherwise required by law; and shall be kept so that the contents thereof shall not become known except to the persons charged with the administration of this chapter, or other governmental agency, or as required by law.

5.12.140 Delinquent tax—Penalty.

For failure to pay a business license tax when due, a penalty shall accrue at the rate of ten percent of the license tax per month after the due date thereof, provided that the amount of such penalty to

be added shall in no event exceed one hundred percent of the amount of the license tax due annually.

5.12.150 Business license categories.

A. Any persons or firms transacting or conducting any business, trade or profession, calling or occupation within the Town requires a business license (exempting home occupations) and shall pay a business license tax according to the tax rate specified.

5.12.160 Tax designated.

A. Except as otherwise provided, the business license tax for those in business, conducting business, supplying services, or delivering goods within the Town shall be as follows:

1. The sum of \$100 together with the sum of \$0.25/\$100 of gross receipts received by the business. The maximum business license tax from any licensee annually shall be the sum of \$25,000.

B. Each licensee shall pay an administrative fee of fifty dollars to help defray the cost of issuing, maintaining and enforcing this chapter. This fee shall not be part of the license fee and is in addition to the license fee specified in this section.

5.12.170 Dispute arising from tax—Administrative procedure.

A. If any person fails to file in a timely manner any statement required under this chapter or if it appears to the satisfaction of the Collector that a statement filed does not set forth the true facts of the business for which a license is required, the Collector shall determine the amount of license tax due from such person by means of such information as the Collector may be able to obtain. The Collector shall have the right, to be exercised by himself or his designated representative, to inspect the books of any such person after five days' written notice to such person.

B. In case a determination is made that an initial business license tax was required to be filed or an additional license tax is due, the Collector shall give notice of the amount so assessed by serving it personally or by depositing it in the U.S. post office in Atherton, postage prepaid, addressed to the person so assessed at the address appearing on his last license or application, if any, or at such address as the Collector may determine is such person's principal place of business or residence. Such person may, within ten days after the serving or mailing of such notice, make application in writing to the Collector for a hearing on the amount of the license tax. If such application is made, the Collector shall give not less than five days' written notice, in the manner prescribed in this chapter, to the licensee to show cause, at a time and place fixed in the notice, why the amount specified therein should not be fixed for such license. At such hearing, the licensee may appear and offer evidence why such specified amount should not be fixed as the license tax. After such hearing, the Collector shall determine the proper tax to be charged and shall forthwith give written notice to the licensee in the manner prescribed in this chapter of such determination and the amount of such tax.

C. If application by the licensee for a hearing is not made within the time prescribed, the business license tax determined by the Collector shall become final and conclusive.

D. The amount of any business license tax finally determined as provided in this section or Section 5.12.180 shall be due and payable as of the date the original license fee tax was due and payable, together with any penalties that may be due thereon; provided, however, if the amount of such license tax shall be fixed in accordance with the original statement of the applicant, then no penalty shall attach by reason of any delinquency.

E. For the purpose of this section, the Collector, his deputies and authorized agents, are authorized to administer oaths.

F. In any action brought under or arising out of any of the provisions of this chapter, or of any ordinance imposing a license tax, the fact that a party thereto represented himself as conducting or engaged in any business for which a license is required shall be conclusive evidence of the liability of such party to pay for a license for such business.

#### 5.12.180 Appeal.

A. Any person aggrieved by any decision of the Collector or any other administrative officer or agency with respect to the issuance or refusal to issue a license or the amount of a license tax may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen days of such decision. The City Clerk shall fix a time and place for hearing such appeal and the City Clerk shall give notice, in writing, to such person of the time and place of hearing by serving it personally or by depositing it in the U.S. post office at Atherton, postage prepaid, addressed to such person at the address appearing on his last license application, or if not previously licensed, such person's principal place of business. The findings of the City Council shall be final and conclusive and shall be served upon such person in the manner prescribed in this chapter for service of notice of hearing.

B. In the event the license taxes set forth in this chapter work unreasonably, unfairly or in a discriminatory manner as to any particular person conducting a business subject to a license tax under this chapter, such person may apply to the City Council for an adjustment of the tax. The City Council shall have the right to adjust any fee so that it will not be discriminatory, unjust or unfair.

C. Upon such application being made to the City Council, the Collector shall investigate the application and make a finding of facts to the City Council, after which time such application will be set for hearing at a regular meeting of the City Council, due notice of which will be given to the applicant. The decision and order of the City Council on such application shall be final and conclusive.

#### 5.12.190 Effect on past actions and obligations.

A. Neither the adoption of the ordinance codified in this chapter nor its superseding of any portion of any other ordinance of the Town shall in any manner be construed to affect prosecution for violation of any other ordinance committed prior to the effective date of the ordinance codified in this chapter; nor be construed as a waiver of any license or penalty provision applicable to any such violation; nor be construed to affect the validity of any bond or cash deposit required by any ordinance to be posted, filed or deposited, and all rights and obligations thereunto appertaining

shall continue in full force and effect. If this new ordinance is not adopted or become effective, the previous Chapter and all sections shall remain in full force and effect until such time as the new ordinance is adopted and implemented.

B. The payment of a license tax required by the ordinance codified in this chapter and its acceptance by the Town and the issuance of a license to any person shall not entitle the holder thereof to carry on any business in or on any building or premises when the carrying on of such business would be in violation of any other ordinances of the Town.

SECTION 2: Any and all provisions of the Atherton Municipal Code in existence at the time of adoption of this new Business License Required Ordinance that conflict with any provision of this new Chapter 15.12 shall be deemed to be superseded by this action. It is the express intent of the City Council that the terms and provisions of the new Chapter 15.12 shall take precedence over any contrary language in any other Chapter of the Atherton Municipal Code. It is also the express intent of the City Council that if the new Business License Required Ordinance is not adopted, all previous Chapters and sections replaced in the new ordinance shall continue in full force and effect.

Introduced this \_\_\_\_ day of \_\_\_\_\_, 2016.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

\_\_\_\_\_  
Elizabeth Lewis, Mayor

ATTEST:

\_\_\_\_\_  
Theresa DellaSanta, Deputy City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William B. Conners, City Attorney

**RESOLUTION NO. 16-xx**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF  
ATHERTON, CALIFORNIA, SETTING PRIORITIES FOR FILING  
WRITTEN ARGUMENTS REGARDING A CITY MEASURE  
RELATING TO THE TOWN'S BUSINESS LICENSE TAX  
ORDINANCE AND DIRECTING THE CITY ATTORNEY TO  
PREPARE AN IMPARTIAL ANALYSIS; AND PROVIDING FOR  
THE FILING OF REBUTTAL ARGUMENTS AT THE  
NOVEMBER 8, 2016 CONSOLIDATED SPECIAL MUNICIPAL  
ELECTION**

**SECTION 1**

**WHEREAS**, a Presidential General Election on Tuesday, November 8, 2016 has been called by Resolution No. 16-06, adopted on May 18, 2016, and

**WHEREAS**, the City Council also desires to submit to the voters at the election a question relating to the Town's Business License Ordinance, Title 5;

	YES
	NO

NOW, THEREFORE, the City Council of the Town of Atherton, California, does resolve, declare, determine and order as follows:

1. That the City Council authorizes

[insert authorized individuals/council here]

to file a written argument in favor of the City measure as specified above, accompanied by the printed name(s) and signature(s) of the person(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted to the City Clerk, which is set for August 19, 2016.

2. That the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of

the measure showing the effect of the measure on the existing law and the operation of the measure. If the measure affects the organization or salaries of the office of the City Attorney, the City Clerk shall prepare the impartial analysis. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments (5:00 p.m. on August 19, 2016).

3. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 20<sup>th</sup> day of July, 2016 by the following vote:*

AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:  
ABSTAIN: COUNCILMEMBERS:

\_\_\_\_\_  
Elizabeth Lewis, Mayor  
Town of Atherton

ATTEST:

\_\_\_\_\_  
Theresa DellaSanta, City Clerk  
[SEAL]

APPROVED AS TO FORM:

\_\_\_\_\_  
William B. Connors  
City Attorney

## **Resolution No. 16-xx**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF  
ATHERTON, CALIFORNIA, PROVIDING FOR THE FILING OF  
REBUTTAL ARGUMENTS FOR THE TOWN MEASURES  
SUBMITTED AT THE NOVEMBER 8, 2016 GENERAL  
MUNICIPAL ELECTION RELATING TO THE TOWN'S  
BUSINESS LICENSE TAX ORDINANCE**

**WHEREAS**, §9220 and §9285 of the Elections Code of the State of California authorizes the City Council, by majority vote, to adopt provisions for the filing of rebuttal arguments for the city measures submitted at municipal elections.

**NOW THEREFORE, THE CITY COUNCIL OF THE TOWN OF  
ATHERTON, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND  
ORDER AS FOLLOWS:**

**SECTION 1.** That pursuant to §9220 and §9285 of the Elections Code of the State of California, when the City Clerk has selected the arguments for and against the measure which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors may prepare and submit rebuttal arguments not exceeding 250 words, a rebuttal argument may not be signed by more than five (5) authors. The rebuttal arguments shall be filed with the City Clerk no later than 10 days after the final date for filing primary arguments. The final date to submit a rebuttal argument to the City Clerk is Monday, August 29, 2016 at 5:00 p.m. Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument which it seeks to rebut.

**SECTION 2.** That all previous resolutions providing for the filing of rebuttal arguments for city measures are repealed.

**SECTION 3.** That the provisions of Section 1 shall apply only to the Presidential General Election to be held on November 8, 2016, and shall be repealed.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 20<sup>th</sup> day of July, 2016 by the following vote:*

*AYES: COUNCILMEMBERS:*  
*NOES: COUNCILMEMBERS:*  
*ABSENT: COUNCILMEMBERS:*  
*ABSTAIN: COUNCILMEMBERS:*

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Elizabeth Lewis, Mayor  
Town of Atherton

ATTEST:

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Theresa DellaSanta, City Clerk  
[SEAL]

APPROVED AS TO FORM:

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William Conners  
City Attorney