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2016 JAN 26 PM 3: 24

Office of the City Attorney
RICHARD DOYLE, CITY ATTORNEY

KARIN MURABITO
Sr. Deputy City Attorney
Direct Line: (408) 535-1928

January 26, 2016

TO ALL INTERESTED PARTIES:

Attached is the City Attorney's title and summary for the proposed measure to amend the San José Municipal Code to add a new Chapter to impose a tax on businesses in San José based on gross receipts and, in certain circumstances, payroll from business activities attributable to San José while partially suspending the existing business tax. In preparing this title and summary, the City Attorney makes no representation about the merits or legality of the proposed measure, nor does the City Attorney verify or confirm any factual or legal assertions made in the proposed measure. Rather, the title and summary are presented as a "true and impartial statement of the purpose of the proposed measure" as required by California Elections Code Section 9203.

Very truly yours,

RICHARD DOYLE, City Attorney

By: *Karin Murabito*
KARIN MURABITO
Sr. Deputy City Attorney

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Attorney of San José has prepared the following ballot title and summary of the proposed measure:

AN INITIATIVE ORDINANCE AMENDING TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW CHAPTER 4.105 TO ADD A TAX ON BUSINESSES BASED ON GROSS RECEIPTS AND, IN CERTAIN CIRCUMSTANCES, PAYROLL FROM BUSINESS ACTIVITIES ATTRIBUTABLE TO SAN JOSE WHILE PARTIALLY SUSPENDING THE EXISTING BUSINESS TAX

Currently, San José imposes a business tax on every person (broadly defined to include individuals and all types of business entities) engaged in business in the City. San José's current business tax is an annual \$150 flat tax plus \$18 for every employee after eight. Commercial and residential landlords are also required to pay an annual flat tax of \$150, which increases based on the number of rental units or square footage. The annual amount of the tax is capped as specified in the San José Municipal Code. The current business tax includes a number of exemptions, including businesses that can demonstrate financial hardship.

The proposed measure would create a business tax based on gross receipts and, in certain circumstances, payroll. Depending on the type of business, businesses would be taxed at the rate of 0.060%, 0.090%, or 0.120% (e.g., \$0.60, \$0.90, or \$1.20 per \$1,000) of their annual gross receipts from business activities attributable to San José. Businesses with gross receipts of \$1 million or less annually would be exempt from the tax. The \$1 million threshold would be adjusted each year to account for inflation. Certain businesses that have administrative offices in San José would be allowed to make an election, in any given tax year, to pay an annual administrative office tax measured by gross payroll instead of gross receipts. The administrative office tax rate is 0.26 percent of gross payroll attributable to San José.

The tax revenue under this measure would go into the City's general fund for any City purposes. If approved by a majority of the voters at the November 2016 election, the taxes imposed under the measure would take effect on January 1, 2018.

In addition to businesses with annual gross receipts of \$1 million or less, the measure provides for various exclusions and exemptions from taxation. These include, but are not limited to: (1) businesses and organizations that are exempt from taxation under State or Federal law; (2) gross receipts in whole or in part from the rental of certain residential real estate properties; and (3) gross receipts which are subject to certain City taxes.

The measure would permit the City Council to amend it to exempt new businesses for up to 24 months or to make any clarifications or corrections necessary for effective implementation but prohibits amendments to provide any new exemptions or exclusions.

The measure would suspend certain elements of the City's existing business tax. Unless otherwise exempt, businesses would be required to pay the \$150 flat business tax in addition to the taxes imposed under the measure.

NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

SAN JOSE CITY REGISTERED VOTERS ONLY

RECEIVED
San Jose City Clerk

January 13, 2016

2016 JAN 13 PM 2:30

Dear City Clerk,

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of San Jose for the purpose of modernizing the business tax. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

The Modernization of the Business Tax Ordinance is based in the belief that San Jose deserves to be a world-class city. Today, San Jose is the richest city in the United States, but at the same time, San Jose has the 8th worst roads in the nation, a \$1 billion back log of public infrastructure projects, and 400 less police officers and almost 100 less fire fighters since 2008.

To help make San Jose a world-class city, the Modernization of the Business Tax Ordinance will modernize the business tax by establishing a gross receipts tax on businesses in San Jose so that it will provide funding to support many important essential City services, including police, fire, emergency response, street pavement and pothole repairs, affordable housing and homeless services, libraries and parks, youth and senior services, and the creation of living wage jobs.

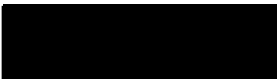
San Jose's current business license tax is in need of modernization, given that the rates it charges have become outdated. Gross receipts is a common business tax base among California's cities. Currently, thirty other California cities have a tax on gross receipts, including Oakland, San Francisco, and Los Angeles. The Modernization of the Business Tax Ordinance proposed in this ordinance would establish modest gross receipts tax rates and provide exemptions for small businesses, for the purpose of minimizing the impact of the tax on businesses within San Jose.

We request that a ballot title and summary be prepared.

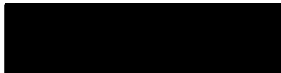
Respectfully,



Steven Hunt



Kathleen Krenek



Scott Myers-Lipton



I, Kathleen Krenek, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot

Signature

A handwritten signature in cursive script, appearing to read "Kathleen Krenek".

Dated this 13 day of Jan, 2016

I, Steven Hunt, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot

Signature

A handwritten signature in black ink, appearing to read 'S. Hunt', written over a horizontal line.

Dated this 13 day of JAN, 2016

I, Scott Myers-Lipton, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot

Signature 

Dated this 13th day of January, 2016

LEGAL TEXT OF THE MODERNIZATION OF THE BUSINESS TAX ORDINANCE

AN INITIATIVE ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO MODERNIZE THE BUSINESS TAX

WHEREAS the citizens of San Jose deserve a world-class city; and

WHEREAS San Jose's current business license tax is in need of modernization, given that the rates it charges have become outdated; and

WHEREAS gross receipts is one of the most common business tax bases among California's largest cities; and

WHEREAS San Jose is in need of funding to support many important City services, including police, fire, emergency response, street pavement and pothole repairs, affordable housing and homeless services, libraries and parks, youth and senior services, and the creation of living wage jobs; and,

WHEREAS establishing a gross receipts tax in San Jose will help to fund City services, improve quality of life for residents and make San Jose a more attractive place to do business; and

WHEREAS the gross receipts tax proposed in this ordinance would establish modest tax rates and provide exemptions for small businesses, for the purpose of minimizing the impact of the tax on businesses within San Jose.

NOW THEREFORE, BE IT ORDAINED, BY THE PEOPLE OF THE CITY OF SAN JOSE:

SECTION 1. Title 4 of the San Jose Municipal Code is hereby amended to add a new Chapter to be numbered entitled and to read as follows:

CHAPTER 4.105 Modernization of the Business Tax Ordinance

4.105.005 PURPOSE.

This Chapter is enacted solely to raise revenue for municipal purposes and is not intended for regulation.

4.105.010 SHORT TITLE.

This Chapter shall be known as the "Modernization of the Business Tax Ordinance" and the tax this Chapter imposes shall be known as the "Gross Receipts Tax."

4.105.015 DEFINITIONS.

Except where the context otherwise requires, the terms used in this Chapter shall have the meanings given to them herein.

4.105.020 ADVANCE PAYMENT.

"Advance payment" means a nonrefundable payment for the purchase of property or services to be delivered or performed in the future.

4.105.025 BIOTECHNOLOGY BUSINESS.

A. "Biotechnology business" means conducting biotechnology research and experimental development, and operating laboratories for biotechnology research and experimental development, using DNA, cells, and/or bioprocessing techniques, as well as the application thereof to the development of therapeutics, diagnostic products and/or devices to improve human health, animal health, and agriculture.

B. For purposes of this section, "DNA" is a nucleic acid sequence, or fragment thereof, that contains the genetic information for cell growth, division, and function. Examples of DNA include recombinant DNA, RNA, mRNA, antisense, RNAi, genes and ESTs.

C. For purposes of this section, "cells" are membrane bound structures containing biomolecules, such as nucleic acids, proteins, and polysaccharides. This definition includes both prokaryotic (bacterial) and eukaryotic (animal or plant) cells. Examples include primary cells, transformed or cultured cells, stem cells, iPS, ESCs, fused cells and cell lines.

D. For purposes of this section, "bioprocessing" is the use of microbial, plant, or animal cells or portions thereof, for the production of therapeutics or diagnostics. Bioprocessing includes the extraction of compounds from biomaterials; reaction of biomaterials, such as microbial fermentation, cell culture, cell fusion or biotransformation by enzymes; and separation of product from biomaterials using filtration, purification, precipitation, centrifugation, solvents, chromatography or other means.

4.105.030 BUSINESS.

The term "business" means any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit or advantage, whether direct or indirect, to the taxpayer or to another or others. The term "business" includes nonprofit entities, trade associations and subsidiary or independent entities which conduct operations for the benefit of others and at no profit to themselves. The term "business" also includes an organization having a formally recognized exemption from income taxation pursuant to Section 501(c), 501(d) or 401(a) of the Internal Revenue Code of 1986, as amended, as qualified by Sections 502, 503, 504 and 508 of the Internal Revenue Code of 1986, as amended.

4.105.035 CASH DISCOUNT.

"Cash discount" means a deduction from the invoice price of goods or charge for services which is allowed if the bill is paid on or before a specified date, or paid in cash rather than by credit card.

4.105.040 CLEAN TECHNOLOGY BUSINESS.

A. "Clean technology business" means a business in which at least seventy-five percent of all business activities carried on during the tax year are directly related to one or more of the following activities:

1. research and development and/or associated manufacturing applying scientific advances to the production, distribution or storage of clean energy;
2. research and development and/or associated manufacturing applying scientific advances to prototype or commercially viable materials and products powered by clean energy, including but not limited to single passenger vehicles and fueling infrastructure;
3. research and development and/or associated manufacturing applying scientific advances to prototype or commercially viable techniques, materials and products that materially improve energy efficiency, water conservation or air quality;
4. research and development, manufacture and/or installation of solar panels.

B. For purposes of this Section, the term "person" includes the combination of all domestic subsidiaries, affiliates and other business entities related by ownership including but not limited to partnerships, joint ventures, limited liability companies, corporations and other business organizations of whatever form. Any beneficial ownership of the stock of publicly traded corporations shall not be considered for purposes of this definition.

C. "Clean energy" means energy utilizing energy produced by wind, solar energy, landfill gas, geothermal resources, ocean thermal energy conversion, quantifiable energy conservation measures, tidal energy, wave energy, biomass, biofuels, or hydrogen fuels derived from renewable sources, excluding (A) any fossil fuel based energy production, including but not limited to, clean coal, clean diesel, natural gas and hydrogen from natural gas, (B) any nuclear based energy production, (C) waste to energy via combustion or incineration, or/and (D) other technologies that are detrimental to human health.

4.105.045 CITY.

The term "City" shall mean the City of San Jose.

4.105.050 DIRECTOR OF FINANCE.

The term "Director of Finance" means the Director of Finance of the City of San Jose or his or her designee.

4.105.055 EMPLOYEE.

The term "employee" means any individual in the service of an employer, under an appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes but is not limited to, all of the enumerated categories in subsections (a) through (f) of California Labor Code Section 3351, regardless of whether Workers' Compensation Benefits, pursuant to Division 4, Part 1, Section 3200 *et seq.* of the California Labor Code are required to be paid. Nothing herein shall be deemed to incorporate any provisions from said Labor Code relating to scope of employment.

4.105.060 GROSS RECEIPTS.

A. "Gross receipts" means the total amounts received or accrued by a person from whatever source derived, including, but not limited to, amounts derived from sales, services, dealings in property, interest, rent, royalties, dividends, licensing fees, other fees, commissions and distributed amounts from other business entities. Except as

otherwise specifically provided in this Chapter, gross receipts includes but is not limited to all amounts that constitute gross income for federal income tax purposes. Except as otherwise specifically provided in this Chapter, gross receipts includes all receipts, cash, credits and property of any kind or nature and including any amount for which credit is allowed by the seller to the purchaser, 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, losses or any other expense whatsoever, except that cash discounts allowed or taken on sales shall not be included as gross receipts. Gross receipts, including advance payments, shall be included in a taxpayer's gross receipts at the time such receipts are recognized as gross income for federal income tax reporting purposes.

B. "Gross receipts" with respect to any lease or rental shall include payment for any services that are part of the lease or rental, whether received in money or otherwise, that are paid to, on behalf of, or for the benefit of, the lessor, and all receipts, cash, credits, property of any kind or character and the fair market value of services so paid or rendered by the lessee.

C. Treatment of Taxes. "Gross receipts" shall not include the amount of any federal, state, or local tax imposed on or with respect to retail sales whether imposed upon the retailer or upon the purchaser and regardless of whether the amount of tax is stated as a separate charge, or such part of the sales price of any property previously sold and returned by the purchaser to the seller which is refunded by the seller by way of cash or credit allowances given or taken as part payment on any property so accepted for resale. Gross receipts shall also not include any federal, state or local tax imposed upon a person for which that person is reimbursed by means of a separately stated charge to a purchaser, lessee, licensee or customer. Gross receipts shall not include any amount of third-party taxes that a taxpayer collects from or on behalf of the taxpayer's customers and remits to the appropriate governmental entity imposing such tax. Gross receipts shall not include any tax refunds received by a person from a governmental entity. Gross receipts shall include any federal, state or local tax not specifically excluded in this subsection.

D. "Gross receipts" shall not include any amount received from or charged to any person that is a related entity to the taxpayer. Nor shall gross receipts include any grants received from governmental entities or any gifts. Gross receipts shall not include any investment receipts. "Investment receipts" includes interest, dividends, capital gains, other amounts received on account of financial instruments, and distributions from business entities, provided such items are directly derived exclusively from the investment of capital and not from the sale of property other than financial instruments, or from the provision of services, to any person. Gross receipts also shall not include any allocations of income or gain, or distributions (such as dividends, interest and other returns on capital) from an entity treated as a pass-through entity for federal income tax purposes, provided such allocations or distributions are derived exclusively from an investment in such entity, and not from any other property sold to, or services provided to, such entity. Any gross receipts of a pass-through entity which is subject to the gross receipts tax shall not also constitute gross receipts of any owner of that entity.

E. Notwithstanding the provisions of subsection A, "gross receipts" from the sale or exchange of stocks or other similar written instruments evidencing a right to participate in the assets of any business, or of bonds or other evidence of indebtedness, or of any other marketable securities (collectively referred to in this Chapter as "financial

instruments"), or of any real property, shall not include the cost to acquire the financial instrument(s), or real property, sold or otherwise exchanged or converted. Nor shall "gross receipts" include the amount received by the original issuer of a financial instrument in exchange for such issuance. To the extent that any loss on the sale or exchange of financial instruments reduces the gross income of a person for federal income tax purposes in the year the loss is incurred, that loss shall reduce gross receipts from the sale or exchange of financial instruments, but in no event shall those receipts be less than zero, and in no event may any such loss be carried back or carried forward to reduce gross receipts in a tax year other than that in which the loss was incurred.

F. No person shall be deemed to be engaging in business in the City if that person is an individual whose only gross receipts within the City are derived from investments of that individual's own funds in financial instruments. Gross receipts of an individual shall not include interest, dividends, capital gains and similar items or investment income earned from the investment of that individual's own capital.

4.105.065 INDIVIDUAL.

The term "individual" means a natural person, a human being, as distinguished from an artificial person such as a corporation or political subdivision.

4.105.070 NAICS CODE.

"NAICS code" means the numerical classification for business activities established in the North American Industry Classification System used by federal governmental agencies to classify business establishments; references in this Chapter to particular numerical NAICS codes are intended to apply the definitions and descriptions adopted in that system as of the effective date of this Chapter.

4.105.075 NEXUS: "ENGAGING IN BUSINESS WITHIN THE CITY."

The taxes imposed by this Chapter shall apply to any person engaging in business within the City unless exempted therefrom under this Chapter. A person is "engaging in business within the City," within the meaning of this Chapter, if that person meets one or more of the following conditions:

- A. The person maintains a fixed place of business within the City; or
- B. An employee, representative or agent of the person maintains a fixed place of business within the City for the benefit or partial benefit of the person; or
- C. The person or one or more of the person's employees, representatives or agents owns, rents, leases, or hires real or personal property within the City for business purposes for the benefit or partial benefit of the person; or
- D. The person or one or more of the person's employees, representatives or agents regularly maintains a stock of tangible personal property within the City, for sale in the ordinary course of the person's business; or
- E. The person or one or more of the person's employees, representatives or agents employs or loans capital on property within the City for the benefit or partial benefit of the person; or
- F. The person or one or more of the person's employees, representatives or agents solicits business within the City for all or part of any seven days during a tax year; or

- G. The person or one or more of the person's employees, representatives or agents performs work or renders services within the City for all or part of any seven days during a tax year; or
- H. The person or one or more of the person's employees, representatives or agents utilizes the streets within the City in connection with the operation of motor vehicles for business purposes for all or part of any seven days during a tax year; or
- I. The person or one or more of the person's employees, representatives or agents exercises corporate or franchise powers within the City for the benefit or partial benefit of the person; or
- J. The person or one or more of the person's employees, representatives or agents liquidates a business when the liquidators thereof hold themselves out to the public as conducting such business.
- K. Notwithstanding the provisions of this section, no person shall be deemed to be engaging in business in the City if that person is an individual whose only gross receipts within the City are derived from investments of that individual's own funds in financial instruments.
- L. Notwithstanding the provisions of this section, no person shall be deemed to be engaging in business within the City if its activities in the City consist solely of one or more of the following:
1. contracting with, acting through, or otherwise using the services of, any investment advisor or affiliate thereof which is not a related entity;
 2. maintaining documents of formation, incorporation, or registration within the City;
 3. being an owner, member, or other participant in an entity engaging in business within the City which is a pass-through entity for federal income tax purposes; or
 4. having trustees or directors who meet or reside within the City.

4.105.080 PERSON.

The term "person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability company, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

4.105.085 RELATED ENTITY.

A person is a "related entity" to a taxpayer if that person and the taxpayer are permitted or required by the California Franchise Tax Board under Section 25102 *et seq.* of the California Revenue and Taxation Code, or any successor, to have their income reflected on the same combined report. For purposes of this Chapter, if two or more persons derive gross receipts solely from sources within California, and their business activities are such that, if conducted both within and outside California, a combined report would be required under the California Revenue and Taxation Code, or any successor, then those persons are related entities regardless of whether they file a combined report under the California Revenue and Taxation Code, or successor.

4.105.090 SALE AND SELL.

"Sale" and "sell" mean the making of any transfer of title, in any manner or by any means whatsoever, to property for a price, and to the serving, supplying or furnishing, for a price, of any property fabricated or made at the special order of consumers who do or who do not furnish directly or indirectly the specifications or materials therefor. A transaction whereby the possession of property is transferred but the seller retains the title as a security for the payment of the price shall likewise be deemed a sale.

4.105.100 TAX YEAR.

The term "tax year" means the year commencing on January 1st of each calendar year ending on December 31st of the same calendar year.

4.105.110 TAXPAYER.

The term "taxpayer" means a person required under this Chapter to pay or remit a tax.

4.105.115 IMPOSITION OF GROSS RECEIPTS TAX.

A. Except as otherwise provided under this Chapter, the City imposes and every person engaging in business within the City shall pay an annual gross receipts tax measured by the person's gross receipts from all taxable business activities attributable to the City, commencing on the Operative Date of the Modernization of the Business Tax Ordinance. A person's liability for the gross receipts tax shall be calculated according to Sections 4.105.120 through 4.105.126.

B. The gross receipts tax is a privilege tax imposed upon persons engaging in business within the City for the privilege of engaging in a business or occupation in the City. The gross receipts tax is imposed for general governmental purposes. Proceeds from the tax shall be deposited in the City's general fund and may be expended for any purposes of the City.

C. The voters intend by adopting this measure to authorize application of the gross receipts tax in the broadest manner consistent with the provisions of this Chapter and the requirements of the California Constitution, the United States Constitution, and any other applicable provision of federal and state law.

D. The tax on Administrative Office Business Activities imposed by Section 4.105.130 is intended as a complementary tax to the gross receipts tax, and shall be considered a gross receipts tax for purposes of this Chapter.

4.105.120 GROSS RECEIPTS TAX APPLICABLE TO RETAIL TRADE; WHOLESALE TRADE; AND CERTAIN SERVICES.

A. The gross receipts tax rate provided by this Section is applicable to the business activities of retail trade, wholesale trade, and certain services. The tax rate provided by this Section is 0.060% (e.g., \$0.60 per \$1,000).

B. Retail trade includes the activity of retailing any type of personal property, generally without significantly transforming its characteristics, and rendering services incidental to the retail sale of property; it includes business activity described in NAICS codes 44 and 45.

C. Wholesale trade includes the activity of wholesaling property, generally without

transformation, and rendering services incidental to the sale of property on a wholesale basis; it includes business activity described in NAICS code 42.

D. Certain services includes the repair and maintenance services, personal and laundry services, and religious, grantmaking, civic, professional and similar organizations that are not otherwise exempt; it includes business activity described in NAICS codes 811, 812 and 813.

E. The amount of gross receipts from retail trade activities and from wholesale trade activities subject to the gross receipts tax shall be one-half of the amount determined under Section 4.105.160 plus one-half of the amount determined under Section 4.105.165.

F. The amount of gross receipts from certain services activities subject to the gross receipts tax shall be the total amount determined under Section 4.105.165.

4.105.121 GROSS RECEIPTS TAX APPLICABLE TO MANUFACTURING; TRANSPORTATION AND WAREHOUSING; INFORMATION; BIOTECHNOLOGY; CLEAN TECHNOLOGY; AND FOOD SERVICES.

A. The gross receipts tax rate provided by this Section is applicable to the business activities of manufacturing, transportation and warehousing, information, biotechnology, clean technology, and food services. The tax rate provided by this Section is 0.060% (e.g., \$0.60 per \$1,000).

B. Manufacturing includes the activity of transforming materials, substances or components into new products by mechanical, physical or chemical means; it includes the activity of assembling component parts of manufactured products; it includes business activity described in NAICS codes 31, 32 and 33.

C. Transportation and warehousing includes the activities of providing transportation of passengers and/or goods, warehousing and storage for goods, scenic and sightseeing transportation, and support activities related to modes of transportation; it includes business activity described in NAICS codes 48 and 49.

D. Information includes producing and distributing information or cultural products; providing the means to transmit or distribute those products; and processing data; it includes business activity described in NAICS code 51.

E. For purposes of this Chapter, biotechnology includes the activity of biotechnology business as defined in Section 4.105.025 and clean technology includes the activity of clean technology business as defined in Section 4.105.040.

F. Food services includes the activity of preparing meals, snacks and/or beverages to customer order for immediate on-premises or off-premises consumption; it includes drinking places; it includes business activity described in NAICS code 722.

G. The amount of gross receipts from all business activities described in this Section subject to the gross receipts tax shall be one-half of the amount determined under Section 4.105.160 plus one-half of the amount determined under Section 4.105.165.

4.105.122 GROSS RECEIPTS TAX APPLICABLE TO ACCOMMODATIONS; UTILITIES; AND ARTS, ENTERTAINMENT AND RECREATION.

A. The gross receipts tax rate provided by this Section is applicable to each of the following business activities: accommodations; utilities; and arts, entertainment and recreation. The tax rate provided by this Section is 0.090% (e.g., \$0.90 per \$1,000).

- B. Accommodations includes the activity of providing lodging or short-term accommodations for travelers, vacationers, or others; it includes business activity described in NAICS code 721.
- C. Utilities includes the activities of the generation, transmission and distribution of electric power, the distribution of natural gas, the provision and distribution of steam supply, the treatment and distribution of water supply, and the removal of sewage; it includes business activity described in NAICS code 22; it excludes establishments primarily engaged in waste management services.
- D. Arts, entertainment and recreation include the activity of operating facilities or providing services to meet cultural, entertainment or recreational interests of customers or patrons; it includes business activity described in NAICS code 71.
- E. The amount of gross receipts and from accommodations subject to the gross receipts tax shall be the total amount of gross receipts derived from or related to properties located or used within the City.
- F. The amount of gross receipts from utilities subject to the gross receipts tax shall be one-half of the amount determined under Section 4.105.160 plus one-half of the amount determined under Section 4.105.165.
- G. The amount of gross receipts from arts, entertainment and recreation subject to the gross receipts tax shall be the total amount determined under Section 4.105.165.

4.105.123 GROSS RECEIPTS TAX APPLICABLE TO PRIVATE EDUCATION AND HEALTH SERVICES; ADMINISTRATIVE AND SUPPORT SERVICES; AND MISCELLANEOUS BUSINESS ACTIVITIES.

- A. The gross receipts tax rate provided by this Section is applicable to the business activities of private education and health services, and administrative and support services. This rate also applies to all business activities not otherwise exempt and not elsewhere subjected to a gross receipts tax rate or an administrative office tax by this Chapter. The tax rate provided by this Section is 0.120% (e.g., \$1.20 per \$1,000).
- B. Private education and health services include the activity by persons other than governmental agencies of providing instruction and training in any subject, or of providing health care or social assistance for individuals; it includes business activity described in NAICS codes 61 and 62.
- C. Administrative and support services includes the activity of performing routine support activities for the day-to-day business activities of others; it includes business activity described in NAICS code 56.
- D. The amount of gross receipts from all business activities described in this Section subject to the gross receipts tax shall be determined under Section 4.105.165.

4.105.124 GROSS RECEIPTS TAX APPLICABLE TO CONSTRUCTION.

- A. The gross receipts tax rate provided by this Section is applicable to the business activity of construction. The tax rate provided by this Section is 0.090% (e.g., \$0.90 per \$1,000).
- B. Construction includes the activity of preparing sites for, subdividing land for, or working on, buildings or engineering projects (including highways and utility systems); it includes business activity described in NAICS code 23.
- C. The amount of gross receipts from construction subject to the gross receipts tax shall

be one-half of the amount determined under Section 4.105.160 plus one-half of the amount determined under Section 4.105.165. The amount of gross receipts so determined shall then be reduced by any amounts which were included in a person's gross receipts within the City pursuant to Section 4.105.160, and which that person paid to a subcontractor during the tax year. There shall be no reduction for any other costs, including without limitation costs for materials, fees, equipment, or other services. In order to claim such a reduction, a person must maintain an itemized schedule of payments to subcontractors.

4.105.125 GROSS RECEIPTS TAX APPLICABLE TO FINANCIAL SERVICES; INSURANCE; AND PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES.

- A. The gross receipts tax rate provided by this Section is applicable to the business activities of financial services; insurance; and professional, scientific and technical services. The tax rate provided by this Section is 0.120% (e.g., \$1.20 per \$1,000).
- B. Financial services includes the activities of engaging in or facilitating financial transactions; it includes business activities described in NAICS codes 521, 522 and 523.
- C. Insurance includes the activities of facilitating or supporting the pooling of risk by underwriting insurance and annuities; the activities covered by this Section include those of persons not exempt from the gross receipts tax based on business activities described in NAICS code 524.
- D. Professional, scientific and technical services includes the activity of providing for others, specialized professional, scientific, or technical services that require a high degree of expertise and training; it includes business activity described in NAICS code 54.
- E. The amount of gross receipts from the activities described in this Section subject to the gross receipts tax shall be the amount determined under Section 4.105.165.

4.105.126 GROSS RECEIPTS TAX APPLICABLE TO REAL ESTATE AND RENTAL AND LEASING SERVICES.

- A. The gross receipts tax rate provided by this Section is applicable to the business activities of real estate and rental and leasing services. The tax rate provided by this Section is 0.090% (e.g., \$0.90 per \$1,000).
- B. Real estate and rental and leasing services includes the activities of renting, leasing, or otherwise allowing the use of tangible or intangible assets, and the activity of providing related services; it includes business activity described in NAICS code 53.
- C. The amount of gross receipts from real estate and rental and leasing services subject to the gross receipts tax shall be the total amount of gross receipts derived from or related to properties located or used within the City. Gross receipts shall not include amounts derived from or related to properties located or used outside the City.

4.105.130 TAX ON ADMINISTRATIVE OFFICE BUSINESS ACTIVITIES.

- A. Except as provided in this Section, notwithstanding any other provision of this Chapter and in lieu of the other taxes provided by this Chapter for any person or combined group, commencing on the Operative Date of the Modernize the Business Tax Ordinance, every person engaging in business within the City as an administrative office, as defined below, shall be allowed to make an election, in any given tax year, as to

whether that person wishes to pay an annual administrative office tax measured by its gross payroll that is attributable to the City, instead of paying a tax on Gross Receipts as would otherwise be required by this Chapter. If a person is a member of a combined group, then its tax shall be measured by the gross payroll of the combined group attributable to the City. The administrative office tax rate for each tax year is 0.26 percent.

- B. "Engaging in business within the City as an administrative office" means that:
1. a person is engaging in business within the City during the tax year and over 50 percent of the total combined gross payroll within the City of that person and its related entities for the preceding tax year was associated with providing administrative or management services exclusively to that person or related entities;
 2. the total combined number of employees of that person and its related entities within the United States as of the last day of the preceding tax year exceeded 1,000; and
 3. the total combined gross receipts of that person and its related entities reported on United States federal income tax return(s) for the preceding tax year exceeded \$1,000,000,000.
 4. For purposes of subsection B. only, a related entity shall include any person who could be included in the same combined report under California Revenue and Taxation Code Section 25102 but for the existence of a water's edge election under Section 25110 of that Code.
- C. "Administrative or management services" comprises internal support services provided on an enterprise-wide basis, such as executive office oversight, company business strategy, recordkeeping, risk management, personnel administration, legal, accounting, market research and analysis, and training services; it does not include sales personnel or personnel actively engaged in marketing, research and development, direct customer service, and product support services. The Director of Finance is authorized to classify in its reasonable discretion which personnel employed by any person provide administrative or management services.
- D. A person provides administrative office services exclusively for itself or a related entity only if the final recipient of those services is at a location where that person or a related entity conducts business activities.
- E. "Gross payroll" means and includes the total gross amount of all salaries, wages, commissions, bonuses, or other money payment of any kind which a person received from or is entitled to receive from or be given credit for by his or her employer for any work done or personal service rendered in any trade, occupation or profession, including any kind of deductions before "take home" pay is received; but shall not mean or include amounts paid to traveling salespersons or other workers as allowance or reimbursement for traveling or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to the employer.

4.105.135 PERSONS OR COMBINED GROUPS ENGAGED IN MULTIPLE BUSINESS ACTIVITIES.

If a person engages in business activities described in more than one of Sections

4.105.120 through 4.105.126, inclusive, of this Chapter, the rate or rates of gross receipts tax to be applied to that person or group, and the method for determining gross receipts in the City, shall be determined as follows:

A. If more than 80 percent of its gross receipts, determined in accordance with Section 4.105.155, are derived from business activities described in only one of Sections 4.105.120 through 4.105.126, inclusive, then the rules of that applicable Section apply to all of its gross receipts derived from all business activities.

B. If its business activities in the City are described in more than one of Sections 4.105.120 through 4.105.126, inclusive, and subsection A. of this Section does not apply, then such person or combined group shall separately compute the gross receipts tax for each set of business activities as provided in the Section applicable to that particular set of business activities, modified as follows:

1. if the set of business activities described in any of Sections 2.105.120 through 4.105.126, inclusive, generates less than 20 percent of the total gross receipts of the person or group, then the receipts of any such set of activities may be combined for all purposes related to computing the gross receipts tax with whichever set of that person's or group's activities are taxed at the highest rate;
2. the small business exemption provided in Section 4.105.145 shall apply only if the sum of receipts within the City from all sets of business activities does not exceed \$1,000,000 in total;
3. the applicable rate for each set of business activities shall be determined in numbered order of the Sections describing each set of business activities; i.e., the gross receipts and tax for business activities described in Section 4.105.120 should be determined first, Section 4.105.121 second, and so on;
4. the rate(s) applicable to any set of activities after the first shall be determined by adding together the gross receipts determined for all previous sets of activities and applying the rate scale commencing with the total gross receipts so determined; and
5. the gross receipts tax liability for the person or combined group shall be the sum of the liabilities for each set of business activities.

4.105.140 EXEMPTIONS AND EXCLUSIONS.

A. Except as provided in subsection B. of this Section, an organization that is exempt from income taxation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended, as qualified by Sections 502, 503, 504 and 508 of the Internal Revenue Code of 1986, as amended, shall be exempt from taxation under this Chapter, only so long as those exemptions continue to exist under state or federal law.

B. An organization otherwise exempt from income taxation under subsection A. that is directly engaged within the City in an unrelated trade or business within the meaning of Section 513(a) of the Internal Revenue Code of 1986, as amended, and has, from its own operations, unrelated business taxable income within the meaning of Section 512(a)(1) of the Internal Revenue Code of 1986, as amended, shall pay the gross receipts tax on its gross receipts from its unrelated trade or business activities that are attributable to the City. If it is impracticable, unreasonable or improper to allocate such organization's gross

receipts as aforesaid either because of the particular nature of the organization's unrelated trade or business or for any other reason, then the amount of gross receipts reasonably attributable to the organization's unrelated trade or business in the City shall be determined on the basis of all of the relevant facts and circumstances of the particular case, in accordance with any rulings or regulations issued or promulgated by the Director of Finance for this purpose.

C.. Gross receipts as defined in Section 4.104.060 shall not include receipts from business activities if, and only so long as and to the extent that, the City is prohibited from taxing such receipts under the Constitution or laws of the United States or under the Constitution or laws of the State of California.

D. A person subject to the tax may exclude from gross receipts in any tax year 50 percent of the total amount received from the rental of real property to tenants in occupancy at any location in the City, which is subject to limits on rent increases pursuant to Chapters 17.22 or 17.23 of this Code.

E. For only so long as and to the extent that the City is prohibited from imposing the tax under this Chapter, the following persons shall be exempt from the gross receipts tax:

1. Banks and financial corporations exempt from local taxation under Article XIII, Section 27 of the California Constitution and Revenue and Taxation Code Section 23182;
2. Insurance companies exempt from local taxation under Article XIII, Section 28 of the California Constitution;
3. Persons engaging in business as a for-hire motor carrier of property under Revenue and Taxation Code Section 7233;
4. Persons engaging in intercity transportation as a household goods carrier under Public Utilities Code Section 5327;
5. Charter-party carriers operating limousines that are neither domiciled nor maintain a business office within the City under Public Utilities Code Section 5371.4; and
6. Any person upon whom the City is prohibited under the Constitution or laws of the State of California from imposing the gross receipts tax.

F. To the extent that any taxpayer has paid a substantially similar tax to any other taxing jurisdiction on any gross receipts attributed to the City and taxed under this Chapter, the tax paid to such taxing jurisdiction shall be credited against the tax due under this Chapter; in no event shall this credit reduce the taxpayer's liability to less than zero.

G. Gross receipts as defined in Section 4.105.060 shall not include receipts for which the Marijuana Business Tax, imposed by Chapter 4.66, or the Cardroom Tax, imposed by Chapter 4.77, have been paid to the City.

H. Gross receipts as defined in Section 4.105.060 shall not include receipts originating from any business activities subject to the Disposal Facility Tax imposed by Chapter 4.78.

I. Any person who pays the Gross Receipts Tax as a manufacturer for the purposes of Section 4.105.121 of this Chapter may subtract from their total gross receipts (1) the value of raw materials used in the manufacture, within the City, of any product and (2) the value of a partially completed product at the time it enters the manufacturing process within the City, provided that it is used in the manufacture of a product within the City. In no event shall this credit reduce the taxpayer's liability to less than zero.

J. A person subject to the tax may exclude from gross receipts in any tax year any receipts derived from 100% deed restricted affordable housing projects. For the purposes of this Subsection, deed restricted affordable housing projects are residential developments where residency is restricted to households earning 100% or below Area Median Income as defined by the U.S. Department of Housing and Urban Development.

4.105.145 SMALL BUSINESS EXEMPTION.

A. Notwithstanding any other provision of this Chapter, a "small business enterprise," as hereinafter defined for purposes of this Chapter, shall be exempt from payment of the gross receipts tax.

B. For purposes of this Chapter, the term "small business enterprise" shall mean and include any person or combined group, except for a lessor of residential real estate, whose gross receipts within the City for the preceding tax year did not exceed \$1,000,000, adjusted annually in accordance with the increase in the Consumer Price Index: All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31st of the preceding year.

C. For purposes of this Chapter, and notwithstanding any other provision of this Section, a lessor of residential real estate is a "small business enterprise" if and only if the lessor leases fewer than 4 units in any individual building. "Residential real estate" means real property where the primary use of or right to use the property is for the purpose of dwelling, sleeping or lodging other than as part of the business activity of accommodations. For purposes of this Chapter, a lessor of residential real estate is treated as a separate person with respect to each individual building in which it leases residential real estate units. The provisions of this subsection apply only to leasing residential real estate units within a building, and not to any business activity related to other space, either within the same building or other buildings, which is not residential real estate. The Director of Finance is authorized to determine what constitutes a separate building and the number of units in a building.

4.105.150 PERSONS DERIVING NO GROSS RECEIPTS FROM BUSINESS ACTIVITIES OUTSIDE THE CITY.

Notwithstanding any other provision of this Chapter, any person subject to the gross receipts tax who derives non-exempt gross receipts from business activities within the City and derives no gross receipts from business activities outside the City is subject to tax on all non-exempt gross receipts.

4.105.155 ALLOCATION AND APPORTIONMENT FOR ALL PERSONS DERIVING GROSS RECEIPTS FROM BUSINESS ACTIVITIES BOTH WITHIN AND OUTSIDE THE CITY.

All persons deriving gross receipts from business activities both within and outside the City shall allocate and/or apportion their gross receipts to the City, using the rules set forth in Section 4.105.160 and 4.105.165, in the manner directed in Sections 4.105.120 through 4.105.126, inclusive, and in Section 4.105.135 of this Chapter.

4.105.160 ALLOCATION OF RECEIPTS FROM REAL, PERSONAL, TANGIBLE AND INTANGIBLE PROPERTY.

- A. For all persons required to determine an amount of gross receipts pursuant to this Section, that amount shall be all non-exempt gross receipts within the City as determined hereunder.
- B. Gross receipts from the sale, lease, rental or licensing of real property are in the City if the real property is located in the City.
- C. Gross receipts from sales of tangible personal property are in the City if the property is delivered or shipped to a purchaser within the City regardless of the f.o.b. point or other conditions of the sale.
- D. Gross receipts from the rental, lease or licensing of tangible personal property are in the City if the property is located in the City.
- E. Gross receipts from services are in the City to the extent the purchaser of the services received the benefit of the services in the City.
- F. Gross receipts from intangible property are in the City to the extent the property is used in the City. In the case of financial instruments, sales are in the City if the customer is located in the City.

4.105.165 APPORTIONMENT OF RECEIPTS BASED ON PAYROLL.

- A. For all persons required to determine an amount of gross receipts pursuant to this Section, that amount shall be all non-exempt combined gross receipts of the person multiplied by a fraction, the numerator of which is payroll in the City and the denominator of which is combined payroll.
- B. Combined gross receipts are the total worldwide gross receipts of the person and all related entities to the person, unless the election provided for in California Revenue and Taxation Code Section 25110 is in effect for the person, in which case combined gross receipts shall be computed consistently with the water's edge election, as set forth therein.
- C. Combined payroll is the total worldwide compensation paid by the person and all related entities to the person, unless the election provided for in California Revenue and Taxation Code Section 25110 is in effect for the person, in which case combined payroll shall be computed consistently with the water's edge election, as set forth therein. A person who has no combined payroll in a tax year shall have no gross receipts under this Section for that tax year.
- D. Payroll in the City is the total amount paid for compensation in the City by the person and by all related entities to the person.
- E. "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for services. In the case of any person who has no employees, compensation shall also include all taxable income for federal income tax purposes of the owners or proprietors of such person who are individuals. Those owners or proprietors shall be treated as individuals to whom compensation is paid.
- F. The apportionment provided by this Section shall not include in either the numerator or the denominator any payroll of persons exempt from tax under subsections A. B. or E. of Section 4.105.140.

4.105.170 DIRECTOR OF FINANCE AUTHORIZED TO DETERMINE GROSS RECEIPTS.

The Director of Finance may, in his or her reasonable discretion, independently establish a person's gross receipts within the City and establish or reallocate gross receipts among related entities so as to fairly reflect the gross receipts within the City of all persons. This authority extends to determining whether any amount excluded from gross receipts by virtue of Section 4.105.060.F is in whole or in part compensation or payment for services and thus included in gross receipts.

4.105.175 ADMINISTRATION OF THE MODERNIZATION OF THE BUSINESS TAX ORDINANCE.

Before the Operative Date of the Modernization of the Business Tax Ordinance, the City Council shall adopt an administrative ordinance that shall establish any procedures necessary for the collection and enforcement of the Modernization of the Business Tax Ordinance. The administrative ordinance shall be consistent with the provisions of this Chapter. The Gross Receipts Tax established in this Chapter shall be administered consistent with the administrative ordinance passed by the Council.

4.105.180 AMENDMENT OF ORDINANCE.

A. The City Council may not amend this Chapter without a vote of the people except according to the following provisions:

1. The City Council may amend this Chapter by a majority vote of the City Council for the purpose of fully or partially exempting from the Gross Receipts Tax any receipts on which the Real Property Conveyance Tax, established pursuant to Chapter 4.58, or the Real Property Transfer Tax, established pursuant to Chapter 4.62, have been paid. In no event shall this credit reduce the taxpayer's liability to less than zero.
2. The City Council may amend this Chapter by a majority vote of the City Council for the purpose of partially or fully exempting newly established businesses from the Gross Receipts Tax for a period of not greater than twenty-four months after the business is established.
3. The City Council may amend this Chapter by a majority vote of the City Council for the purpose of making any clarifications or corrections necessary to the effective implementation of the ordinance. This Subsection A3 shall not be construed to allow any reduction in the gross receipts tax rate, the creation of any new exemptions or exclusions from the tax, substantive changes to the way in which gross receipts are defined or calculated, or the expansion of the City Council's power to amend this ordinance as provided under this Section 4.105.180.

B. Notwithstanding the provisions of Subsection A, the City Council shall not amend this Chapter in any way that is prohibited by Article XIII C of the California Constitution.

4.105.185 EFFECT OF STATE AND FEDERAL AUTHORIZATION.

To the extent that the City's authorization to impose or collect any tax imposed under this Chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform the taxes to those changes, and the taxes are hereby imposed and the Director of Finance shall collect them to the full extent of the City's authorization up to the full amount and rate of the

taxes imposed under this Chapter.

4.105.190 SEVERABILITY.

Except as provided in Section 4.105.195.B below, if any section, sentence, clause, phrase, or portion of this Chapter is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this Chapter shall nonetheless remain in full force and effect. The people of the City of San Jose hereby declare that, except as provided in Section 4.105.195.B, they would have adopted each section, sentence, clause, phrase, or portion of this Chapter, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Chapter be declared invalid or unenforceable and, to that end, the provisions of this Chapter are severable.

4.105.195 SAVINGS CLAUSE.

- A. No section, clause, part or provision of this Chapter shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California. Except as provided in subsection B. of this Section, if any section, clause, part or provision of this Chapter, or the application thereof to any person or circumstance, is held invalid or unconstitutional, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.
- B. If the imposition of the gross receipts tax in Section 5.105.115 of this Chapter is held invalid or unconstitutional in a final court determination, the remainder of this Chapter shall be null and void and of no force and effect. For any tax year for which this Chapter is invalidated pursuant to this Section, the Business License Taxes provided by Chapter 4.76 may be assessed against any person engaging in business in the City during that tax year as if this Ordinance had not been passed..

SECTION 2. Chapter 4.76 of the San Jose Municipal Code is hereby amended to add a new Section to be numbered entitled and to read as follows:

4.76.050 PARTIAL SUSPENSION OF THE BUSINESS LICENSE TAX

- A. On the Operative Date of the Modernization of the Business Tax ordinance established by Chapter 4.105, certain elements of the Business License Tax shall be suspended, as follows:
1. The tax of eighteen dollars per employee imposed by Section 4.76.360 shall be suspended, but the minimum business tax of one hundred fifty dollars per year shall not be suspended.
 2. Any taxes imposed on businesses by Section 4.76.440 shall be suspended, except that the minimum business tax of one hundred fifty dollars per year shall not be suspended.
 3. Any taxes imposed by section 4.76.480 shall be suspended.
- B. The City Council may amend this Section to defer the suspension of the Business License Tax for up to one year after the Operative Date of the Modernization of the Business Tax ordinance, for the purpose of ensuring adequate cash flow to the City

during the transition period or to otherwise provide for an orderly transition.

SECTION 3. Operative Date.

In the event that this ordinance is approved by the voters at the election held in November 2016, this ordinance shall become operative on January 1, 2018. In the event that this ordinance is approved by the voters at an election subsequent to the election held in November 2016, this ordinance shall become operative on the second January 1st after it is certified. This ordinance is intended to have prospective effect only.