

Chapter 3
Business Regulations, Business Taxes,
Permits and Licenses

(“Licenses, Permits, Business Regulations and Business Taxes” retitled “Business Regulations, Business Taxes, Permits and Licenses” 2–23–1987 by O–16815 N.S.)

Article 1: Business Taxes

(“Licenses and License Taxes” retitled to “Business Taxes” 2–23–1987 by O–16815 N.S.)

Division 1: General Provisions — Definitions — Applications

§31.0101 Revenue Provisions

There is hereby imposed a business tax which, under the provisions of this Article, is enacted solely to raise revenue for municipal purposes and is not intended for the purpose of regulation. Taxes collected under this Article are not subject to refund except as provided elsewhere in this Code. Taxes collected under this Article are exclusive of any fees for permits or licenses required under any other provision of the San Diego Municipal Code.

(Amended 2–23–1987 by O–16815 N.S.)

§31.0110 Business Taxes — Definitions

The following words and phrases whenever used in this Article shall be construed as defined in this section, unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

- (a) “CERTIFICATE” shall mean a certificate of payment of the business tax pursuant to Chapter III, Article 1 of this Code. Issuance of a “certificate” does not authorize operation of a business without any permit or license required under other sections of the San Diego Municipal Code, or in violation of other provisions of the laws, and it shall not be a defense to any such violation that a certificate was issued. The certificate may bear such notation on its face or reverse side.
- (b) “CODE” refers to the provisions of San Diego Municipal Code.

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- (c) “EMPLOYEE” refers to a person defined in Title 22, section 4304–1 of the California Administrative Code.
- (d) “ENGAGED IN THE BUSINESS,” “PROFESSION,” “OCCUPATION,” “OPERATION,” or “PRACTICE” shall include owning, conducting, operating, managing or carrying on of a commercial or industrial enterprise through which services or property are sold, furnished, or constructed; provided however, that this definition shall not be so interpreted as to require more than one certificate to be obtained or paid for any one business enterprise at one location, except as otherwise provided in this Article.
- (e) “PERSON” shall mean and include all natural persons and all domestic and foreign corporations, associations, syndicates, joint stock companies, partnerships of every kind, clubs, Massachusetts business or common law trusts, societies and individuals engaged in any business as defined herein in the City of San Diego.
- (f) “SALE OR SELL” shall include the making of any transfer of title, in any manner or by any means whatsoever, to tangible personal or real property for a price, and the serving, supplying or furnishing, for a price, of any service or of tangible personal property: A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price shall likewise be deemed a sale. The foregoing definitions shall include any other type of transaction which is, or which in effect results in, a sale within the contemplation of law.
- (g) “SELLING GOODS, WARES AND MERCHANDISE” shall, in addition to any other meaning established at law, be deemed to extend to and include in its application persons who engage in the business of fabricating, serving or supplying, for a price, tangible personal property furnished, produced or made at the special order of purchasers or consumers, or for purchasers or consumers, or for purchasers or consumers who do or who do not furnish directly or indirectly the specifications therefor.
- (h) “SWAP MEETS” refers to the activity carried on in a building, structure, enclosure, lot or other area into which members of the public at large are invited or allowed to offer for sale, exchange, display, barter or bargain for new or used merchandise, and includes those activities defined in section 21661 of the California Business and Professions Code.

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- (i) “REFUSE” has the same meaning as in San Diego Municipal Code Section 66.0102(a).
- (j) “REFUSE COLLECTOR” has the same meaning as in San Diego Municipal Code Section 66.0102(d).
(Amended 9–27–1993 by O–17986 N.S.)

§31.0120 Unlawful Business Practices

- (a) No certificate issued under the provisions of this Article shall be construed to authorize the conduct or continuance of any illegal or unlawful business or of any business for which a license or permit is required by state law, county ordinance or the San Diego Municipal Code, including but not limited to police, health, zoning, planning, building or engineering permits, or state contractors licenses and the like. The issuance of a business tax certificate shall not relieve an owner or operator from obtaining any licenses or permits that may be necessary under other provisions of law for employees or for operation of the business.
- (b) It is unlawful to use or refer to a business tax certificate issued under the provisions of this Article in any advertisement, or to present or represent such certificate as a license or permit which is required by other provisions of the San Diego Municipal Code or the laws of the State of California or the County of San Diego.
(Amended 4–16–1990 by O–17451 N.S.)

§31.0121 Certificate Requirements

No person shall engage in any business, trade, calling or occupation required to be taxed under the provisions of this Article until a certificate of payment is obtained. Any person who so fails to obtain a certificate required under this Article is guilty of a misdemeanor.
(Retitled to “Certificate Requirements” and amended 2–23–1987 by O–16815 N.S.)

§31.0122 Suit for Recovery of Unpaid Sums

Any sum required to be paid hereunder shall be deemed a debt to the City, and any person who engages in any business required to be taxed without first obtaining a certificate of payment shall be subject to an action by and in the name of The City of

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San Diego in any court of competent jurisdiction for the recovery of any such amount, together with penalties and costs of collection.
(Amended 2-23-1987 by O-16815 N.S.)

§31.0125 Transferability

No certificate issued pursuant to this Article shall be transferable in case of a change in ownership.
(Retitled to "Transferability" and amended 2-23-1987 by O-16815 N.S.)

§31.0126 Duplicate Certificates — Fees

Duplicate certificates of payment may be issued by the City Treasurer to replace any certificate previously issued which has been lost or destroyed upon the filing of an affidavit attesting to such fact, and payment to the City Treasurer of a fee to be set by the City Manager.
(Retitled to "Duplicate Certificates— Fees" and amended 2-23-1987 by O-16815 N.S.)

§31.0127 Posting and Keeping Certificates

Except as otherwise specifically provided by the provisions of this Article, all required certificates must be kept and posted in the following manner:

- (a) Any person or entity engaged in business at a fixed place of business shall keep the certificate posted in a conspicuous place upon the premises where such business is conducted.
- (b) Any person engaged in business in The City of San Diego, but not operating from a fixed place of business, shall keep the certificate issued to him or her upon his or her person at all times while engaging in such business.
- (c) Each certificate holder shall at all times when requested exhibit said certificate to any police officer or other official of The City of San Diego.

Violation of this section is a misdemeanor.
(Retitled to "Posting and Keeping Certificates" and amended 2-23-1987 by O-16815 N.S.)

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§31.0128 Enforcement

It shall be the duty of the City Treasurer to enforce the provisions of this Article. The Chief of Police and other City officials shall render such assistance in the enforcement of this Article as may from time to time be required by the City Treasurer.

The City Treasurer in the exercise of the duties imposed by this Article, and acting through deputies or other duly authorized City employees, may examine all places of business in the City to ascertain whether or not the provisions of this Article have been complied with.

The City Treasurer, deputies and duly authorized City employees shall have the power to examine all necessary books and records of any person doing business in the City to determine whether that business is required to be taxed by the terms of this Article, or for the purpose of ascertaining the amount of any tax required to be paid by the provisions hereof. The City Treasurer and all deputies and duly authorized City employees shall have the power and authority to enter, free of charge, at any reasonable time any place of business and to demand the exhibition of a certificate of payment. Unless exempted by the provisions of this Code, any person having any such certificate theretofore issued in his/her possession or under his/her control, or who is required to have such certificate, and who fails to exhibit the same on demand shall be guilty of a misdemeanor and be further subject to the penalty provided for by Section 31.0131 of this Code.

Regularly salaried and detailed employees of the City Treasurer's Office shall have the power to arrest any person without a warrant whenever they have reasonable cause to believe that the person to be arrested had committed a misdemeanor in their presence which is a violation of a statute or this Article which the employee has the duty to enforce, and to issue a notice to appear, pursuant to Penal Code section 836.5. *(Amended 2-23-1987 by O-16815 N.S.)*

§31.0130 Branch Establishments

Separate certificates of payment of business tax must be obtained for each branch establishment or business location. Each certificate shall certify the holder has paid the business tax applicable to the business at the address or location or in the manner designated in such a certificate, except as provided for in Section 31.0302 of this Code.

(Amended 2-23-1987 by O-16815 N.S.)

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§31.0131 Taxes — Time of Payment — Penalties

Except as otherwise provided, business taxes for businesses currently holding a certificate shall be due and payable on the first day of the month following the expiration date of the certificate of payment. For new businesses, business taxes shall be due and payable on the date on which the business commences. Certificates issued to new businesses shall expire on the last day of the 12th month following the day the business commences.

Except as otherwise provided, penalties for failure to pay the amount required when due will be assessed as follows:

Business taxes are past due on the fifteenth (15th) day following the day they become due. Any person who fails to make a payment before the fifteenth (15th) calendar day following the due date will be assessed a late penalty of twenty-five dollars (\$25) or ten percent (10%) of the total business tax due, whichever is greater. In addition, beginning one calendar month from the due date, a penalty charge of one percent (1%) per month, or any part of a month, will be added to any past due taxes and penalties.

Operating a business without a current certificate of payment shall be grounds for the filing of a complaint against the person or persons responsible for paying the taxes under the provisions of this Article. Any action filed to collect taxes and penalties due under this Article shall be commenced no later than three years from the date the tax becomes delinquent.

(Retitled to “Taxes— Time of Payment— Penalties” and amended 2–23–1987 by O–16815 N.S.)

(Amended 7-21-2004 by O-19297 N.S.)

§31.0132 Acceptance of Tax

No certificate of payment will be issued until the full sum owed is paid. Payment must be made in lawful U.S. currency. Acceptance of any sum less than the amount required shall not be construed as meeting the requirement of this section, and no certificate shall be issued for partial payment. However, the City Treasurer is authorized to waive or make administrative adjustments to taxes or penalties due when such adjustments are in the best interest of the City for reasons of efficiency and cost effectiveness.

(Retitled to “Acceptance of Tax” and amended 2–23–1987 by O–16815 N.S.)

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§31.0133 Regulations — City Treasurer

The City Treasurer of The City of San Diego is hereby authorized to make such rulings and regulations as may be necessary to aid in the administration, implementation and enforcement of the provisions of this Code. A copy of any regulation promulgated hereunder shall be filed in the office of the City Clerk. Copies shall be provided upon request of any person.

(Amended 2-23-1987 by O-16815 N.S.)

§31.0134 Taxes — Prosecutions — Remedies of City

A prosecution resulting in the conviction or the acquittal of any person for engaging in any business without first obtaining a certificate of payment of business tax to conduct such business shall not relieve such person from paying the business tax and penalties due and unpaid at the time of such conviction or acquittal, nor shall the payment of any tax prevent a criminal prosecution for the violation of any of the provisions of this Article. All remedies prescribed hereunder shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Article.

(Retitled to “Taxes— Prosecutions— Remedies of City” and amended 2-23-1987 by O-16815 N.S.)

§31.0135 Notice or Bill by City Treasurer

The City Treasurer is not required to send a notice or bill to any person subject to the provisions of this Article, and the failure to send such notice or bill shall not affect the validity of any fee or penalty due hereunder, or the duty of such person to pay required taxes.

(Amended 2-23-1987 by O-16815 N.S.)

§31.0140 Written Statements Required at Time of Declaration

Every person required to pay a tax under this Article shall furnish to the City Treasurer, on forms approved by the office of the Treasurer, a sworn Declaration of Business Tax, accompanied by the tax amount due and setting forth the following:

- (a) The name and address of the business and whether a sole proprietorship, partnership, corporation or other business entity;
- (b) The exact nature or kind of business;

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- (c) The place where such business is conducted or to be conducted;
- (d) The names and residence address of the owners of the business, and if a corporation, the names and residence addresses of the principal officers thereof;
- (e) The number of persons employed by the business:
 - (1) For a new business, the number of persons to be employed may be estimated, and is subject to subsequent verification by the City Treasurer or duly authorized City employees;
 - (2) For an existing business, the number of persons employed shall be the number of persons appearing on the payroll of said business immediately prior to the license expiration date.

Owners of a business are not to be considered as employees; however, paid officers of a corporation are considered employees.

- (f) Such other information as the Treasurer may require. All declarations shall be signed by the owner of the business, or if a corporation, at least one officer of the business or by another authorized person as may be approved by the City Treasurer. Changes in the information appearing upon said sworn declaration shall promptly be reported to the City Treasurer on a form approved by the Treasurer. The declaration and each of the items it contains shall be subject to audit and verification by the City Treasurer or a duly authorized employee, who is hereby authorized to examine, audit and inspect the books and records of any business as may be necessary to ascertain the correct amount of the tax due.

All certificate holders, declarants, and all persons engaged in business are required to permit an examination of their books and records for the purposes of this section or to determine whether the provisions of this Article shall apply.

The information or data obtained from an examination or audit, or from any statement required hereunder, shall be used for official City purposes only, and shall not be provided to any person for any other purpose except as provided for in this section, or as required by state or federal law.

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Nothing in this section shall prohibit the City Treasurer from furnishing to any citizen upon request the name under which the business is conducted, the address and type of business and the name of owner of the business, including the names of partners, if a partnership, or the names of officers, if a corporation.

Any person who willfully makes, provides, or signs any false or untrue statement which is filed or furnished pursuant to this section is guilty of a misdemeanor.

(Retitled to "Written Statements Required at Time of Declaration" and amended 2-23-1987 by O-16815 N.S.)

§31.0141 Failure to File Declaration or Corrected Declaration

If any person fails to file any Declaration required hereby within the time prescribed, or if after demand therefor made by the City Treasurer fails to file a corrected declaration, the City Treasurer may determine the amount of business tax due from such person from such information as he may be able to obtain and if necessary may estimate the tax required to be paid hereunder upon the basis of external indices such as stock on hand, capital invested, dividends paid, sales or other taxes paid, number of people employed, or by the consideration of other facts. When such a determination is made, the City Treasurer shall give notice of the amount so assessed by serving the same personally or by depositing same in the United States Post Office at San Diego, California, first-class postage prepaid thereon, addressed to the person so assessed at his last known address. Such person may, within ten (10) calendar days after the mailing or personal service of such notice, make application in writing to the City Treasurer for a hearing on the amount of the tax. If such application is not so made within the time prescribed, the assessment shall become final. If such an application is filed, the City Treasurer must set the matter for hearing within fifteen (15) calendar days before a board consisting of the City Treasurer, the City Auditor and Comptroller and the City Attorney, or their duly appointed deputies. The board shall consider all evidence produced and shall make written findings thereon. A copy of such findings shall be served upon the applicant, in the manner prescribed above for the service of notice of assessment. Such findings shall become final at the expiration of five (5) calendar days from the date of service, unless within which time new information is filed by the applicant and the board makes such modifications as may be deemed necessary; thereupon the final assessment shall be made.

(Retitled to "Failure to File Declaration or Corrected Declaration" and amended 2-23-1987 by O-16815 N.S.)

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§31.0142 Additional Powers of City Treasurer — Declaration of Business Tax and Fees

The City Treasurer shall have, in addition to all other powers conferred by law, for good cause shown, the power to extend the time for filing any such declaration for a period not to exceed thirty (30) calendar days, and in such case waive any penalty that would have otherwise accrued; and, with the written approval of the City Attorney and subject to the provisions of the City Charter, to compromise any claim for tax amounting to less than five hundred dollars (\$500); and, with the approval of the City Attorney and the City Council, to compromise any claim for tax amounting to five Hundred Dollars (\$500) or more.

In cases where any penalty results from administrative error by any City employee, the City Treasurer shall have the power to waive such penalty, and to cause any refund to be issued.

Notwithstanding the provisions of Section 31.0131, the Treasurer shall also have the power to extend the term of the expiration date of a certificate of payment and to prorate the taxes due therefor, or to waive such prorated fee when it is administratively infeasible, for a period not to exceed six months, in order to efficiently phase in the renewal or reissuance of certificate of payment.

(Retitled to “Additional Powers of City Treasurer – Declaration of Business Tax and Fees “ and amended 2–23–1987 by O–16815 N.S.)