

AUG 08 2018
BLANCA SANTOS
JOE PAUL GONZALEZ, COUNTY CLERK
BY BLA SANTOS
DEPUTY CLERK

RESOLUTION NO. 2018- 56

**A RESOLUTION OF THE SAN BENITO COUNTY BOARD OF SUPERVISORS
CALLING FOR AN ELECTION TO SUBMIT A MEASURE TO THE VOTERS TO
CONSIDER AN ORDINANCE ESTABLISHING A BUSINESS LICENSE TAX IN
ORDER TO GENERATE REVENUE FOR LOCAL GOVERNMENT SERVICES,
SUBMITTING THE PROPOSED ORDINANCE TO THE ELECTORATE FOR
APPROVAL, AND REQUESTING AND ORDERING CONSOLIDATION WITH THE
NOVEMBER 6, 2018 GENERAL ELECTION**

WHEREAS, the continuation of general funded county functions, such as law enforcement, fire protection and road maintenance is dependent upon sufficient revenue to maintain operations and to offset expenses;

WHEREAS, there is insufficient revenue to maintain essential public services at a reasonable level;

WHEREAS, the business license tax was historically collected for years, if not decades, before it was discontinued in the 1996, when the County attempted a ballot measure increasing the rate imposed on mining operations;

WHEREAS, historically the business license tax generated \$170,000 of general fund revenues used to fund certain essential services including, without limitation, law enforcement, fire, and road maintenance;

WHEREAS, Article XIII C, Section 2 of the California Constitution, and Government Code Section 53723 authorize the Board of Supervisors of the County of San Benito to impose, extend, or increase a general tax upon a majority vote of the voters; and,

WHEREAS, the San Benito County Board of Supervisors may submit to the voters, without a petition, an ordinance for the repeal, amendment, enactment of any ordinance pursuant to Elections Code Section 9140; and,

WHEREAS, it would be economical to consolidate the local election with the general election;

NOW THEREFORE, BE IT RESOLVED, that Ordinance ____, known as the San Benito County Business License Tax Ordinance, attached hereto as Exhibit A and incorporated herein by this reference, be submitted to the voters in the November 6, 2018 general election, and which if approved, shall be enacted and effective. The question submitted to the voters shall be substantially as follows:

MEASURE ____ (to be designated by Elections Department)

To provide and increase law enforcement, fire services, road maintenance, and other local governmental services, shall the proposed business license tax ordinance be adopted and enacted to impose a business license tax at a rate of \$30 to \$118 per business, \$.66 to \$7.80 per employee, and \$.10 per ton of minerals depleted, indexed by a COLA, in the unincorporated area of San Benito County?	Yes ☐
	No ☐

This question requires the approval of a simple majority (50% plus 1) of those voting. The measure shall be submitted to all voters in San Benito County. The referenced Ordinance is attached hereto as Exhibit 1 and incorporated in this Resolution by this reference; and,

BE IT FURTHER RESOLVED THAT pursuant to Elections Code, including but not limited to section 10400, the election for this measure shall be consolidated with the general election to be conducted on November 6, 2018, that the consolidated election shall be held and conducted in the manner prescribed in Elections Code, and the ballots to be used in the election shall be in form and content as required by law; and,

BE IT FURTHER RESOLVED THAT pursuant to the provisions of Elections Code Section 1002, the Board of Supervisors authorizes and directs the San Benito County Clerk/Registrar of Voters to render all services necessary for the conduct of the election, including providing all notices and taking all other actions necessary to holding said election. The costs of said election are to be paid by the County regardless of the election outcome; and,

BE IT FURTHER RESOLVED THAT the San Benito County Counsel is hereby requested to prepare an impartial analysis of the Measure; and,

BE IT FURTHER RESOLVED THAT the San Benito County Auditor is hereby requested to perform a fiscal impact analysis of the proposed measure's fiscal impact; and,

BE IT FURTHER RESOLVED that arguments in favor of and in opposition to the ballot measure and rebuttal arguments are permitted. The County hereby adopts the provisions of California Elections Code Sections 9161 through 9167 regarding the acceptance of arguments relating to ballot measures. Any arguments for and against the measure shall be filed in accordance with all applicable provisions of law. Arguments for and against shall be submitted no later than 5:00 p.m. on August 14, 2018, by 5:00. Rebuttal arguments shall be submitted no later than 5:00 p.m. on August 21, 2018; and,

BE IT FURTHER RESOLVED that the business license tax imposed by the ordinance is a general tax. As a result, the revenue generated by this general tax can be spent for unrestricted general revenue purposes; and,

BE IT FURTHER RESOLVED THAT the adoption of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. ("CEQA"))

and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines"), and would not be a project pursuant to 14 CCR 15378(3),(4),(5); and,

BE IT FURTHER RESOLVED THAT this resolution shall be liberally construed to achieve its purposes and preserve its validity. If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this resolution. The Board of Supervisors hereby declares that it would have passed this resolution and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid, and, to that end, the provisions hereof are hereby declared to be severable; and,

BE IT FURTHER RESOLVED that the County Administrative Officer, or designee, is authorized to take all administrative actions necessary to accomplish the orders set forth in this Resolution; and,

BE IT FURTHER RESOLVED that this resolution shall take effect on and after its adoption.

THE FOREGOING was passed and adopted by the following vote of the Board of Supervisors of the County of San Benito on August 7, 2018, by the following vote:

AYES:	Supervisors:	Botelho, De La Cruz, Medina, Rivas, Muenzer
NOES:	Supervisors:	<i>None</i>
ABSTAIN:	Supervisors:	<i>None</i>
ABSENT:	Supervisors:	<i>None</i>


Anthony Botelho, Chair
Board of Supervisors

ATTEST:


Janet Slibsager
Clerk of the Board

APPROVED AS TO LEGAL FORM:

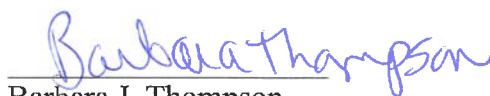

Barbara J. Thompson
County Counsel

EXHIBIT “1”

PROPOSED ORDINANCE

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF SAN BENITO, STATE OF CALIFORNIA, TO
APPROVE AND READOPT AND AMEND ARTICLE IV OF TITLE 5 OF THE SAN
BENITO COUNTY CODE PERTAINING TO THE BUSINESS LICENSE TAX AND TO
INCREASE THE AMOUNT OF TAX PAID THEREUNDER**

THE PEOPLE OF THE COUNTY OF SAN BENITO ORDAIN AS FOLLOWS:

Section 1: Article IV "Business License Tax" Chapter 5.03 of Title 5 of the San Benito County Code shall be amended to read as follows::

ARTICLE IV. BUSINESS LICENSE TAX

SUBARTICLE I. GENERAL PROVISIONS

§ 5.03.090 SHORT TITLE.

This article shall be known as the "Business License Tax Article".

§ 5.03.091 TAX IMPOSED.

There is established and imposed, commencing on the effective date of the ordinance codified in this article, a business license tax at the rates set forth in this article.

§ 5.03.092 PURPOSE OF ARTICLE.

This article is enacted solely to raise revenue for the general governmental purposes of the county and not for purposes of regulation. All of the proceeds from the tax imposed by this article shall be placed in the county's general fund and used for the usual current expenses of the county, howsoever incurred.

§ 5.03.093 EFFECT ON OTHER ORDINANCES.

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

§ 5.03.094 DEFINITIONS.

For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section.

APARTMENT. A room or suite of rooms which is/are designed to be occupied by one family for living or sleeping purposes in an apartment house.

APARTMENT HOUSE. A building in which three or more families are living independently of each other.

AVERAGE NUMBER OF PERSONS EMPLOYED. The average number of employees located within the unincorporated area of the county engaged during the three-month period of maximum employment, excluding therefrom temporary seasonal employees not employed for a period in excess of two weeks.

BOARD. The Board of Supervisors of the County

BUSINESS. BUSINESS includes all professions, trades, occupations and callings carried on in the unincorporated area of the County of Santa Benito for profit or livelihood, or those conducted by the exercise of corporate or franchise powers. BUSINESS also includes, without limitation, every kind of commercial enterprise, and including the operation of games, machines or mechanical devices in the unincorporated area of the County of San Benito.

COUNTY. The County of San Benito.

CONCESSIONER. The person who rents or leases a portion of a premises for some specific use.

CONSTRUCTION CONTRACTOR. Every person conducting or carrying on a business who is required to be licensed as a contractor by the state and who undertakes to, or offers to undertake to, or purports to have the capacity of undertaking to, or submits bids to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding, or other structures or works in connection therewith. The term **CONTRACTOR**, as used in this section, also includes **SUBCONTRACTOR** and **SPECIALTY CONTRACTOR**.

CONTRACT CONSTRUCTION BUSINESS. All business activities carried out by construction contractors.

DEPLETED MINERALS. Depleted minerals" means finished mineral products excavated or removed from within the county and shall be measured by the weight of the FINISHED PRODUCT(S). For purposes of assessing the business license tax specified in this article, **DEPLETED MINERALS** shall be measured at the time the minerals are sold, are transported out of San Benito County, or are used on any project within San Benito County, whichever event occurs first.

EMPLOYEE. A person who works for an employer, where right or control exists with the employer, where directions on performance of work can be given by employer, and where breach of contract is not involved if work is halted by employer or employee; furthermore, if there is prima facie evidence that a person is included on the payroll deductions, such as federal taxes and social security, the person may be considered to be an employee.

ENGAGING IN BUSINESS. Commencing, conducting or continuing in business, and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

FINISHED PRODUCT means the raw minerals which have finally been processed to whatever degree, but to which no amendments, such as cement, petroleum-based products or the

like, have yet been added. In any case, any mineral will be considered a ***FINISHED PRODUCT*** when it leaves San Benito County.

HOTEL or MOTEL. A building or series of buildings on one site, containing three or more units used for guest occupancy, and intended and designed to be used for occupancy by temporary guests, and having the usual characteristics of a hotel or motel.

ITINERANT VENDOR. All persons, both principal and agent, who engage in a temporary and transient business in the unincorporated area of the county, providing services, selling articles of wearing apparel, dry goods, fancy foods, notions, jewelry, cutlery, groceries, harness, machinery, vehicles of all kinds, hardware, photographs or photograph, tinware, mill products or merchandise of any class or character with the intentions of continuing the business in such area of the county for a period of not less than one day and not more than 90 days, and who for the purpose of carrying on such business have no fixed place for business, or hire, lease or occupy any room, building or structure for the exhibition or sale of the merchandise or services, or from which room, building or structure the sales are to be made, or business solicited by means of samples or delivery from house to house. Any such person or firm so engaged shall not be relieved from the provisions of this article by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such temporary or transient business in connection with, or as a part of, or in the name of, any local dealer, merchant or auctioneer.

MANUFACTURING BUSINESS. Any business wherein persons are engaged in making materials, raw or partially finished, or assembling finished parts, into articles suitable for use.

MINE. The same meaning as specified in Cal. Public Resources Code § 2200.

MINERALS. The same meaning as specified in Cal. Public Resources Code § 2005.

MINING OPERATION. The business conducted by a mining operator.

MINING OPERATOR. The person operating a mine, or the person owning a royalty or other interest in the production of a mine. For purposes of this article, the person operating a mine and the person owning a royalty or other interest in the mine shall be jointly and severally liable for the tax imposed by this article.

PERSON. All domestic and foreign corporations, associations, syndicates, joint stock corporations, limited liability companies, partnerships of every kind, clubs, businesses or common law trusts, societies and individuals transacting and carrying on any business in the unincorporated area of the county, other than as an employee.

PROCESSING. Any mining activity occurring after the severance of the mineral resources. ***PROCESSING*** shall include, without limitation, activities such as screening, washing and crushing.

PROFESSIONAL.

(1) Any person engaged in business or activity characterized by or conforming to the technical or ethical standards of a profession, including, but not limited to, those listed below:

(a) Accountant;

- (b) Appraiser;
- (c) Architect;
- (d) Assayer;
- (e) Attorney;
- (f) Chemist/pharmacist;
- (g) Chiropractor;
- (h) Consultant;
- (i) Dentist;
- (j) Dermatologist;
- (k) Designer;
- (l) Electrologist;
- (m) Engineer;
- (n) Chemical;
- (o) Civil;
- (p) Consultant;
- (q) Electrical;
- (r) Hydraulic;
- (s) Mechanical;
- (t) Mining;
- (u) Structural;
- (v) Entomologist;
- (w) Geologist;
- (x) Insurance agent;
- (y) Landscape architect;
- (z) Optician;
- (aa) Optometrist;
- (bb) Osteopath;
- (cc) Physician;

- (dd) Physiotherapist;
- (ee) Podiatrist;
- (ff) Real estate broker;
- (gg) Radiologist;
- (hh) Surgeon; and
- (ii) Veterinarian

(2) Each person engaged in one of the above-entitled professions, and such other professions as may be defined by the Tax Administrator, shall be deemed to be conducting a separate business for purposes of the business license tax. When two or more professionals employ persons jointly, or by joint agreement or arrangement, each such professional shall be jointly and severally responsible for the payment of the business license tax based on employees, however, the total number of employees shall be divided equally by the number of professionals in the office, and rounded up to the nearest whole employee number to determine the tax for each professional.

RETAIL BUSINESS. Every business conducted for the purpose of selling or offering for sale any goods, wares or merchandise other than as part of a “wholesale business”.

SEVER. To remove from, or cause to become separated from, the land.

TAX ADMINISTRATOR. The county’s Tax Collector.

TAX COLLECTOR. The County of San Benito Tax Collector or such person that the Tax Collector may designate as his/her designee.

TAXPAYER. Any person liable for the payment of the tax imposed by this article.

WHOLESALE BUSINESS. Every business conducted solely for the purpose of selling goods, wares or merchandise whole lots for resale.

WITHIN THE COUNTY. Within the exterior geographical limits of the unincorporated area of the county, not including any territory of the incorporated cities within San Benito County, or the territory held under ownership of the federal government.

§5.03.095 RULES AND REGULATIONS.

The Board may make rules and regulations not inconsistent with the provisions of this article as may be necessary or desirable to aid in the enforcement of this article.

§ 5.03.096 EMPLOYMENT OF NECESSARY PERSONNEL.

The Board may employ accountants, auditors, investigators and other expert and clerical assistance necessary to enforce its powers and perform its duties under this article.

§ 5.03.097 RESOURCE MANAGEMENT AGENCY.

The Resource Management Agency, when requested by the Board or Tax Collector, shall provide information to the Board or Tax Collector to aid in implementing this article.

§ 5.03.098 REQUIRED NOTICES; CERTIFICATE BY BOARD AS EVIDENCE.

(A) Any notice provided by this article to be mailed or served may be given either by mailing or by personal service. The giving of the notice shall be deemed complete at the time of the deposit in a United States post office, or a mailbox, subpost office, substation, mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason, or in the case of personal service, at the time of delivery.

(B) A certificate by the county or an employee of the county stating that a notice required by this article was given by mailing or personal service is prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this article for the giving of a notice.

§ 5.03.099 DISCLOSURE OF BUSINESS AFFAIRS, OPERATIONS OR OTHER INFORMATION SUBMITTED IN REQUIRED REPORT OR RETURN; AUTHORIZATION OF EXAMINATION OF RECORDS.

Neither the county nor any person having an administrative duty under this article shall disclose in violation of the Public Records Act the business affairs, operations or any other information pertaining to a taxpayer which was submitted to the county in a report or return required by this part, or permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not authorized by the Public Records Act or this article, or other provision of state or federal law to receive such information.

§ 5.03.100 SUCCESSORS TO TAXPAYER; TAX INFORMATION.

A taxpayer's successors, receivers, trustees, executors, administrators, assignees or guarantors, if directly interested, may be given information regarding the determination of any unpaid tax or the amount of taxes or penalties required to be collected or assessed.

§ 5.03.101 EFFECT ON PUBLIC ACCESS TO RELEVANT INFORMATION.

Except as provided herein, this article does not limit nor increase public access to information made available pursuant to any other state or local law, regulation or ordinance.

SUBARTICLE II. BUSINESS LICENSE TAX

§ 5.03.120 LICENSE REQUIRED.

(A) On or after July 1, 2019, no person shall conduct any business in the unincorporated area of the county without having an unrevoked license from the county to do so, valid and in effect at the time, and without complying with any and all regulations of the business contained within this article.

(B) For purposes of this article, conducting business in the unincorporated areas of the county means transacting or carrying on any business in the unincorporated area of the county for at least 30 days, not necessarily consecutive. It shall be immaterial whether such business has a physical office in the unincorporated area of the county.

(C) Notwithstanding division (B) above, a business license for an itinerant vendor shall be required when that vendor conducts business within the unincorporated area of the county for at least one day, or portion thereof, such as that the license would be required before the conduct of business the second day in the County within a one year period.

§ 5.03.121 CONCESSIONER.

(A) *General.* Every person who operates any business, whether upon a cost, rental or commission basis as a concession or upon rented floor space in or upon the premises of any person licensed under any provision of this article, is required to obtain a separate and independent license pursuant to the appropriate provisions hereof, and shall be subject to all provisions of this article.

(B) *Non-profit corporations.* Any nonprofit corporation which is exempt from both federal and state income tax shall be exempt from the payment of a business license tax.

§ 5.03.122 CLASSIFICATION AND TAX RATE.

(A) *Class A.* Each retail, wholesale, construction and manufacturing business, excluding a mining operation, and each business for which no other classification is provided in this section, shall be treated as a Class A business. Each Class A business shall pay an annual basic license tax specified in section 5.03.123(A), in addition to the annual payment of an amount determined by multiplying the average number of employees by the Class A business employee multiplier specified in section 5.03.123(B).

(B) *Class B.* Each service business, hotel and motel, rental property, entertainment services, food service, apartment house, each business engaged in the leasing or renting of commercial or industrial space, and each business engaged in providing recreation and entertainment services and facilities, shall be treated as a Class B business. Each Class B business shall pay an annual basic license tax specified in section 5.03.123(A), in addition to the annual payment of an amount determined by multiplying the average number of employees by the Class B business employee multiplier specified in section 5.03.123(B);

(C) *Class C.* Each professional shall be treated as a Class C business. Each Class C business shall pay an annual basic license tax specified in section 5.03.123(A), in addition to the annual payment of an amount determined by multiplying the average number of employees by the Class C business employee multiplier specified in section 5.03.123(B);

(D) *Class D.* Each itinerant vendor shall be treated as a Class D business. Each Class D business shall pay a basic license tax specified in section 5.03.123(A), in addition to the payment of an amount determined by multiplying the average number of employees by the Class D business employee multiplier specified in section 5.03.123(B).

(E) *Class E.* Each mining operation shall be treated as a Class E business. Each Class E business shall pay a basic license tax specified in section 5.03.123(A), in addition to the annual payment of an amount determined by multiplying the number of tons of the minerals depleted during the preceding year by the tonnage multiplier specified in section 5.03.123 (C).

§ 5.03.123 TAX DUE AND ANNUAL ADJUSTMENT OF TAX RATES.

(A) The base license tax for each Class A business, Class B business, Class C business, and Class E business, effective July 1, 2019 is \$118.80. The base license tax for a Class D business effective July 1, 2019, is \$30.00. The above rates shall be adjusted as specified in section 5.03.123 (D).

(B) **Employee Multipliers.** Commencing the fiscal year beginning July 1, 2019, the employee multiplier for Class A, Class B, Class C, and Class D business as are set forth below shall be added to the base license tax rate to determine the entire business license tax due. These rates shall be adjusted as Section 5.03.123(D):

Class A Business - \$2.64 per average number of employees

Class B Business - \$5.22 per average number of employees

Class C Business- \$7.80 per average number of employees

Class D Business - \$0.66 per average number of employees

The above rates shall be adjusted as specified in Section 5.03.123(D).

(C) **Tonnage Multiplier.** For fiscal year beginning July 1, 2019, the tonnage multiplier shall be \$.10 per ton of minerals depleted. The tonnage multiplier, in subsequent years shall be adjusted as specified in section 5.03.123(D). Beginning July 1, 2019, the tonnage multiplier shall be determined and added to the business license base rate to determine the total business license tax rate due.

(D) Commencing on July 1, 2019, and every July 1st thereafter, the Tax Administrator shall annually adjust the amount of the basic license tax rates, the employer multiplier rates, and the tonnage multiplier rates. The basic license rate, the rates for the average number of employees and for the tonnage, for each class of business specified in § 5.03.122 and 5.03.123 by the annual change in the Consumer Price Index, All Urban Consumers, for the San Francisco-Oakland-San Jose Metropolitan Area, published by the Bureau of Labor Statistics, or any replacement index published by the bureau ("index"). For example, on July 1, 2019, the basic license tax rates and the additional license tax rates shall be adjusted by multiplying them by the April 2019, index divided by the April, 2018 index, to determine the percentage increase in the Consumer Price Index. The tax rate once increased shall be rounded to the nearest cent.

§ 5.03.124 DATA; PREVIOUS YEARS.

For the purposes of determining the number of employees or the tonnage as required in §§5.03.122 and 5.03.123, the business owner shall provide the necessary data for the previous county fiscal year. The Tax Collector shall compute the tax based on accurate information from the previous county fiscal year.

§ 5.03.125 REVIEW OF CLASSIFICATION.

(A) In any case where a licensee or an applicant for a license believes that the individual business of the licensee or applicant is not assigned to the proper classification under this article because of circumstances peculiar to it, as distinguished from other businesses of the same kind, the licensee or applicant may apply to the Tax Administrator for reclassification. The application shall contain such information as the Tax Administrator may deem necessary and require in order to determine the applicant's individual business is properly classified. The Tax

Administrator shall then assign an individual business to a classification shown to be proper on the basis of the investigation. The proper classification is that which, in the opinion of the Tax Administrator, most nearly fits the applicant's individual business.

(B) The reclassification shall not be retroactive, but shall apply at the time of the next regularly ensuing calculation of the applicant's tax, except where the applicant applies for reclassification within 30 days of his or her original classification, in which case the reclassification shall be retroactive.

(C) The Tax Administrator shall notify the applicant of the action taken on the application for reclassification. The notice shall be given by mail.

§ 5.03.126 BRANCH ESTABLISHMENTS.

A separate license must be obtained for each branch establishment or location of the business transacted and carried on and for each separate business at the same location; provided, that warehouses and distributing plants used in connection with or incidental to a business license under the provisions of this article shall not be deemed to be separate places of business or branch establishments. A separate business at the same location is a business operation conducted under a different name which business operation provides a product or service unrelated to the products or services provided by the other business operation at the same location. For the purpose of a Class E license, the mining operator shall obtain only one business license, which license shall be based upon the total of all minerals depleted by all operations within the unincorporated area of county. The original class E license shall be displayed at the principal mining operation location. Copies shall be displayed at all other mining operation locations.

§ 5.03.127 EXEMPTIONS.

No tax prescribed in this article shall be deemed or construed to apply to any of the following persons who are exempted from payment thereof:

(A) *Agricultural.* When it applies to growers of livestock, poultry or agricultural products for sale or disposal by growers only. This exception shall not apply to agricultural suppliers and agricultural support businesses, including but not limited to businesses relating to irrigation, seeds, fertilizer, transportation, supplies, services, and/or labor companies, or to businesses involved in cannabis/marijuana cultivation.

(B) *Charitable and non-profit organizations.* Any church, school, charitable, benevolent or social organizations conducting any exhibition, show or performance for the exclusive benefit of the church, school, benevolent or social organization. Also any bona fide church, bona fide school, bona fide veterans' organization or bona fide charity conducting any sale or business for the exclusive benefit of the church, school, veterans' organization or charity provided such is located within the unincorporated area of the county. The exemption shall not apply to any person operating any business, show, sale, exhibition or enterprise for profit who shares such profit with any church, school, veterans' organization, charity or charitable benevolent or social organization.

(C) *Conflict with federal and state law.* Any person conducting any business exempt by virtue of the Constitution or applicable statutes of the United States or of the State of California from the payment to counties of the taxes as are herein prescribed is exempt from license.

(D) *Day care facilities.* Day care homes and day care centers shall be exempt from license taxes.

(E) *Disabled veterans.* Any honorably discharged soldier, sailor or marine from the military or naval services of the United States of America, who is unable to earn a livelihood by manual labor, and who hawks, peddles or vends any kind of goods in the unincorporated area of the county (where the sale of such goods would otherwise be allowed by state and local law), provided that the person has obtained, in advance, a written permit issued by a veteran's service officer of the county and a written permit from the county's Administrative Officer.

(F) *Employees.* No person who is an employee or who is the direct representative of a licensee shall be required to pay a license tax for doing any part of the work of the licensee.

(G) *Growers.* Persons selling or otherwise disposing of livestock, poultry or agricultural products raised by the seller only.

(H) *Nurses.* Nurses shall be exempt from license taxes.

(I) *Rooming houses.* Rooming houses with two rental rooms or less.

(J) *Teachers.* Teachers or instructors, including, but not limited to teachers or instructors of the fine arts such as painting, vocal and instrumental music, drawing, sculpture, ceramics, pottery, dancing, dramatics and arrangements, providing that all of the following conditions exist:

- (1) The instruction is given only in the homes of the teacher or instructor or student:
- (2) The teacher or instructor has no employee, or employees; and
- (3) The teacher or instructor is not required to hold a sales tax permit.

(K) *Vending machines.* Persons operating vending machines used for the sale of food, gum, tobacco, drinks or other merchandise, where the vending machines are operated in connection with a regularly licensed business and in the same premises.

§ 5.03.128 LICENSE NONTRANSFERABLE.

No license hereunder shall be transferred or assigned.

§ 5.03.129 LICENSE TAX; HOW PAYABLE.

The license tax shall be paid to and collected by the Tax Administrator who shall sign all licenses issued by the county and shall number and keep a record thereof. The record shall show the numbers, dates thereof, to whom issued, the type of business licensed, the location thereof, the number of employees, the time of expiration and the amount of license tax.

§ 5.03.130 LICENSE APPLICATION; CONTENTS.

Before any license is issued, a written application by the applicant shall be made upon a form prescribed by the Tax Administrator. The applicant shall supply any information which the Tax Administrator may require to enable him or her to issue the type of license applied for. The application shall be signed by the owner, if a natural person, or, in the case of a corporation, by an executive officer or some person specifically authorized by resolution of the corporation to sign the application. The Tax Administrator may require such information as may be necessary in order to issue a license renewing an existing license; provided, however, that if there is a change of ownership or operation of any business, the new owner or operator shall immediately notify the Tax Administrator thereof, and obtain a new license.

§ 5.03.131 COUNTY COMPUTATION OF AMOUNT TO BE PAID; INTEREST ON TAX DETERMINED; PENALTY; NOTICE OF DETERMINATION.

(A) (1) If the county is dissatisfied with the information filed by, or the amount of tax paid to the county by, any taxpayer, or if no application has been filed or no payment or payments of the tax have been made to the county by a taxpayer, the Tax Administrator may compute and determine the amount to be paid, based upon any information available to the county. The amount of tax so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to § 5.03.134 from the date the amount of the tax or any portion thereof became due and payable until the date of payment.

(2) The Tax Administrator shall give to the taxpayer written notice of the determination of deficiency.

(B) If any deficiency in the tax owed is found to have been occasioned by negligence or intentional disregard of this article, an additional penalty of 10% of the amount of the deficiency shall be added, exclusive of other penalties, plus interest as provided in division (A) of this section.

(C) If any deficiency is found to be occasioned by fraud or an intent to evade this article, an additional penalty of 25% of the amount of the determination shall be added, plus interest as provided in division (A) of this section.

§ 5.03.132 LICENSE TAX; WHEN PAYABLE.

All licenses issued pursuant to this article shall be paid in advance, and shall be dated on the day of issuance, and shall, where an annual license is issued, expire at 12:00 midnight on June 30 next ensuing year, except for the first year, all businesses required by this code shall require a license no later than July 1, 2019, which shall be valid through June 30, 2020. For the 2019 calendar year only, licenses obtained after July 1, 2019 but prior to August 1, 2019, shall not owe a late penalty.

§ 5.03.133 TERMS OF LICENSE.

The license term shall be, except as otherwise provided in this article, for a term of one year, commencing with July 1, and ending on June 30 of the following calendar year, and except as hereinafter otherwise provided, a full year's license tax shall be paid, regardless of time of the year in which the license shall be issued, and all license taxes shall be paid for in advance. For

annual licenses first issued in the second half of the fiscal year for new businesses, one-half of the applicable license tax shall be paid.

§ 5.03.134 PENALTIES FOR DELINQUENCIES.

(A) In the event that the initial licenses required under this article for existing businesses are not applied within 60 days of July 1, 2019, a penalty of 10% shall be added to the cost of the licenses; and if not applied for within 90 days of July 1, 2019, a total penalty of 20% shall be added to the cost of the licenses.

(B) Thereafter, in the event that the licenses required under this article are not obtained, or the appropriate tax is not paid, on or before the starting date of the business, a penalty of 10% shall be added to the cost of the licenses; and if the license is not obtained, or the appropriate tax is not paid within 30 days after the starting date of the business a total penalty of 20% shall be added to the cost of the licenses.

(C) On or after July 1, 2019, if a license is not renewed or if the appropriate tax is not paid within 30 days from the beginning of the fiscal year, a 10% penalty shall be added to the cost of the license, and if not renewed within 60 days from the beginning of the fiscal year, a total penalty of 20% shall be added to the cost of the license.

(D) In addition to the penalties imposed, any person who fails to pay any tax imposed by this article shall pay interest at the rate of 1-1/2% per month or fraction thereof on the amount of the tax, exclusive of penalties, from the first day of the month following the month for which the tax was payable. No interest penalty shall accrue from July 1, 2019 through September 1, 2019.

§ 5.03.135 LICENSE TAX; DEBT TO COUNTY.

The amount of any license tax imposed under this article shall constitute a debt to the county, and any person conducting business within the unincorporated area of the county without having a license from the Tax Administrator to do so shall be subject to an action in the name of the county, in any court of competent jurisdiction, for the collection of the amount of the license tax imposed by this article, including applicable penalties and attorneys' fees and costs.

§ 5.03.136 CONVICTION; EFFECT ON DEBT.

The conviction and punishment of any person having conducted business without a license shall not excuse or exempt the person from the payment of any license tax due or unpaid at the time of the conviction, and nothing herein shall prevent criminal prosecution for any violation of any provisions of this article.

§ 5.03.137 EXHIBITION OF LICENSE.

Every person having a license under the provisions of this article for conducting business at a fixed place shall keep the license posted for exhibition while in force in some conspicuous part of the place of business. Every person having such a license, and not having a fixed place of business, shall carry the license with him or her at all times while carrying on the business for which the same was granted. Every person having a license shall procure and exhibit the same, when applying for a renewal thereof, and whenever requested to do so by any peace officer, or by any person authorized to issue or inspect licenses, or collect license taxes.

§ 5.03.138 REFUNDS.

No refunds of an overpayment of taxes imposed by this article shall be allowed in whole or in part unless a claim for refund is filed with the Tax Administrator within a period of three years from the last day of the calendar month following the period for which the overpayment must be filed with the Tax Administrator on forms furnished by him or her and in the manner prescribed by him or her. Upon the filing of the claim and when determining that an overpayment has been made, the Tax Administrator shall authorize a refund by the Auditor-Controller.

§ 5.03.139 WAIVER OF CLAIM FOR REFUND.

The failure of a person to file a claim within the time prescribed in this article constitutes a waiver of all demands against the state on account of the overpayment.

§ 5.03.140 APPEAL.

(A) Any taxpayer aggrieved by any decision made by the Tax Administrator, may, within ten days of the date of the decision, file an appeal in writing with the Clerk of the Board, accompanied by an appeal application fee which shall be set from time to time by the Board. The appeal shall be on a form provided by the Clerk of the Board and shall set forth with particularity the specific grounds upon which the appeal is made. Any grounds not set forth in the written appeal shall be deemed waived and the taxpayer shall thereafter be precluded from raising them.

(B) The Clerk of the Board shall set the appeal for hearing before the Board of Supervisors within 30 days after the date of filing of the appeal. Upon hearing the appeal, the Board of Supervisors shall consider the record and the evidence presented, de novo, and may sustain, modify, reject or overrule, in whole or in part, the decision appealed from. The decision of the Board of Supervisors shall be expressed in the form of a written resolution concurred in by a majority of all of the members of the Board.

SUBARTICLE III. VIOLATIONS; ENFORCEMENT

§ 5.03.155 VIOLATIONS.

(A) *Business violating law.* The issuance of a license under this article shall not entitle the licensee to engage in any business which for any reason is in violation of any law or ordinance.

(B) *Separate violation.* The conducting of business in the unincorporated area of the county without first having procured a license from the county to do so, or without complying with any and all regulations of the business contained in this code, shall be a separate violation hereof for each and every day that such business is so carried on.

(C) *Penalty for violations.* Any person violating any of the provisions of this article or knowingly or intentionally misrepresenting to any officer or employee of the county any material fact in procuring the license herein provided for is guilty of a misdemeanor. Enforcement and punishment for violations of this code may proceed by all mechanisms allowed under the San Benito County Code, and/or state law.

(D) *Remedies cumulative.* Except as otherwise provided by law, the remedies provided in this article are cumulative and not exclusive. Nothing in this article is intended, or shall be deemed or

construed, to limit or impair the ability of the county, or any of its officers, agents or employees, to take any administrative or judicial action, otherwise authorized by law, to recover any taxes owed it.

§ 5.03.156 ENFORCEMENT.

(A) It shall be the duty of the Tax Administrator to enforce all of the provisions of this article and the Sheriff shall render such assistance as required for enforcement.

(B) The Tax Administrator in the exercise of the duties imposed hereunder, and acting through deputies or duly authorized assistants, may examine or cause to be examined all places of business in the unincorporated area of the county to ascertain compliance with the provisions of this article.

(C) The Tax Administrator and all deputies and any peace officers shall have the power and authority to enter, free of charge, and at any reasonable time during business hours, any place of business required to be licensed herein, and demand an exhibition of its license. Any person having the license theretofore issued, in his or her possession or under his or her control, shall exhibit the same on demand.

(D) Any tax required to be paid by any person under the provisions of this article shall be a debt owed by the person to the county. Any person owing money to the county under the provisions of this article shall be liable to an action brought in the name of the county for the recovery of such amount including applicable penalties and attorneys' fees and costs.

SECTION 2. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption by a majority of the electorate voting on the ordinance at the November 6, 2018 election. Upon adoption, Section 1 of this ordinance shall be codified; the remaining sections shall not be codified.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or any part thereof, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The People hereby declare that they would have approved this Ordinance or any section, subsection, sentence, clause, or phrase hereto, irrespective of the fact that any one or more sections, subsection, sentences, clauses or phrases should be declared to be unconstitutional. If necessary, this ordinance shall be amended to confirm with any state and local laws that may now or hereafter exist.

SECTION 4. CAPTIONS. The titles and headings of this article and the sections thereunder are not part of this ordinance and shall have not effect upon the construction or interpretation of any part thereof.

SECTION 5. STATEMENT OF HOW TAX MAY BE SPENT. All revenue from the taxes imposed pursuant to this ordinance can be spent for unrestricted general revenue purposes.

SECTION 6: The tax imposed by this ordinance is a general tax. The revenue generated by this general tax is available for general governmental purposes. To that end, the Auditor-Controller is

instructed to deposit the revenue from the tax into the County General Fund and to include his/her estimate of the revenue from this general tax, together with his estimates of other revenue sources, in the tabulation that is annually required to prepare by Government Code Section 29060. The revenue from this general tax shall be made available to the Board of Supervisors for annual appropriation in the County's budget for any lawful expenditure. Nothing in this ordinance nor in any other ordinance, advisory measure, resolution, or policy shall be construed as limiting, in any way, the amount or the objects of the appropriations and expenditures that can be made from the revenue of the tax nor be construed as creating a continuing appropriation.

SECTION 7: COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). Pursuant to CEQA Guidelines Section 15378(b) (4), adoption of this tax ordinance as a government funding mechanism is not a project subject to the requirements of CEQA. Prior to commencement of any project that may result from the expenditure of revenues from this tax increase, any necessary environmental review required by CEQA shall be completed.

SECTION 8. AMENDMENTS. This ordinance may be amended by the San Benito County Board of Supervisors without a further vote of the people, but the taxes authorized herein shall not be increased except pursuant to the COLA set forth herein, unless authorized pursuant to law or a further vote of the voters of San Benito County.