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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

UNLIMITED CIVIL JURISDICTION

CHEVRON U.S.A. INC., a Pennsylvania Corporation, Plaintiff and Petitioner, vs. CITY OF RICHMOND, a municipal corporation, Defendant and Respondent.	No. MSC09-00491 (Case Assigned to Hon. David B. Flinn) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS Date: August 28, 2009 Time: 9:00 A.M. Place: Dept. 6 Trial Date: None Set Complaint Filed: February 26, 2009

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1 I. PRELIMINARY STATEMENT

2 In the instant action, Chevron U.S.A., Inc. ("Chevron") challenges on numerous
3 grounds the validity of the multiple measure tax scheme of Measure T[1] which was recently
4 enacted by the City of Richmond. The three legal issues presented in this motion are the
5 following:

6 (1) Whether Measure T violates the internal consistency test under the
7 Commerce Clause and parallel State constitutional provisions;

8 (2) Whether Measure T is a prohibited property tax on inventory; and

9 (3) Whether Measure T violates the Bradley-Burns Uniform Local Sales and
10 Use Tax Law.

11 Measure T Violates the Internal Consistency Test of the Commerce Clause.

12 Effective January 1, 2009, Measure T provides for the taxation of manufacturers on
13 the greater of (i) a head tax based on total employees[2] or (ii) a value tax equal to one-fourth
14 of one percent (0.250%) of the values of materials used in the manufacturing process during
15 the calendar year immediately preceding the year for which the tax is paid. Prior to
16 January 1, 2009, manufacturers, wholesalers, retailers and other service providers paid only
17 the head tax.

18 The United States Supreme Court has applied a four-prong test to determine
19 whether a state or local tax meets Commerce Clause standards. To determine whether a
20 state or local tax is fairly apportioned under the second prong of the test, the Court has
21 adopted the internal consistency test. To be internally consistent a tax must be structured so
22 that if every jurisdiction (local or state) were to impose an identical tax, no risk of multiple
23 taxation would result. A taxpayer is not required to demonstrate any actual multiple
24 taxation in order for a court to strike down the statute—only the risk of multiple taxation.
25 The internal consistency test focuses on the language of the challenged statute and the

26

[1] Chapter 7.04 of the Richmond Municipal Code ("RMC").
27 [2] The head tax is \$234.10 plus \$46.10 per employee for the first 25 employees and
\$40.10 per employee in excess of 25 employees. RMC §7.04.030.
28

1 actual operation of the tax, and hypothesizes a situation where all other jurisdictions have
2 passed an identical statute to determine whether a taxpayer engaged in interstate or intercity
3 commerce is placed at a competitive disadvantage as compared to a taxpayer operating
4 solely within the taxing jurisdiction.

5 Measure T's multiple measure tax scheme fails the internal consistency test since it
6 discriminates against interstate and intercity businesses operating in Richmond and as such,
7 constitutes a facial discrimination against interstate and intercity commerce that is per se
8 invalid under the Commerce Clause and the California Constitution. A simple example
9 illustrates the invalidity of Measure T. A manufacturer (Taxpayer I) operating only in
10 Richmond (manufacturing plant and administrative offices) will pay only one tax—either
11 the head tax or the value tax. However, a manufacturer (Taxpayer II), with manufacturing
12 operations located in Richmond, but with its administrative offices and employees located
13 in a city outside Richmond, will pay two taxes—the value tax in Richmond and the head
14 tax outside of Richmond. In such a situation, Taxpayer II will always have an aggregate
15 total tax burden greater than Taxpayer I which only operates in Richmond. This is a direct
16 violation of the internal consistency test since it creates a risk of multiple taxation and
17 places Taxpayer II at a competitive disadvantage solely because it operates in interstate and
18 intercity commerce. Both the United States Supreme Court and California courts have held
19 similar multiple measure tax schemes to be invalid under the internal consistency test.
20 Measure T should likewise be struck down.

21 Measure T Imposes a Prohibited Property Tax on Business Inventories.

22 Measure T's value tax is an invalid personal property tax on business inventories.
23 Revenue and Taxation Code ("RTC") section 219 exempts business inventories from
24 personal property taxation. Business inventories are defined as goods intended for sale in
25 the ordinary course of business and include raw materials. RTC § 129.

26 The Measure T value tax has many of the attributes of a property tax. It is ad
27 valorem—based on value. It is imposed annually and due on a set date, e.g. due on
28 March 15, 2009 based on the total 2008 raw material purchase values. The tax is based on

1 the aggregate value of all raw materials that annually flow through the taxpayer's inventory
2 account. In all, the Measure T value tax on raw materials is nothing more than a disguised
3 property tax on business inventories which is prohibited by RTC §§ 219 and 129.

4 Measure T Violates the Bradley-Burns Uniform Local Sales and Use Tax Law.

5 The Measure T value tax is a use tax which does not conform to the California Sales
6 and Use Tax Law and thus violates the Bradley-Burns Uniform Local Sales and Use Tax
7 Law ("Bradley-Burns Law"). California has adopted a uniform sales and use tax law which
8 permits cities and counties to impose a 1% sales or use tax which is to be administered by
9 the State Board of Equalization ("SBE"). The Legislature has declared that by enactment
10 of the California Sales and Use Tax Law (RTC § 6001, et seq.) and the Bradley-Burns Law,
11 the State has preempted the area of sales and use taxes.

12 Under the California Sales and Use Tax Law, a taxable "use" is broadly defined to
13 include "the exercise of any right or power over tangible or personal property incident to
14 the ownership of that property." A use tax is imposed on the storage, use or other
15 consumption of tangible personal property in California. The Measure T value tax meets
16 the definition of a use tax under California law. By its very terms, it is imposed on the
17 values of materials used in the manufacturing process in Richmond.

18 Under the Sales and Use Tax Law, raw materials incorporated into final products to
19 be sold are not subject to either the sales or use tax at the manufacturing or wholesale level.
20 The basic design of the Sales and Use Tax Law is that by imposing the alternative and
21 mutually exclusive sales or use tax only at the retail level of trade, a manufacturer's "use"
22 of the raw materials at any previous trade level (e.g., wholesale) would not be taxable. The
23 Measure T value tax violates this principle by imposing a tax at the wholesale level of
24 trade.

25 Chevron submits that its motion for judgment on the pleadings must be granted
26 because the Measure T tax is invalid on three separate grounds. It violates the internal
27 consistency test under the Commerce Clause. It is a prohibited property tax on business
28 inventories. Finally, it is an invalid use tax.

II. CHEVRON'S MOTION FOR JUDGMENT ON THE PLEADINGS MUST BE GRANTED BECAUSE ITS COMPLAINT STATES FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION AND RICHMOND'S ANSWER PRESENTS NOTHING TO DEFEAT THE ACTION.

A plaintiff's motion for judgment on the pleadings must be granted when the complaint states facts sufficient to constitute a cause of action and the answer presents nothing, either by way of denial or new matter, to bar or defeat the action. Code of Civ. Proc. ("CCP") § 438(c)(1)(A). Hemme v. Hayes, 55 Cal. 337, 339 (1880); Allstate Ins. Co. v. Kim W., 160 Cal. App. 3d 326, 334-335 (1984). In the instant case, Chevron's motion satisfies the requirements of CCP § 438(c)(1)(A) and must be granted.

III. STATEMENT OF THE CASE

On February 26, 2009, Chevron filed its Complaint for Declaratory Relief; and Petition for Writ of Mandate (No. MSC09-00491). On March 27, 2009, defendant answered the complaint. On April 15, 2009, Chevron's Motion for an Order to Sequester Funds was heard and denied by this Court. On May 12, 2009, pursuant to a stipulation of the parties, this Court ordered that the following issues be bifurcated and briefed separately from the other issues in this matter:

(1) Whether Measure T, on its face, is a prohibited property tax on inventory;

(2) Whether Measure T, on its face, violated the Bradley-Burns Uniform Local Sales and Use Tax Law; and

(3) Whether Measure T, on its face, violates the internal consistency test under the Commerce Clause and parallel State constitutional provisions.

The Court further ordered that Plaintiff file its motion and opening brief with respect to the above enumerated legal issues on or before June 19, 2009; Defendant file its opposition brief on or before July 30, 2009; and Plaintiff file its reply brief on or before August 21, 2009; and that a hearing be held on August 28, 2009.

On June 2, 2009, Chevron filed its Complaint for Refund of City of Richmond Business License Taxes Paid (No. C09-01533). To avoid any issue regarding res judicata

since payment of the tax has occurred, the parties have stipulated to an order consolidating the refund action with the instant case. The proposed order is awaiting signature by this Court.

IV. SUMMARY OF UNDISPUTED FACTS

The facts set forth below are from the verified allegations contained in Chevron's Complaint filed on February 26, 2009 (hereinafter "Compl."), defendant's Answer thereto filed on March 27, 2009 (hereinafter "Answ.") and the City of Richmond's Municipal Code.

Chapter 7.04 of the Richmond Municipal Code is known as the "Richmond Business License Act." The Chapter was enacted to raise revenue for municipal purposes and is not intended for the purpose of regulation. The license fees payable thereunder are general taxes within the meaning of Article XIIIC of the California Constitution. The Chapter applies to all persons engaged in business in the City. RMC § 7.04.010; Compl. ¶ 5. The adjusted annual business license taxes for manufacturers, wholesalers, retailers, persons providing services and persons conducting other business under RMC § 7.04.030 prior to January 1, 2009, was $268.50 plus an additional sum of money equal to $53.50 per employee for the first twenty-five employees and $46.00 per employee in excess of twenty-five employees. Compl. ¶ 9.

The Richmond City Council issued Resolution 64-08 on June 17, 2008 calling a special municipal election on the following initiative measure placed on the November 4, 2008 general election ballot to amend Chapter 7.04 of the Richmond Municipal Code to provide:

> Every person engaged in manufacturing shall pay an annual license fee of the greater of: (i) the license fee which would apply to such person if such person were subject to the provisions of Section 7.04.030 or (ii) a fee equal to one fourth of one percent (0.250%) of the values of materials used in the manufacturing process during the calendar year immediately preceding the year for which the fee is paid.

1 A complete copy of the ballot initiative (Measure T) is attached hereto as Exhibit A.
2 Compl. ¶¶ 10 and 11.

3 Chevron is the largest manufacturer (as "Manufacturing" is defined in Measure T)
4 in the City. Compl. ¶ 12; Answ. ¶ 12. Following the general election of November 4,
5 2008, Measure T passed by an approximate 51.5% majority. Compl. ¶ 13; Answ. ¶ 13. On
6 December 2, 2008, the Contra Costa County Clerk certified that Measure T passed. Compl.
7 ¶ 15. On December 16, 2008, the Richmond City Council adopted a Resolution Declaring
8 the Canvas of Returns and Result of the General Municipal Election held on November 4,
9 2008. Compl. ¶ 16; Answ. ¶ 16. As a direct consequence of the November 4, 2008
10 election, the City now provides two distinct levels of taxation for the City's businesses:

11 (a) The City continues to tax business operations other than
12 manufacturers (such as wholesalers, retailers, service providers, etc.) on the basis of a
13 minimal flat tax ($234.10) plus a tiered tax per employee reduced to the rates existing prior
14 to January 1, 2006 (i.e., $46.80 per employee for the first twenty-five employees and
15 $40.10 per employee in excess of twenty-five employees). RMC § 7.04.030.

16 (b) Effective January 1, 2009, the City began to tax manufacturers on the
17 greater of the (i) the tax which would apply to such person if such person were subject to
18 the provisions of RMC § 7.04.030, or (ii) a tax equal to one-fourth of one percent (0.250%)
19 of the values of materials used in the manufacturing process during the calendar year
20 immediately preceding the year for which the tax is paid. ("Measure T tax"). RMC
21 § 7.04.025; Compl. ¶ 17.

22 The taxation of manufacturers under Measure T will be substantially greater than
23 the taxation of non-manufacturers (such as wholesalers, retailers, service providers, etc.).
24 Compl. ¶ 18.

25 For purposes of the Measure T tax:

26 "Manufacturing" means the activity of converting or conditioning tangible personal property by changing the form, composition, or quality of character
27 of some existing material or materials, including natural resources, by procedures commonly regarded by the average person as manufacturing,
28 compounding, processing or assembling, into a material or materials with a

different form or use. Manufacturing includes any process of refining or processing hydrocarbons, petroleum or crude oil to produce products for use as fuels, lubricants, solvents, plastics, or other intermediate or final products. "Materials used in manufacturing" means any and all materials used by a business engaged in manufacturing any part of which becomes a part of a product produced by the manufacturing business. With respect to any business which refines, distills, or otherwise manufactures any product using hydrocarbons, petroleum or crude oil of any type, materials used in manufacturing includes all such materials used in such manufacturing process. For any taxable period, materials used in manufacturing does not include any materials acquired, stored or transported which are not actually subjected to the manufacturing process during the taxable period.

RMC § 7.04.020.

Chevron conducts a refinery operation in the City which involves the refining of crude oil into various gasoline products. The crude oil refined by Chevron in the City is produced outside California, either in other states or in foreign countries. Chevron's refined products also move in interstate and foreign commerce. Compl. ¶ 21. Based on its activity during 2008, Chevron will be subject to the higher calculation under the newly enacted Measure T tax on manufacturing under RMC § 7.04.025. Compl. ¶ 22; Answ. ¶ 22.

Measure T makes no finding that manufacturers consume a greater amount of City services than non-manufacturers. Measure T does not provide for apportionment[3] of the business license tax; nor does it provide for a credit against taxes owed under RMC § 7.04.025 for taxes paid on the value of materials used in the manufacturing process to other jurisdictions. Compl. ¶¶ 24 and 25.

On or about April 15, 2009, Chevron filed its Renewal Notice and paid its 2009 annual business license tax under the alternative higher rate for a manufacturer in the amount of $20,596,322. This was an increase in Chevron's business license tax in excess of $20,500,000 from 2008. On or about April 27, 2009, Chevron filed a Claim for Refund with the City of Richmond for 2009 seeking a refund of the amount of $20,596,322, plus interest as provided by law. On or about May 13, 2009, the City of Richmond caused to be mailed to Chevron a Notice of Rejected Claim for Damages notifying Chevron that its

[3] On March 27, 2009, the City issued an Enforcement Policy by which it attempts to provide for apportionment. However, the validity of such Policy is uncertain for numerous reasons.

1 Claim for Refund was rejected. On June 2, 2009, Chevron filed its Complaint for Refund
2 of City of Richmond Business License Taxes Paid. The parties have stipulated to the
3 consolidation of the refund action with this action and a proposed order is awaiting
4 signature by this Court.

5 Chevron has asserted in its Complaint for Declaratory Relief and Petition for Writ
6 of Mandate and in its Complaint for Refund that the imposition of the Measure T tax of
7 0.250% on values of materials used in the manufacturing process is unlawful for numerous
8 reasons, including but not limited to, the following:

9 (a) It is a property tax on business inventories in violation of RTC
10 §§ 219 and 129.

11 (b) It violates the Bradley-Burns Law. RTC §§ 7200, et seq.

12 (c) It violates the Commerce Clause of the United States Constitution
13 and parallel State constitutional principles for numerous reasons, including but not limited
14 to, the tax (1) violates the internal consistency test; (2) violates the external consistency
15 test; (3) is not fairly related to the services provided by the City; (4) discriminates against
16 and unduly burdens interstate and foreign commerce; and (5) creates a substantial risk of
17 international multiple taxation.

18 (d) It violates the Equal Protection Clauses of the United States
19 Constitution, Amendment 14, Sec. 1 and the California Constitution (art. I, §7, subd. (a))
20 for numerous reasons, including but not limited to, the tax discriminates against Chevron by
21 singling it out for higher taxation.

22 (e) Chapter 7 of the RMC does not provide for a tax credit or for
23 apportionment concerning business operations conducted by Chevron outside of the City.

24 (f) It is an ad valorem tax on tangible personal property manufactured in
25 a foreign trade zone in violation of 19 U.S.C. § 81o(e).

26 (g) The March 27, 2009 Business License Ordinance Enforcement
27 Policy is an improper amendment to a ballot measure—Measure T—under California
28 Elections Code § 9217 and Proposition 218. Compl. ¶ 29.

Chevron seeks in the underlying actions a refund of the tax paid under Measure T, a declaration that the 0.250% Measure T value tax imposed on Chevron is null and void and a writ of mandate directing the City to set aside Measure T as null and void. Chevron also seeks such other and further relief as the Court deems just and proper.

V. MEASURE T VIOLATES THE COMMERCE CLAUSE AND PARALLEL STATE CONSTITUTIONAL PRINCIPLES.

A. Federal and State Commerce Clause Principles.

Under Measure T, a manufacturer like Chevron is subject to the greater of two taxes: (i) the employee tax (head tax) or (ii) the tax on the values of materials used in the manufacturing process (value tax). RMC §§ 7.04.025; 7.04.030. Taxing schemes similar to Richmond's whereby a taxpayer is subject to the greater of two taxes have been consistently held to violate the Commerce Clause of the United States and parallel State constitutional principles. In determining whether a local tax meets Commerce Clause standards, the United States Supreme Court has applied a four-prong test. Under this test, the tax withstands Commerce Clause scrutiny only if it (i) is applied to an activity with a substantial nexus with the taxing jurisdiction, (ii) is fairly apportioned, (iii) does not discriminate against interstate commerce, and (iv) is fairly related to the services provided by the local jurisdiction. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977); Goldberg v. Sweet, 488 U.S. 252, 257 (1989). While Measure T violates at least three of the four prongs of the Complete Auto test, this motion is directed to the second prong—i.e., whether the tax is fairly apportioned.

To determine whether a state or local tax is fairly apportioned under Complete Auto's second prong,[4] the Supreme Court has adopted the dual tests of internal and external consistency. Container Corporation of America v. California Franchise Tax Board, 463 U.S. 159 (1983). These tests were described in Goldberg as follows:

[4] The tax must reach only the taxing jurisdiction's fair share of interstate or intercity commerce. Goldberg v. Sweet, 488 U.S. 252, 260-261.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

> But 'we have long held that the Constitution imposes no single [apportionment] formula on the States, and therefore have declined to undertake the essentially legislative task of establishing a 'single constitutionally mandated method of taxation' [citations omitted]. Instead, we determine whether a tax is fairly apportioned by examining whether it is internally and externally consistent. [citations omitted.]
>
> To be internally consistent a tax must be structured so that if every State were to impose an identical tax, no multiple taxation would result. [citations omitted.] Thus, the internal consistency test focuses on the text of the challenged statute and hypothesizes a situation where the other states have passed an identical statute.
>
> The external consistency test asks whether the State has taxed only that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed. [citations omitted.]

Goldberg v. Sweet, 488 U.S. 252, 261-262.

In Armco v. Hardesty, 467 U.S. 638 (1984), the Supreme Court explained both (i) the purely hypothetical nature of the internal consistency test and (ii) the overlap of the internal consistency test with the related Complete Auto third prong of non-discrimination. In Armco, the Supreme Court was faced with a state tax scheme giving preferential treatment to taxpayers conducting all of their manufacturing and wholesale activities in the state. In that case, West Virginia had imposed a gross receipts tax on manufacturers engaging in the business of selling tangible personal property at wholesale in the state, but exempted local manufacturers from the wholesale tax. The state argued that the discriminatory impact of its exemption for manufacturers from the wholesale tax was cured by a separate manufacturing tax imposed on in-state manufacturers. Id. at 639-641. In striking down West Virginia's tax scheme under both the fair apportionment and non-discrimination prongs of Complete Auto, the Court concluded that the discriminatory impact of the wholesale tax exemption for in-state manufacturers was not cured by the separate manufacturing tax on such in-state manufacturers and held as follows:

> Moreover, when the two taxes are considered together, discrimination against interstate commerce persists. If Ohio or any of the other 48 States imposes a like tax on its manufacturers – which they have every right to do – then Armco and others from out of State will pay both a manufacturing tax and a wholesale tax while sellers resident to West Virginia pay only the manufacturing tax …

> Appellee suggests that we should require Armco to prove actual discriminatory impact on it by pointing to a State that imposes a manufacturing tax that results in a total burden higher than that imposed on Armco's competitors in West Virginia. This is not the test. In Container Corp. Of America v. Franchise Tax Board, [citations omitted], the Court noted that a tax must have 'what might be called internal consistency – that is the [tax] must be such that if applied by every jurisdiction,' there would be no impermissible interference with free trade. In that case, the Court was discussing the requirement that a tax be fairly apportioned to reflect the business conducted in the State. A similar rule applies where the allegation is that a tax on its face discriminates against interstate commerce. A tax that unfairly apportions income from other States is a form of discrimination against interstate commerce. Any other rule would mean that the constitutionality of West Virginia's laws would depend on the shifting complexities of the tax codes of 49 other States, and that the validity of the taxes imposed on each taxpayer would depend on the particular other States in which it operated.

Armco v. Hardesty, 467 U.S. 638, 644-645.

Notably, the Supreme Court in Armco held that the taxpayer need demonstrate neither actual multiple taxation nor actual discriminatory impact upon itself to strike down a tax under both the fair apportionment and non-discrimination prongs of Complete Auto. Three years later, the Supreme Court affirmed its holding in Armco in Tyler Pipe Indus., Inc. v. Washington Dep't of Revenue, 483 U.S. 232 (1987), where it found that Washington's business and occupation "wholesale" tax exemption available to in-state manufacturers was fundamentally equivalent to the taxing scheme at issue in Armco and therefore invalid because of its violation of the internal consistency test. The Supreme Court noted, as it had on prior occasions, that in applying the internal consistency test it did not matter whether other taxing jurisdictions had passed similar taxing provisions but rather the internal consistency test looks at the hypothetical consequences if such taxes were to be enacted. Tyler Pipe, 483 U.S. at n.11.

The Supreme Court in Oklahoma Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175, 185 (1994), described more fully the tests of internal and external consistency:

> For over a decade, we have assessed any threat of malapportionment by asking whether the tax is 'internally consistent' and, if so, whether it is 'externally consistent' as well. [citations omitted.] Internal consistency is preserved when the imposition of a tax identical to the one in question by every other state would add no burden to interstate commerce that intrastate commerce would not also bear. This test asks nothing about the degree of

economic reality reflected by the tax, but simply looks to the structure of the tax at issue to see whether its identical application by every state in the Union would place interstate commerce at a disadvantage as compared with intrastate commerce. A failure of internal consistency shows as a matter of law that the state is attempting to take more than its fair share of taxes from the interstate transaction since allowing such a tax in one state would place interstate commerce at the mercy of those remaining states which might impose an identical tax. [citations omitted.] ... External consistency, on the other hand, looks not to the logical consequences of the cloning, but to the economic justification for the State's claim upon the value taxed, to discovery whether as State reaches beyond that portion of value that is fairly attributable to economic activity within the taxing states.

In addition to this purely federal analysis (governing the relationship between the national government and the states), a substantial body of parallel California law has arisen. As early as 1971, the California Supreme Court in City of Los Angeles v. Shell Oil Company, 4 Cal. 3d 108 (1971), held that California's own constitution independently proscribes local taxes which discriminate against intercity businesses by failing to provide for fair apportionment. Id. at 119 and 123-124.[5] Indeed, multiple measure tax schemes similar to Richmond's Measure T, have been consistently struck down as being violative of both the Commerce Clause (failure of internal consistency), and parallel state law jurisprudence. General Motors v. City of Los Angeles, 35 Cal. App. 4th 1736, 1749-1752 (1995) ("General Motors I"); General Motors Corporation v. City and County of San Francisco, 69 Cal. App. 4th 448, 452-453 (1999) ("General Motors II"); Union Oil Company of California; Litton Systems, Inc. v. City of Los Angeles, 79 Cal. App. 4th 383, 388-391 (2000) ; and Macy's Department Stores, Inc. v. City and County of San Francisco, 143 Cal. App. 4th 1444 (2006).

In the General Motors cases, the Courts of Appeal in the First and Second Districts struck down tax schemes in Los Angeles and San Francisco that differentiated between in-city manufacturers and out-of-city manufacturers. In both cases, the cities created a

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[5] As the Supreme Court noted in Shell, the California Constitution does not contain a specific "commerce clause" but other provisions in the State Constitution, notably those provisions forbidding extraterritorial application of laws and guaranteeing equal protection of the laws (Article XI, section 1; Article I, section 21 and Article IV, section 16) have been determined to apply to intrastate and intercity commerce similar to the considerations relevant to the problems confronted by interstate commerce.

1 manufacturing tax and a selling tax, with the local in-city manufacturer exempt from the
2 selling tax. General Motors I, 35 Cal. App. 4th at 1742; General Motors II, 69 Cal. App.
3 4th at 451-452. In both cases, a taxpayer which manufactured and sold only within Los
4 Angeles (or San Francisco) paid only a manufacturing tax to the city and no selling tax.
5 However, a taxpayer which manufactured outside the city and sold goods within and
6 without the city was subject to two taxes—the manufacturing tax outside the city and a
7 selling tax within the city. In each case, the courts concluded that giving the local
8 manufacturer a competitive advantage in its home market impeded commerce among the
9 states and the cities and counties of California. As such, each tax was discriminatory on its
10 face[6], failed the internal consistency test and violated both the Commerce Clause and
11 equivalent proscriptions derived from provisions of the California Constitution.

12 Even more closely parallel to the instant matter was the multiple measure tax
13 scheme struck down in the Union Oil case. In that case, the City of Los Angeles had
14 imposed alternate taxes measured by either gross receipts or employee payroll, with
15 taxpayers paying the greater of the two taxes. In finding that the City's multiple measure
16 tax scheme violated the internal consistency test, the Court stated:

17 "... A similar analysis compels a similar conclusion here. As required by
18 the internal consistency test, we assume that all taxing jurisdictions have a
taxing scheme identical to the City's business license tax and separate
19 payroll tax. Local businesses paying the business license tax are exempt

20 [6] As noted above, the Supreme Court in Armco addressed the overlap of the internal consistency test with the Complete Auto third prong of non-discrimination. Indeed, where
21 a tax fails the internal consistency test it will generally be found to be facially discriminatory against interstate commerce and thus per se invalid under the Commerce
22 Clause. In South Central Bell Telephone Co. et al. v. Alabama et al, 526 U.S. 160 (1999), the Court found Alabama's franchise tax to be facially discriminatory in its operation, even
23 though the language of the challenged statute was not clear in this regard. In South Central Bell, Alabama imposed a franchise tax on domestic corporations based on the par value of
24 its stock which the corporation could set at whatever level it chose. Foreign corporations were assessed a franchise tax based on numerous balance sheet items that were valued in
25 accordance with set accounting rules. On closer examination, it became apparent that the domestic corporation could reduce its tax base through assigning low par values to its stock,
26 whereas a foreign corporation's tax base was not able to be reduced in such fashion. The Court found the differences in the tax bases to be facially discriminatory against interstate
27 commerce and thus held the Alabama tax to be unconstitutional because it favored domestic corporations over foreign corporations.
28

> from the payroll tax, yet other taxpayers engaged in intercity and interstate commerce are obligated to pay the payroll tax.
>
> The unconstitutionality is apparent in the following typical situation: a taxpayer with a large percentage of its payroll in one city sells its products in a jurisdiction where it has little or no payroll. We assume that both jurisdictions have a tax scheme similar to that of City whereby the taxpayer in the City selling across the City lines would pay the payroll tax in the City and be subject to the business license tax in the other jurisdiction. And, the taxpayer outside the City would pay two taxes, the City's business license tax and the other jurisdiction's payroll tax. However, the taxpayer located inside the City and selling inside City would pay only one tax, the City's payroll tax. Giving a local manufacturer such a competitive advantage in its own market is prohibited under the Commerce Clause as explained in G.M. v. Los Angeles, Armco, and Tyler."

Union Oil Company v. City of Los Angeles, 79 Cal. App. 4th at 390.

Finally, in Macy's Department Stores, Inc. v. City and County of San Francisco, 143 Cal. App. 4th 1444, the Court of Appeal struck down San Francisco's multiple measure tax scheme under which a taxpayer paid the higher of a payroll tax or a gross receipts tax. In doing so, the Court observed that "it is only the tandem interaction of the City's payroll and gross receipts taxes that violates the Commerce Clause under the internal consistency test. In isolation, each of the taxes is valid." Similarly, it is the tandem interaction of Richmond's value tax and head tax on manufacturers which violates internal consistency and which causes Measure T to be invalid under the Commerce Clause.

B. Measure T's Multiple Measure Tax Scheme Violates the Internal Consistency Test.

Similar to the multiple measure tax schemes struck down in Armco, Tyler Pipe, Union Oil, General Motors I and II and Macy's, Measure T cannot withstand scrutiny under the internal consistency test. Under Measure T, a manufacturer like Chevron would be taxed on the greater of either the number of its employees working in Richmond at stated rates (head tax), or .25% of the value of all materials used in its manufacturing processes (value tax).

The unconstitutionality of Richmond's tax under the internal consistency test is illustrated by the following simple example. Assume the City of San Ramon passes a business license tax that is identical to Measure T. Two manufacturers with identical manufacturing operations each annually use $10 million in materials in the manufacturing

process and each have 500 employees that work in their business enterprise. One manufacturer ("Taxpayer I") which has its entire business operation located solely inside Richmond, would pay the value tax of $25,000[7] since that is higher than the head tax of $20,434 [8] which would be due on the 500 employees. However, a taxpayer ("Taxpayer II") which manufactures only in Richmond and has 100 employees in Richmond, but which has its administrative and other headquarters functions in San Ramon where its other 400 employees are based, would pay two taxes, the $25,000 value tax to Richmond and a head tax of $16,424 [9] to San Ramon based on the 400 employees.

Simply by virtue of operating in two separate taxing jurisdictions Taxpayer II will have an aggregate total tax burden greater than Taxpayer I which only operates within Richmond. This is a direct violation of the internal consistency test and results in a discrimination against interstate and intercity commerce in violation of the Commerce Clause and the California Constitution. In our example, a taxpayer conducting business operations in two separate California cities would be forced to either relocate its business operations to Richmond or carry a heavier tax burden than a competitor operating solely within the City of Richmond. In short, Measure T results in an impermissible interference with free trade that the Commerce Clause prohibits.

As can be seen, Measure T fails not only the internal consistency test, but also the underlying basic premise of the Commerce Clause that "a State [city] may not tax a transaction or incident more heavily when it crosses state [city] lines than when it occurs within the State [city]." Armco, 467 U.S. 638, 642. The U.S. Supreme Court and California courts have consistently struck down such discriminatory tax schemes as violative of the Commerce Clause. See e.g., Armco, 467 U.S. at 642-644; Tyler Pipe; General Motors I and II; Union Oil; Macy's. This Court must do the same with respect to Richmond's Measure T.

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[7] $10,000,000 x .0025 = $25,000.
[8] ($234.10 + [$46.10 x 25] + [$40.10 x 475]) = $20,434
[9] ($234.10 + [$46.10 x 25] + [$40.10 x 375]) = $16,424

VI. MEASURE T'S TAX ON THE VALUES OF MATERIALS USED IN MANUFACTURING CONSTITUTES AN INVALID PERSONAL PROPERTY TAX ON BUSINESS INVENTORIES.

Prior to 1980, California imposed an ad valorem tax levied upon certain tangible personal property in the possession of businesses on the tax lien dates. Zee Toys, Inc. v. County of Los Angeles; Sears, Roebuck & Co. v. County of Los Angeles, 85 Cal. App. 3d 763 (1978). RTC § 219 now exempts all business inventories from taxation. Star-Kist Foods, Inc. v. County of Los Angeles et al, 42 Cal. 3d 1, 5, n. 5 (1986). Business inventories include raw materials with respect to goods intended for sale.

RTC § 219 provides:

> For the 1980-81 fiscal year and fiscal years thereafter, business inventories are exempt from taxation and the assessor shall not assess business inventories.

RTC § 129 provides in pertinent part:

> 'Business inventories' shall include goods intended for sale or lease in the ordinary course of business and shall include raw materials and work in process with respect to such goods.

Property Tax Rule[10] ("Rule") 133 provides:

> (a)(1) 'Business inventories' that are eligible for exemption from taxation under Section 129 of the Revenue and Taxation Code include all tangible personal property, whether raw materials, work in process or finished goods, which will become a part of or are themselves items of personalty held for sale or lease in the ordinary course of business.

The question presented is whether Measure T's tax on the values of materials used in the manufacturing process (value tax) is in reality a prohibited property tax on business inventories. It is well settled that the character of a tax must be ascertained by its incidences, and from the natural and legal effect of the language employed in the statute. Ingels v. Riley, 5 Cal. 2d 154, 159 (1936). Moreover, the character of a tax is not determined merely by its nomenclature or the title attached to it by the enacting authority. Rather, it must be determined by its incidences, the natural and legal effect of its language,

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[10] California Code of Regulations, title 18.

1 and the real object, purpose and result of its enactment. Flynn v. San Francisco, 18 Cal. 2d
2 210, 214-215 (1941); City of Oakland v. Digre, 205 Cal. App. 3d 99, 105 (1988). Thus,
3 notwithstanding the title of RMC section 7.04.385, "Business License Fee Not A Property
4 Tax," such is not controlling in determining the nature of the Measure T value tax.

5 The typical property tax is measured by the value of the property—ad valorem.[11] It
6 is generally due at a set time, e.g., a lien date. The repealed State personal property tax on
7 business inventories was imposed on the value of all business inventories at a business
8 location on a specific lien date. Formerly, the lien date was on March 1 preceding the tax
9 year, July 1 through June 30. Similarly, in the instant matter the value tax is based on the
10 value of aggregate purchases of raw materials made during the year preceding the
11 applicable tax year (e.g., the total value of raw material purchases made during 2008 is used
12 to determine the tax for the 2009 tax year).[12]

13 The Measure T value tax has many of the attributes of a property tax on business
14 inventories: (1) the tax is based on value; (2) the tax is imposed annually; (3) the tax is due
15 on a set date each year; (4) the tax is based on the value of materials that flow through the
16 inventory account of a manufacturer—raw materials incorporated into the final
17 manufactured product; and (5) the tax is imposed on raw materials.

18 In determining the nature of the Measure T value tax, it is instructive to review the
19 business inventories exemption and the reasons for its enactment. In Amdahl Corp. v.
20 County of Santa Clara, 116 Cal. App. 4th 604, 623 (2004), the Court of Appeal analyzed
21 the business inventories exemption and reviewed its legislative history. The issue in
22 Amdahl was whether certain spare parts fell within the business inventories exemption as

23 [11] Black's Law Dictionary defines "ad valorem" as "proportional to the value of the thing taxed." Webster's Dictionary has a similar definition, defining it as "according to
24 value: a term applied to (a) a duty laid upon goods at a certain rate per cent according to their invoiced value, rather than upon the quantity of pieces; (b) an assessment of taxes laid
25 on the value of property."

[12] The fact the tax is not based on inventory as of a particular lien date but on the value
26 of all materials that flow through the inventory account within a 365 day period does not change the nature of Measure T's value tax. A lien date is simply used to extrapolate the
27 total value of tangible personal property present in a jurisdiction over the year without the need for assessing such values every day of the year.
28

1 property held for sale or was subject to personal property taxes when being held for use in
2 servicing and repairing customers' computers. The Amdahl Court looked to a 1968 Senate
3 Staff Report[13] which described the perceived inequities and negative economic
4 considerations relating to the taxation of business inventories. The Court quoted the
5 following inequities from the March 1968 Staff Report:

6 (1) The effective tax rate may be slightly higher on inventories than the tax rate for other property, because of the annual appraisal of inventories (vis-a-
7 vis the less frequent appraisal of real property); (2) goods-producing or selling operations are taxed on inventories that they are required to maintain,
8 while businessmen involved in service operations generally do not pay such taxes; (3) there is a degree of arbitrariness in the assessment of property tax
9 as between different businesses, in that certain businesses require high levels of inventory on the March 1 lien date, while others have lower inventory
10 levels on the same date; (4) taxes on inventory are paid, irrespective of the profitability of the business (and some businesses may have higher
11 inventories and higher taxes during unprofitable periods); and (5) the inventory tax is loosely related to gross sales, which may result in unequal
12 treatment of different businesses with the same gross sales (e.g., one business with a more frequent "turn" of inventory may pay significantly less
13 taxes than a business with the same annual gross sales, but with a slower inventory "turn"). (March 1968 Staff Report, *supra,* at pp. 10-11.)
14

15 Amdahl, 116 Cal. App. 4th 604, 623.

16 The Amdahl Court also observed that the Legislature in enacting the business
17 inventories exemption was concerned with the fact that the taxation of business inventories
18 discouraged manufacturers and wholesalers from locating or expanding in California and
19 that by enacting the exemption, manufacturers would be encouraged to expand their
20 business activity in California. The Court quoted the following economic considerations
21 from the March 1968 Staff Report:

22 (1) Taxation of inventories discourages manufacturers and some wholesalers from locating or expanding in California; (2) California producers and
23 manufacturers whose inventories are taxed cannot compete with their counterparts located in states that do not tax inventories; (3) taxation of
24 inventories results in increased storage of goods outside of California and discourages construction of warehouse space in this state; (4) manufacturers,
25 wholesalers, and retailers deplete their inventory prior to the lien date to reduce their tax liability, resulting in economic losses; (5) a tax exemption

26
27 [13] See Sen. Com. on Rev.& Tax. (March 1968) Staff Report, An Analysis and Evaluation of Proposals Relating to the Ad Valorem Taxation of Business Inventories in California (March 1968 Staff Report).
28

> for inventory will decrease the price of goods; and (6) exempting inventories from taxation will encourage manufacturers to locate new facilities in this state. (March 1968 Staff Report, *supra*, at p. 12.)

Amdahl, at 623.

The same inequities and economic considerations which led to the exemption from taxation of business inventories apply here to the Measure T value tax. By enacting RTC §§ 219 and 129, the State effectively preempted the taxation of business inventories, whether raw materials or finished goods, in order to promote and encourage business activity in California. The Measure T value tax on raw materials runs directly afoul of RTC §§ 219 and 129 and Regulation 133 and must be struck down.[14]

VII. THE MEASURE T VALUE TAX IS A PROHIBITED USE TAX UNDER THE BRADLEY-BURNS LAW.

The Bradley-Burns Law was enacted in 1955 to permit cities and counties to impose a 1% sales or use tax, which is structured identically to the statewide tax and exclusively administered by the SBE. RTC §§ 7200, et seq. In 1968, the Legislature amended the Bradley-Burns Law and added RTC § 7203.5. In doing so, the Legislature specifically prohibited cities from enacting any non-conforming sales or use tax laws.

RTC § 7203.5 provides in pertinent part:

> (a) The State Board of Equalization shall not administer and shall terminate its contract to administer any sales or use tax ordinance of a city, county, or city and county, if that city, county, or city and county imposes a sales or use tax in addition to the sales and use taxes imposed under an ordinance conforming to the provisions of Sections 7202 and 7203
>
> . . .
>
> (f) Except as provided in subdivision (b), nothing in this section shall be construed as prohibiting the levy or collection by a city, county, or city and county of any other substantially different tax authorized by the California Constitution or by statute or by the charter of any chartered city.

In enacting RTC § 7203.5, the Legislature made it clear that its intention was that the State had preempted the area of sales and use taxation.

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[14] Notably, Chevron is unaware of any other California municipality which imposes a tax of this nature on raw materials which are incorporated into products for ultimate sale.

The Legislature finds that the overlapping tax structures of the federal, state and local governments are seriously hampering the functioning of the State of California....

Therefore, the state must rely on sales and use taxes as its chief source of revenue.

In addition, the Legislature is well aware that prior to the enactment of the Bradley-Burns Uniform Local Sales and Use Tax Law in 1955 the differences in the amount of sales tax levied among the various communities of the state created a very difficult situation not only for retailers but also created fiscal problems for the cities and counties. ...

Therefore, the Legislature declares that the state, by enactment of the Sales and Use Tax Law and the Bradley-Burns Uniform Local Sales and Use Tax Law, has preempted this area of taxation. (Emphasis added.)

(Chapter 1265, Statutes of 1968, § 2.)

Two years after RTC § 7203.5 was enacted, the Court of Appeal confirmed that the Legislature had indeed preempted the field in the area of sales and use taxes. In Century Plaza Hotel Company v. City of Los Angeles, 7 Cal. App. 3d 616 (1970), Los Angeles enacted a municipal "Tippler's tax" upon sales of alcoholic beverages for on-site consumption. Taxpayers challenged the tax under both RTC § 32010 (which imposed a statewide tax on the sale of alcoholic beverages, specifically in lieu of any local entity taxation), and RTC § 7203.5. The Court overturned the Tippler's tax because it found that the State had reasonably preempted the field of alcoholic beverage taxation. It did not expressly find that the tax was also preempted by the Bradley-Burns Law. However, the Court noted:

Certainly, the reasons given by the Legislature for preempting the entire area of sales and use taxation are persuasive and must be granted fullest consideration. These include the state's reliance upon sales and use taxes as its chief source of revenue; the difficulty faced by a retailer in the event municipal communities were permitted to tax, at different rates, sales and use of alcoholic beverages; and, third, the matter of competition with retailers in adjacent municipalities.

We emphasize that in determining whether state or local law is to be predominate, we deal only with the ordinance before us relating exclusively, as it does, to the purchase and on-premises consumption of alcoholic beverages. In considering the problem, we have borne in mind the reasons for preemption of the entire field of sales and use taxation stated by the Legislature in chapter 1265, Statutes 1968, as well as the specific "in lieu" language of Revenue and Taxation Code section 32010. We must also recall

the past and present significance of alcoholic beverages as a source of societal and other problems.

Later in 1970, following the Century Plaza decision, the California Attorney General issued an opinion on a Bradley-Burns local sales and use tax question and concluded that it is doubtful charter cities may separately impose local sales and use taxes which do not conform to the Bradley-Burns Law :

> If the county uniform sales and use tax ordinance becomes inoperative by repeal or termination and the State Board of Equalization no longer administers and collects uniform local sales and use taxes in that county, general law cities do not have the authority to enact ordinances providing for the separate administration and collection of sales and use taxes by the city officials under section 37101 of the Government Code. In view of the decision in *Century Plaza Hotel Co. v. City of Los Angeles,* 7 Cal.App.3d 616 (1970), it is doubtful that charter cities may separately impose nonconforming local sales and use taxes under their charter powers . . .
>
> It was our opinion prior to the decision in *Century Plaza Hotel Co. v. City of Los Angeles, supra,* that charter cities could separately impose their own local sales and use taxes in the event that the county uniform local sales and use tax law become inoperative. In light of the *Century Plaza* decision, we now think it is doubtful that charter cities may separately impose local sales and use taxes which do not conform to the Bradley-Burns Law. It is to be noted that in *Century Plaza* the court relied on the fact that the state had taken over both the regulation and taxation of alcoholic beverages. In the situation under discussion, the problem of regulation and taxation of alcoholic beverages which was involved in the *Century Plaza* case is not present. Accordingly, we cannot predict with certainty whether a court would hold that charter cities may impose separately administered local sales and use taxes in a situation where there is no operative county uniform sales and use tax or that there is an overriding state purpose in preventing them from doing so.

Opinion No. 70-51, California Attorney General, October 30, 1970.

In Rivera v. City of Fresno, 6 Cal. 3d 132 (1971), a taxpayer attempted to rely upon the preemptive effect of the Bradley-Burns Law to challenge Fresno's utility users tax imposed on gas and electric service. However, the Court in Rivera disposed of the case pursuant to RTC § 7203.5(f) by simply holding that the utility users tax was a "substantially different tax" from a sales or use tax because the California Sales and Use Tax Law had always exempted gas and electricity from its scope under RTC section 6353. The Court observed that "we are not required to reach the issue of preemption in deciding the case before us." Id. at p. 137.

1 Under the Sales and Use Tax Law, a taxable "use" is broadly defined as "the
2 exercise of <u>any</u> right or power over tangible personal property incident to the ownership of
3 that property ... except ... the sale of that property in the regular course of business." See
4 RTC § 6009; <u>Union Oil Company v. State Bd. Of Equal.</u>, 60 Cal. 2d 441 (1963).[15] RTC
5 § 6201 provides that a use tax is imposed on the storage, use or other consumption in
6 California of tangible personal property purchased from a retailer. The Measure T value
7 tax meets the definition of a use tax under RTC §§ 6009 and 6201. By its very terms, it is a
8 tax imposed on the values of materials <u>used</u> in the manufacturing process in Richmond.
9 However, under the Sales and Use Tax Law, a use tax would <u>not</u> be imposed under such
10 circumstances because such tax is deferred until the retail sale of such products, in order to
11 avoid pyramiding of the tax. Sales and Use Tax Regulation 1525 specifically addresses this
12 situation and provides:

13 "[use] tax does not apply to sales of tangible personal property to persons who purchase it for the purpose of incorporating it into the manufactured
14 article to be sold, as, for example, any raw material becoming an ingredient or component part of the manufactured article."
15

16 By imposing the alternative and mutually exclusive sales or use tax only at the retail
17 level of trade (RTC §§ 6051 and 6201) a manufacturer's "use" of the raw materials at any
18 previous trade level would not be taxable under the Sales and Use Tax Law. <u>Burroughs</u>
19 <u>Corporation v. State Board of Equalization</u>, 153 Cal. App. 3d 1152 (1984).
20 The Measure T value tax is directly contrary to Regulation 1525 and the cases
21 which have interpreted the same. It is in effect a use tax imposed on raw materials at the
22 wholesale level, which are again taxed under the Sales and Use Tax Law at the time of the
23 retail sale of the manufactured product. This form of double taxation (pyramiding of the
24 tax) is inconsistent with the basic design of the Sales and Use Tax Law.
25
26

27 [15] An excellent illustration of the breadth of the definition of taxable use can be found in <u>McConville v. State Board of Equalization</u>, 85 Cal. App. 3d 156 (1978), where it was held that the depreciation of breeding mares was a taxable use.
28

1 In sum, the Legislature has specifically declared that the State has preempted the
2 area of sales and use taxation. The Measure T value tax is a use tax which does not
3 conform with the State Sales and Use Tax Law. As such, it runs directly afoul of RTC
4 § 7203.5 and the Legislature's express declaration of intent, and thus, must be held to be
5 invalid.

6 VIII. CONCLUSION.

7 For the foregoing reasons, Chevron respectfully submits that its motion for
8 judgment on the pleadings should be granted and that judgment should be entered in favor
9 of Chevron.

10 Dated: June 18, 2009.

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14

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16 CHEVRON U.S.A. INC.

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Exhibit A

FULL TEXT OF
MEASURE " "

EXHIBIT B

PROPOSED MEASURE

ORDINANCE OF THE CITY OF RICHMOND ENACTING THE RICHMOND BUSINESS LICENSE ACT

The People of the City of Richmond, California, do ordain as follows:

Section 1. Chapter 7.04 of the Richmond Municipal Code is hereby amended and restated to read as follows:

Chapter 7.04 BUSINESS LICENSE ACT

7.04.010 Purpose

This chapter shall be known as the "Richmond Business License Act." This Chapter is enacted to raise revenue for municipal purposes and is not intended for the purpose of regulation. The license fees payable hereunder are general taxes within the meaning of Article XIIIC of the California Constitution. This chapter shall apply to all persons engaged in business in the City of Richmond.

7.04.015 Business License Required; Replacement of Existing Licenses.

(a) All persons conducting any business in the City of Richmond shall be required to obtain a business license and pay the applicable fee pursuant to this chapter. Each business license shall be for the period commencing January 1 and ending on December 31 of each year, unless otherwise provided herein. Unless a period of shorter than one year for the license fee is specified in this chapter, each license shall be for a period of one calendar year. The license fee shall not be prorated for any period shorter than the period specified in the applicable section of this chapter for payment of the fee.

(b) Any person holding an existing business license issued pursuant to this chapter prior to December 31, 2008 shall be required to obtain a renewed license effective January 1, 2009 for calendar year 2009. A credit toward the 2009 license fee payable hereunder shall be given equal to the product of (i) the license fee paid for the existing license times (ii) a fraction, the numerator of which is the number of months remaining from January 1, 2009 to the expiration date of the existing license (with a full month's credit given for any fraction of a month) and the denominator of which is 12. Any business license issued prior to December 31, 2008 shall expire on such date and shall be superseded by the new license issued pursuant to this chapter.

7.04.017 New Businesses

For any person who establishes a new business in the City of Richmond and which has not operated any business in the City of Richmond in the preceding five years, the fees under this chapter shall be waived (1) if the date of establishment of such business is after June 30 of any year, for the period commencing on the date of establishment of such business and ending on the December 31 which is at least 12 months after the date of establishment of the business, or (ii) if the date of establishment of such business is prior to July 1 of any year, for the period commencing on the date of establishment of such business and ending the next December 31. Thereafter, such business shall be required to pay the fees specified in this chapter.

7.04.020 Definitions

In this chapter the singular number includes the plural and the plural the singular, and the masculine gender includes the other genders. The word "shall" is mandatory, "may" is permissive.

"Arcade" means a general room or enclosure in which is conducted a business of operating or exhibiting any phonograph, graphaphone talking machine, music machine, kinetoscope, biograph, projectoscope, or any other instrument or machine of like character, or exhibiting, showing, or letting the use of any game of skill, microscope, lungtester, muscle-tester, galvanic battery, weighing machine, fortune telling machine, or machine of similar character.

"Armed Forces of the United States" as used in this chapter means the Army, Navy, Air Force, Marine Corps, Coast Guard and Revenue Marine (Revenue Cutter) Service of the United States.

"Carnival" means any commercialized merrymaking, whether upon a public street or otherwise, wherein there is any performance or exhibition of any kind or character, or concession or group of concessions, or tests of skill, or merry-go-round or ferris wheel or animals or clowns or side shows of any kind.

"Circus" means any exhibition in which seats for spectators are arranged in tiers, and in which are shown feats of horsemanship, balancing, tumbling, vaulting, where clowns and singers and acrobats and wild animals and performers and actors entertain the audience.

"Direct relative" means a spouse, parent, parent-in-law, grandparent, grand-parent-in-law, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, child, or grandchild.

"Disabled war veteran" means a war veteran who is disabled ten percent or more which disability was incurred in connection with his service in the armed forces of the United States during time of war or while participating in a campaign or expedition.

"Employed" means engaged or employed as an employee in a business which is subject to regulation under this chapter.

"Employee" means all persons engaged in the operation or conduct of any business, whether as owner, any member of owner's family, partner, associate, agent, manager, or solicitor, and any and all other persons engaged or employed in said business.

"Engaged in business" means the conducting, managing or carrying on of any business herein specified by any person as owner, officer, agent, manager, employee, servant, or lessee.

"Evidence of doing business" means and includes whenever any person, by use of signs, circulars, cards or any other advertising media, holds oneself out as, or represents that person as doing business in the city.

"Itinerant show" means any temporary or transient show or theatrical performance, such as is usually given in theaters, and which is conducted in any structure or tent hired, leased, or erected for such purpose.

"Manufacturing" means the activity of converting or conditioning tangible personal property by changing the form, composition, or quality of character of some existing material or materials, including natural resources, by procedures commonly regarded by the average person as manufacturing, compounding, processing or assembling, into a material or materials with a different form or use. Manufacturing includes any process of refining or processing hydrocarbons, petroleum or crude oil to produce products for use as fuels, lubricants, solvents, plastics, or other intermediate or final products. "Materials used in manufacturing" means any and all materials used by a business engaged in manufacturing any part of which becomes a part of a product produced by the manufacturing business. With respect to any business which refines, distills, or otherwise manufacturers any product using hydrocarbons, petroleum or crude oil of any type, materials used in manufacturing includes all such materials used in such manufacturing process. For any taxable period, materials used in manufacturing does not include any materials acquired, stored or transported which are not actually subjected to the manufacturing process during the taxable period.

"Peddler" or "solicitor" means any person going from door to door or doing business at any place other than in a permanent store building, selling, taking orders for or soliciting orders for goods, wares, or merchandise.

"Person" means any domestic and foreign corporations, associations, syndicates, joint stock companies, firms, partnerships of every kind, trusts, societies, and individuals

"Professional carnival operator" means any person, partnership, corporation or firm whose business is the operation, management or carrying on of a carnival or of performances, exhibitions, concessions, rides or other apparatus designed for or employed in the conduct of a carnival.

"Rodeo" means any exhibition or contest of skill in riding, racing, roping, throwing, or otherwise controlling broken or unbroken horses or cattle for the entertainment of spectators.

"Sworn statement" means a written statement sworn to before the Tax Collector or any officer authorized by law to administer oaths.

"Tax Collector" means the license administrator of the city.

"Value" means, with respect to materials used in manufacturing, the actual cost or fair market value, whichever is greater, of all of the materials used in manufacturing. With respect to any materials used in manufacturing for which there is a published spot price in the financial markets, "value" shall be deemed to be equal to such published spot price for purposes of this chapter unless substantial evidence is presented to the Tax Collector that the actual fair market value of the materials is lower. Notwithstanding the foregoing, for purposes of calculating the license fee for any manufacturing process involving crude oil, the value of such crude oil shall be deemed to be equal to the product of (i) the total amount of crude oil used during the period of calculation for the business license, times (ii) the average daily spot price of New York Mercantile Exchange Inc. Light Sweet Crude Oil (trading symbol CL), or, if such index is no longer published, such other index as is determined to be comparable by the Tax Collector, for such period.

"War veteran" as used in this chapter means any person who has served in the armed forces of the United States during time of war or in a campaign or expedition in time of peace for which a medal has been issued by the Congress of the United States and who has received an honorable discharge or release from such service.

"War" and "campaign" as used in this chapter mean those wars and campaigns referred to in Section 205 of the Revenue Code of the state and in any amendment or revision of said section hereafter enacted.
Words and phrases not specifically defined in this chapter shall be construed according to the context and approved usage of the language.

7.04.025 Manufacturers

Every person engaged in manufacturing shall pay an annual license fee of the greater of : (i) the license fee which would apply to such person if such person were subject to the provisions of Section 7.04.030 or (ii) a fee equal to one fourth of one percent (0.250%) of the values of materials used in the manufacturing process during the calendar year immediately preceding the year for which the fee is paid.

7.04.030 Wholesalers, retailers, persons providing services and persons conducting other business.

Every person engaged in the manufacturing, wholesaling or retailing business or providing any service to the public or engaging in or conducting any other business not elsewhere in this chapter specifically mentioned shall pay annually a

license fee of two hundred thirty-four dollars and ten cents ($234.10) plus an additional sum of money equal to forty-six dollars and eighty cents ($46.80) per employee for the first twenty-five employees and forty dollars and ten cents ($40.10) per employee in excess of twenty-five employees. For the purpose of calculating the total license fee payable under this section, the number of employees shall be the average number of employees employed or to be employed in the city as shown by the applicant's sworn statement required under Section 7.04.300 of this chapter reduced by one; provided, that, where the business is owned jointly by a husband and wife or where the husband or wife of the owner of the business is engaged or employed in the business, such average number of employees shall be reduced by two, and further reduced by one for each person engaged or employed in the business who is the child of the husband and wife.

7.04.031 Contractors licensed by state.

Every contractor or other person who, pursuant to Chapter 9 (commencing with Section 7000) of Division III of the Business and Professions Code, is licensed by or engages in a business regulated by the Contractors' State License Board of the Department of Professional and Vocational Standards of the state shall, at the time he applies for a license under this chapter or for a renewal thereof, file or have on file with the tax collector a signed statement that he is licensed under the provisions of Chapter 9 and stating that the license is in full force and effect, or, if he is exempt from the provisions of Chapter 9, he shall furnish proof of the facts which entitle him to such exemption.

7.04.032 Child care homes.

Every person regularly providing care, protection or supervision to more than six children, in the person's own home for periods of less than twenty-four hours per day shall pay an annual license fee of sixteen dollars and seventy cents ($16. 70) dollars plus an additional sum of six dollars and sixty-five cents ($6.65) for each child cared for in the home.

7.04.040 Motion pictures.

Every person conducting, managing or carrying on the business of exhibiting motion pictures, either in a building or an open airdrome, shall pay an annual license fee based on the annual gross receipts of such business as follows: one hundred dollars and thirty cents ($100.30) for twenty thousand dollars or less of gross receipts, and three dollars for each additional one thousand dollars or fractional part thereof of gross receipts over twenty thousand dollars.

7.04.050 Itinerant shows, circuses, carnivals, rodeos and hawkers.

(a) General. Every person conducting any itinerant show, circus, carnival, rodeo, or in the business of hawking, shall pay a license fee in advance at the following rates: itinerant show, eighty-three dollars and sixty cents ($83.60) per day; carnival when conducted by a professional carnival operator, eight hundred thirty-six dollars and fifteen cents ($836.15) per day; circus, eight hundred thirty six dollars and fifteen cents ($836.15) per day; rodeo, five hundred one dollars and

seventy cents ($501.70) per day; hawker, eighty-three dollars and sixty cents ($83.60) per day, payable in advance where the article sold is not a patent or other medicine, and when the article is a patent or other medicine, the license fee shall be one hundred sixty-seven dollars and twenty cents ($167.20), payable in advance.
(b) Reduced Fee for Carnivals. Upon written application, the City Council may reduce the license fee for a carnival which is conducted in its entirety or in any part of a professional carnival operator, if it is sponsored by a religious, charitable, fraternal or educational organization or association, or a student body group for purposes of raising funds for such organization, association, or group, and if the proceeds received by the sponsoring organization, association or group are used entirely for the purposes and objects for which such organization, association or group was formed. The application for a reduced license fee shall be accompanied by the agreement or contract between the professional carnival operator and the sponsoring organization, association or group showing the agreement of the parties thereto regarding division of the proceeds to be derived from the operation of the carnival. The City Council may consider the agreement between the parties, respecting the division of such proceeds in determining whether, and to what extent, the license fee for the carnival may be reduced.
(c) Waiver of Fee. Upon written application, the City Council may waive the license fee for a carnival or similar activity or event which is sponsored or conducted by a religious, charitable, fraternal or educational organization or association, or by a student body group if the organization, association, or group does not employ the services of a professional carnival operator to conduct the carnival or similar activity.

7.04.051 Vendors of racing forms.

Every person engaged in the business of vendor of racing forms shall pay a license fee, in advance, to the City of Richmond at the following rate: six hundred and sixty-eight dollars and ninety-five cents ($668.95) for ninety days. Every person engaged in the business of vendor of racing forms shall pay a racing forms application fee of eight dollars and thirty-five cents ($8.35).

7.04.060 Arcade and shooting gallery.

Every person engaged in the business of operating an arcade or shooting gallery shall pay an annual license fee at the following rate: arcade, two hundred dollars and sixty-five cents ($200.65) per year; shooting gallery, one hundred thirty-three dollars and seventy-five cents ($133. 75) per year.

7.04.065 Mechanical or electronic amusement device.

Every person who owns or operates a business containing any mechanical or electronic amusement device shall pay an annual fee for the permit of fifty-six dollars and five cents ($56.05) for each device operated within the business.

7.04.070 Auctioneers and auctions.

For each auction to be conducted within the City of Richmond an application fee of one hundred sixty-seven dollars and twenty cents ($167.20) shall be paid. Every

person conducting an auction within the City of Richmond shall pay an auctioneer license fee of eighty-three dollars and sixty cents ($83.60) per day, provided that no license shall be required under the provisions of this section for the sale of merchandise salvaged from any fire, wreck or other calamity occurring in the City of Richmond, where said auction is conducted by the person who held the license to conduct the business before the fire, wreck or other calamity occurred.

7.04.080 Billiard or pool rooms and bowling alleys.

Every person engaged in the business of operating any public billiard or pool room shall pay a license fee of fifty dollars and fifteen cents ($50.15) per table per year. Every person engaged in the business of operating a bowling alley shall pay an annual license fee based on the annual gross receipts of such business as follows: one hundred dollars and thirty cents ($100.30) for twenty thousand dollars or less of gross receipts, and five dollars ($5.00) for each one thousand dollars or fraction thereof, by which such gross receipts exceed the sum of twenty thousand dollars.

7.04.090 Mechanical musical instruments.

Every person engaged in the business of maintaining in places of business or elsewhere in the City of Richmond mechanical musical instruments, which are operated by coins, shall pay a license fee of thirty dollars and ten cents ($30.10) semiannually or sixty dollars and twenty cents ($60.20) annually for each such instrument.

7.04.092 Weight scales.

Every person maintaining, operating, offering for operation or letting the use of any coin operated weight scale within the City of Richmond shall pay a license fee of three dollars and thirty cents ($3.30) per year for each such scale.

7.04.100 Peddlers and solicitors.

Every person engaged in the business of peddler or solicitor shall pay a license fee of one hundred dollars and thirty cents ($100.30) semiannually or two hundred dollars and sixty-five cents ($200.65) annually, provided that no license fee shall be required for any person selling fruit, vegetables, or other farm products raised or produced by himself, or articles of merchandise manufactured by himself.

7.04.105 Police permits for peddlers and solicitors.

Each person engaged in the business of peddler and solicitor in the City of Richmond shall pay an application fee of eleven dollars and twenty cents ($11.20) upon the filing of the application. Upon expiration of the application each such person shall pay a renewal fee of five dollars and sixty cents ($5.60).

7.04.110 Photographs, enlargements, frames, coupons, and orders for taking photographs only.

Every person engaged in the business of canvassing for or soliciting orders for the sale of enlarging of photographs or other pictures, or picture frames to be sold or given away with enlarged pictures, or selling tickets, coupons, or other devices in return for which such pictures or frame may be had, shall pay a license fee of sixteen dollars and seventy cents per day, payable in advance.
Every person engaged in the business of canvassing for or soliciting orders for the taking of photographs only shall pay a license fee of fifty dollars and fifteen cents ($50.15) semiannually.

7.04.115 Part-time businesses.

(a) Subject to the exemptions set forth in Section 7.04.160, every person or business which generates more than six hundred dollars but less than one thousand dollars for the fiscal year shall be required to pay a business license fee of one hundred dollars and thirty cents ($100.30) semi-annually or two hundred dollars and sixty-five cents ($200. 65) annually.
(b) For the purpose of this section, evidence that the income of the business does not exceed the sum of one thousand dollars for the fiscal year shall be either the previous year's tax return for the person or business or, if the person or business is new to the City of Richmond, a signed declaration stating that the person or business does not anticipate that the income generated within the City will exceed one thousand dollars for the fiscal year.

7.04.120 Taxicabs.

Every person engaged in the business of operating vehicles for hire or taxicabs shall pay a license fee of eighty-three dollars and sixty cents ($83. 60) per vehicle per year.

7.04.125 Hazardous waste facilities.

(a) Imposition. Pursuant to California Health and Safety Code Section 25173.5, there is hereby imposed a license fee on every off-site, multi-user hazardous waste facility located within the City of Richmond.
(b) Amount. The license fee authorized pursuant to this section shall not exceed ten percent of the hazardous waste facility's annual gross receipts for the treatment, storage, or disposal of hazardous waste at the facility.
(c) Payment. The owner of any hazardous waste facility subject to the license fee authorized by this section shall make quarterly payments. The payments shall be due and payable ninety days after the end of each quarter of the fiscal year of the facility. Payments shall be made to the Director of Finance of the City of Richmond.
(d) Accounting. The owner of any hazardous waste facility subject to the license fee authorized by this section shall provide the Director of Finance with a quarterly financial report which supports the license fee paid. The owner of any hazardous waste facility subject to the license fee authorized by this section shall also provide the Director of Finance with the facility's annual audited financial statement.

7.04.130 Amusements.

Every person engaged in the business of conducting a boxing or wrestling exhibition, or a skating rink, or a public dance hall, or a sporting event or commercial show or production of any other commercial entertainment, where a charge for admission is made, collected or received, either directly or indirectly, shall pay a license fee which shall be ascertained by multiplying the number of tickets sold or admissions charged by three cents.

7.04.135 Oil drilling and production.

Every person engaged in the business of drilling or exploring for, or in the production of, oil, gas or hydrocarbon substances from wells shall pay license fees in accordance with the following schedules:
(1) Eighty-three dollars and sixty cents ($83.60) per day for each day of actual drilling or other work upon each well until the well is placed in production;
(2) Six hundred sixty-eight dollars and ninety-five cents ($668.95) for each well during the first year that it is in production and one hundred thirty-three dollars and seventy-five cents ($133. 75) during each year thereafter that the well is in production;
(3) In addition to the fee specified in subsection (2), the sum of fifteen cents ($0.15) per barrel of oil produced from each well, such sum to be computed and paid monthly within fifteen days after the close of each calendar month.

7.04.136 Bicycles and bicycle establishments.

Every person purchasing a bicycle shall pay a fee of three dollars and thirty-five cents ($3.35) for the issuance of an initial license; provided that the owner of any new bicycle shall not have to pay the initial license fee if the bicycle is licensed within thirty days of the date of the initial purchase of said bicycle. Upon renewal of the license, the licensee shall pay a fee of one dollar and ten cents ($1.10) and shall receive a supplemental sticker.
Any bicycle which has not been licensed in violation of the provisions of 7.12.050 shall be subject to a fine of three dollars and thirty-five cents ($3.35) which will be in addition to the licensing fee.
Upon loss of the license tab, every person shall pay a fee of one dollar and sixty-five cents ($1.65).

7.04.137 Junkyards.

Each person engaged in the junk business in the City of Richmond shall pay an initial permit fee of forty-one dollars and eighty cents ($41.80).

7.04.138 Mobilehome parks.

Each person seeking a permit for the operation of a mobilehome park in the city shall be eighty-three dollars and sixty cents ($83.60) for each mobilehome lot therein. The annual renewal fee shall be eighty-three dollars and sixty cents ($83.60) for each mobilehome lot therein.

7.04.140 No license for charitable institutions, etc.

The provisions of this chapter shall not be deemed or construed to require the payment of a license to conduct, manage or carry on any business, occupation or activity or require the payment of any license from any institution or organization which is conducted, managed or carried on wholly for the benefit of charitable purposes or religious purposes or from which profit is not derived either directly or indirectly by any person.
No license fee shall be required for the conducting of any entertainment, dance, concert, exhibit, lecture or other activity by any religious, charitable, fraternal, educational, student body, military, state, county or municipal organization or association, whenever the receipts of any such entertainment, dance, concert, exhibition, lecture or other activity are to be appropriated for the purposes and objects for which said association or organization was formed and from which profit is not derived either directly or indirectly by any person.
This exemption shall not apply to any institution or organization which prohibits membership therein on grounds of race, color, or national origin.

7.04.150 Veterans exemption.

The tax collector, without payment to the City of any consideration, shall issue to any war veteran as defined in Section 7.04.020 hereof any license provided for in this chapter subject to the following conditions:
(1) The person seeking such gratuitous license must make application to the tax collector giving proof of his identity, residence, service in the Armed Forces of the United States during the time of war or in a campaign, honorable discharge or release from such service and interest in the business subject to such license fee;
(2) That such person, if over the age of twenty-one years, is a registered voter in the city of Richmond, or, if under the age of twenty-one years, is a bona fide resident of the city of Richmond;
(3) That the amount of the exemption allowed any one person within any period of twelve consecutive months shall not exceed twenty-five dollars, and if such person has only a partial interest or ownership in a business subject to such license fee, then the exemption shall not exceed that portion of the license fee which is proportionate to his interest;
(4) That no more than three annual exemptions of business license fees, whether or not the same are in consecutive years, shall be allowed to any one person; provided that this section shall not apply to those applicants who fall within the provisions of Section 16001 of the Business and Professions Code of the state of California.

7.04.152 Gratuitous licenses to indigents, etc.

The tax collector, without payment to the city of any consideration, shall issue to any disabled war veteran or to any indigent person or to any person who by reason of the infirmities of age, loss of limb or other disabling cause is unable to obtain a livelihood by manual labor, or to minors under the age of eighteen years, any license provided for in this chapter, provided that such applicant is a voter of the city if over the age of twenty-one years, or, if under the age of twenty-one years, a resident of the city, and further provided that such applicant does not fall within the provisions of Section 16001 of the Business and Professions Code of

the state of California. Application shall be made to the tax collector for the gratuitous permit stating the facts relied upon by the applicant. If requested by the tax collector, written proof of any such facts shall be submitted by the applicant, including a medical doctor's certificate of disability, inability to perform manual labor, infirmity resulting from age, loss of limb or other cause of disability. This section does not apply to any applicant who employs one or more persons in the business for which the gratuitous license is sought.

7.04.160 Exemptions.

The provisions of this chapter shall not apply to the following individuals, businesses and organizations:
(1) Minors under the age of eighteen (18) years;
(2) Businesses owned and conducted by minors under the age of eighteen (18) years when legal documentation is provided to support that:
(A) All persons engaged in the operation of the business are under the age of eighteen years, and
(B) All persons engaged in the operation of the business have a bona fide ownership interest in the business;
(3) Any public utility paying franchise payments to the City;
(4) Any person or business paying sums under a contract with the City for the privilege of collecting solid wastes; or
(5) Any person or business when the sole income generated within the City by the person or business does not exceed the sum of six hundred dollars for the fiscal year. For the purpose of this section, evidence that the income of the business does not exceed the sum of six hundred dollars for the fiscal year shall be either the previous year's tax return for the person or business or, if the person or business is new to the City of Richmond, a signed declaration stating that the person or business does not anticipate that the income generated within the city will exceed six hundred dollars for the fiscal year.
(6) Any person or business when the sole income generated within the City of Richmond by the person or business is the income from a single contract with the City of Richmond when the amount of said contract does not exceed (and never exceeds) the sum of five thousand dollars in any single fiscal year.

7.04.161 Intercity transportation business.

Commencing on July 1, 1971, and continuing during the effectiveness of the Highway Carriers' Uniform License Tax provided for in Chapter 3 (Section 4303 et seq) of Division 2 of the California Public Utilities Code, no business license fees shall be required for the following types of enterprises covered by said Chapter 3: Intercity transportation business of any express corporation, freight forwarder, motor transportation broker, or person or corporation, owning or operating motor vehicles in the transportation of property for hire upon the public highways, under the jurisdiction of the Public Utilities Commission.

7.04.170 Licenses, contents of.

All licenses shall be prepared and issued by the tax collector upon the payment of the sum herein required to be paid therefore. Each license so issued shall state upon the face thereof the following:

(1) The name of the person to whom it is issued.
(2) The kind of business license.
(3) The location of such business.
(4) The date of expiration of such license.

7.04.180 Tax collector not required to send bill.

The tax collector is not required to send a notice or bill to any person subject to the provisions of this chapter, and failure to send such notice or bill shall not affect the validity of and license fee due hereunder.

7.04.190 Posting and keeping licenses.

All licenses must be kept and posted in the following manner:
(1) Any licensee engaged in business at a fixed place of business in the city shall keep the license posted in a conspicuous place upon the premises where such business is carried on.
(2) Any licensee engaged in business but not operating at a fixed place of business in the city shall keep the license upon his person at all times while engaged in such business.

7.04.200 Duplicate licenses.

A duplicate license may be issued by the tax collector to replace any license previously issued hereunder, which has been lost or destroyed, upon licensee's filing an affidavit attesting to such fact, and at the time of filing such affidavit, paying to the tax collector a duplicate license fee of forty-five dollars and fifteen cents ($45.15).

7.04.210 No license transferable--Exception--Amended license for changed location.

No license issued pursuant to this chapter shall be transferable, provided that a license to a person engaged in the business of peddler or solicitor issued pursuant to Section 7.04.100 of this chapter, the fee of which was paid by the employee of such licensee, may be transferred to another employee of the person having paid said fee in the event of termination of the employment of the original licensee upon application therefore and payment of a transfer fee of thirty six dollar and seventy-five cents ($36.75) and provided further that when a license pursuant to any provision of this chapter is issued authorizing a person to carry on a business at a particular place, such licensee may, upon application therefore and paying a fee of thirty six dollar and seventy-five cents ($36.75) have the license amended to authorize the carrying on of such business at some other location within the city of Richmond to which the business is or is to be moved.

7.04.220 Separate license for each place of business or branch.

A separate license must be obtained for each branch establishment or location of the business engaged in and each license shall authorize the licensee to engage only in the business licensed thereby at the location or in the manner designated in such license; provided that warehouses and distributing plants used in connection with and incidental to businesses licensed under this chapter shall not be deemed to be separate places of business or branch establishments.

7.04.230 Two or more businesses at same location.

Whenever any person is engaged in two or more businesses at the same location and under the same management, such person shall not be required to obtain a license for the carrying on of each of such businesses, but shall be issued a joint license, and the sum of the average number of employees of all of such businesses so carried on by him shall be used as the basis for computing the amount of license fee to be paid for the carrying on of all such businesses; provided that when two or more businesses are carried on at the same location under different managements, the person managing each business shall obtain a separate license for his respective business at such location.

7.04.240 License fees paid in advance.

Except for monthly license fees payable on or before the tenth day of the succeeding month, all license fees shall be paid in advance. For annual business licenses, license fees are due and payable on or before March 15 of the year for which the license is issued. For all other business licenses, licenses fees are due and payable on or before the date of issuance.

7.04.250 Unexpired license heretofore issued.

Where a license for any business has been issued by the city of Richmond and fee paid therefore under the provisions of any ordinance heretofore enacted, and term of such license has not expired, then the license fee prescribed for the business by this chapter shall not be payable until the expiration of the term of such unexpired license.

7.04.260 Quarterly licenses.

Any business not otherwise provided for in this Article VII and without a place of business in the city to engage in business activities, may obtain a quarterly (91 days) license for seventy five dollars and twenty-five cents ($75.25) as the basic license fee plus an additional sum based upon the rate of twenty-five percent of the per-employee fees specified in Section 7.04.030.

7.04.270 Refunds due to action of public agency.

The tax collector shall refund a portion of license fees paid by any licensee whose business is terminated by the action of any public agency authorized by law to exercise its right of eminent domain, and who does not relocate within the city of Richmond. Such licensee must first file with the tax collector a written request for such refund. The amount to be refunded in any such case shall be determined by determining the number of days in the license period for which the license fee was paid, treating as earned the number of days of such period which have elapsed up to and including the date of cancellation of such license, and treating as unearned the number of days of such period following said date. The amount to be refunded shall be in proportion to the total license fee paid as the unearned number of days bears to the total of days in such license period.

7.04.280 No license issued to applicant in arrears.

No license for any ensuing, current or unexpired license period shall knowingly be issued to any person who at the time of making application there for is indebted to the city for any unpaid license fee.

7.04.290 Delinquency.

Any person who fails to file any required statement and pay the amount of the license fee prescribed in this chapter within thirty (30) days after it becomes due shall be deemed delinquent and shall be assessed the following penalty:
(1) Ten percent of the license fee if the payment is made within one to thirty days after it became delinquent;
(2) Twenty-five percent of the license fee if the payment is made within thirty-one to sixty days after it became delinquent; and
(3) Fifty percent of the license fee if the payment is made more than sixty days after it became delinquent. Such penalty shall become part of the license fee then required to be paid under this chapter, and if such delinquency continues thereafter, such person shall be subject to all further penal provisions and remedies contained in this chapter.

7.04.300 Sworn statements.

At the time of applying for a license under this chapter, if applicant has been engaged in a business in the city for one year, he shall file a sworn statement verifying the accuracy of the calculations used in determining the license fee payable hereunder.

7.04.310 Statements not conclusive.

No such statement shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the city from collecting by appropriate action such sum as is actually due and payable under this chapter. Such statement and each of the several items therein contained shall be subject to audit and verification by the tax collector, who is authorized to examine, audit, and inspect such books and

records of any licensee or applicant for license as may be necessary in his judgment to verify or ascertain the amount of license fee due.

All licensees, applicants for licenses, and persons engaged in business in the city are required to permit an examination of such books and records for the purposes aforesaid. The information or data obtained from such examination or audit, or from any statement required under this chapter shall be used for the purpose of enforcing the provisions of this chapter and for no other purpose.

7.04.320 Rules and regulations for enforcement.

The tax collector is authorized to make such rules and regulations as may be necessary to aid or assist in enforcement of the provisions of this chapter. Notwithstanding anything in this chapter to the contrary, such rules and regulations may include withholding issuance of a business license or revoking an existing license when the underlying activity violates the Municipal Code or any state or federal law.

7.04.330 Enforcement.

It shall be the duty of the tax collector to enforce each and all of the provisions of this chapter, and the Chief of Police shall render such assistance as may from time to time be required by the Tax Collector.
The Tax Collector in the exercise of his duties and acting through his deputies or any duly authorized City employee shall investigate all businesses hereby licensed to ascertain whether or not the provisions of this chapter are being complied with.
The Tax Collector and his deputies and any police officer shall have the authority to enter free of charge at any reasonable time any place of business required to have a license hereunder, and to demand exhibition of such license. Any person having any such license in his possession or under his control, who fails to exhibit the same on demand, shall be guilty of a misdemeanor and shall be punishable accordingly.

7.04.340 Additional power of tax collector.

In addition to all other powers conferred upon him, the Tax Collector shall have the power, for good cause shown, to extend the time for filing any required sworn statement for a period not exceeding thirty days, and in such case to waive any penalty that would otherwise have accrued; and shall have the further power, with the consent of the Council, to compromise any claim as to amount of license fee due.

7.04.350 Remedies cumulative.

The conviction and punishment of any person for engaging in any business without obtaining a license so to do shall not relieve such person from paying the license fee due and unpaid at the time of such conviction, nor shall the payment of any license fee prevent a criminal prosecution for the violation of any of the provisions of this chapter. All remedies prescribed herein shall be cumulative and

the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

7.04.360 No under or over payment to be received.

No person charged with the enforcement of any of the provisions of this chapter shall knowingly accept or receive any sum for any license which is less than or greater than the amount actually required to be paid under the provisions of this chapter.

7.04.370 Unlawful business.

No license issued under the provisions of this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business.

7.04.380 Unlawful burden.

Nothing herein shall be construed as requiring a license or the payment of a license fee, or the doing of any act which would constitute an unlawful burden upon or an unlawful interference with interstate or foreign commerce, or which would be in violation of the Constitution or laws of the United States of America or the Constitution or laws of the State of California.

7.04.385 Business License Fee Not A Property Tax

The payment of any amount under this chapter measure by the value of any tangible or other property is not a tax on such property, but is a tax on the business undertaken by the taxpayer measured by the value of such property actually used in the business.

7.04.390 Regulatory provisions of other chapters remain.

Any person required to pay a license fee for any business under this chapter shall be relieved from the payment of any license fee for the privilege of doing such business which has been required under any other law of the City of Richmond, but shall remain subject to the regulatory provisions of such other law.

7.04.400 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 licensed hereunder without obtaining a license so to do shall be liable to an action by and in the name of the City in any court of competent jurisdiction for recovery of any such sum.

7.04.410 Failure to file statement or corrected statement.

If any person fails to file any required statement within the time prescribed hereby, or if after demand therefore made by the Tax Collector he fails to file a corrected statement, the Tax Collector may determine the amount of license fee due from such person by means of such information as he may be able to obtain.

In case such a determination is made the Tax Collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States Post Office at Richmond, California, postage prepaid, addressed to the person so assessed at his last known address. Such person may, within ten days after the mailing or serving of such notice, make application in writing to the Tax Collector for a hearing on the amount of the license fee. If such application is not made within the time prescribed the assessment shall become final. If such application is made within the time prescribed, the Tax Collector must cause the matter to be set for hearing within fifteen days before the City Council. The Council shall consider all evidence produced, and written notice of its findings thereon, which findings shall be final, shall be served upon the applicant in the manner prescribed above for service of notice of assessment.
(Source: Ordinance No. 8-03 N.S.)

7.04.420 Review By City Audit Committee

[New] The Audit Committee appointed by the City Council shall annually review the collection of the taxes levied under this chapter and shall issue a report to the City Council, no later than 120 days after the close of each Fiscal Year, concerning the amount collected during such fiscal year and the impact on the City's ability to provide needed services, facilities and community improvements. Such report may include recommendations for the allocation of funds from future collections, subject to the approval of the City Council

Section 2. **Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The People hereby declares that they would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section 3 **Effective Date.** If approved by majority of the voters of the City of Richmond at the November 4, 2008 election, as certified by the City Council, this Ordinance shall become effective on January 1, 2009