



AGENDA ITEM NO. 9:30am D

COUNCIL MEETING 2/26/08

APPROVED BY

DEPARTMENT

CITY ATTORNEY

January 29, 2008

FROM: JAMES C. SANCHEZ, City Attorney

SUBJECT: BILL - (FOR INTRODUCTION) - AMENDING SECTION 7-1002, SECTION 7-1202 SUBSECTION (a), SECTION 7-1207 SUBSECTION (a) AND ADDING SUBSECTION (e) TO SECTION 7-1207 OF THE FRESNO MUNICIPAL CODE RELATING TO EXEMPTION OF PRIVATE SECTOR PROFESSIONAL EMPLOYEES FROM BUSINESS LICENSE AND LICENSE FEE REQUIREMENTS - City Attorney's Office

EXECUTIVE SUMMARY

City Attorney's Office has prepared the attached introduction ordinance pursuant to December 18, 2007 direction of City Council. Under the existing Fresno Municipal Code, a professional employer may avoid responsibility for paying the City business license taxes due from the employer's professional employee(s). Under this proposed ordinance all professional employers will become responsible for paying all business license taxes due from their employees and all professional employees will be expressly exempted from responsibility for paying City business license taxes. The basis for determining the existence of an "employment relationship" for purposes of this proposed ordinance will be the issuance of a W-2 Form. The proposed ordinance does not otherwise modify the City's existing business license tax requirements. The tax computation options, methodologies and marginal rates will remain the same.

BACKGROUND

On December 18, 2007, Councilmember Duncan requested and City Council approved directing (i) City Attorney to return with a modification to the Fresno Municipal Code that will provide for an exemption to licensed individual professional employees of a professional firm from the City of Fresno business tax, and (ii) City staff to determine what, if any, fiscal impact such modification might have on the General Fund.

The attached ordinance changes the existing Fresno Municipal Code requirements regarding business license taxes in the following ways:

- 1. Shifts responsibility for payment of business license taxes due from professional employees to the professional employer.
2. Specifies that an employer's issuance of a W-2 Form shall be the basis for determining whether an "employment relationship" exists for purposes of this proposed ordinance.

Otherwise the current City requirements regarding City business license tax assessment and collection will continue unchanged, including (i) the existing ("per capita" versus "gross revenue") options, the methodologies and the marginal rates for computing the business license taxes, (ii) the requirement that independent contractor professions are individually responsible for paying their own business license taxes, and (iii) the exceptions from business license taxes variously available to veterans, tax-exempt/nonprofit entities, credit unions, and public sector employees.

Presented to City Council

Date 1/29/08

Disposition laid over

2 weeks

**REPORT TO THE CITY COUNCIL**

Subject: Exemption Of Private Sector Professional  
Employees From Business License And License Fee Requirements  
January 29, 2008  
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**OPTIONS**

Council may:

1. Introduce the proposed amendment to the City Business License Tax Ordinance for adoption at the next Council meeting.
2. Take no further action and leave the City Business License Tax Ordinance unchanged.
3. Introduce a modified amendment to the City Business License Tax Ordinance.

**FISCAL IMPACT**

City staff has advised our office that this proposed ordinance is anticipated to have an essentially revenue neutral fiscal impact, such that City's annual business tax revenues should not materially increase or decrease as a result of this proposed ordinance. Staff has further advised that the City's annual business license revenues are generally in the range of \$7-8 Million, with professional license fees comprising approximately \$1.5 Million of such sum.

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AMENDING SECTION 7-1002, SECTION 7-1202 SUBSECTION (a),  
SECTION 7-1207 SUBSECTION (a) AND ADDING SUBSECTION (e)  
TO SECTION 7-1207 OF THE FRESNO MUNICIPAL CODE  
RELATING TO EXEMPTION OF PRIVATE SECTOR  
PROFESSIONAL EMPLOYEES FROM BUSINESS LICENSE AND  
LICENSE FEE REQUIREMENTS

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 7-1002 of the Fresno Municipal Code is amended to read:

SECTION 7-1002. LICENSE PROCUREMENT AND COMPLIANCE WITH  
REGULATION.

[Except as otherwise expressly provided in this chapter,] No person,  
whether as principal or agent, clerk or employee either for himself or for any  
other person or for any body corporate, or as an officer of any corporation, or  
otherwise, shall commence or carry on any trade, calling, profession or  
occupation in the city, in this chapter specified, without first having procured a  
license so to do, and without complying with any and all regulations of such trade,  
calling, profession or occupation contained in this chapter.

SECTION 2. Subsection (a) of Section 7-1202 of the Fresno Municipal Code is amended to  
read:

SECTION 7-1202. LICENSE FEES BASED UPON SALES.

(a) Every person conducting, carrying on or managing any business or  
profession, not otherwise specifically licensed by [or exempted by] other sections  
of this chapter, shall pay a quarterly license fee based on the applicable gross  
receipts schedule(s) designated in the Master Fee Resolution, whether retail,

wholesale or both. License fees shall be based upon the total [gross] sales and service from business transactions within the city as recorded on the records of the business.

SECTION 3. Subsection (a) of Section 7-1207 of the Fresno Municipal Code is amended to read:

SECTION 7-1207. SPECIFIC BUSINESSES AND PROFESSIONS.

(a) Every person primarily conducting, carrying on or engaged in a profession in the private sector shall pay the annual license fee designated in the Master Fee Resolution, except [that] where the professional is [an employee in an employment relationship then the employer shall] ~~employed by a business organization which~~ pays [the employee's designated annual] a license fee [unless the employer pays a license fee] under Section 7-1202; or ~~where the alternate fee is elected under~~ Section 7-1208. [For purposes of this subsection the term "employee" means an employee whose wages are reported by the employer on a Form W-2 Wage and Tax Statement.]

SECTION 4. Section 7-1207 of the Fresno Municipal Code is amended by adding subsection (e) thereto to read:

[(e) If any sentence, clause or phrase of this section is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this section. The City Council hereby declares that it would have passed this ordinance and adopted this section and each sentence, clause or phrase thereof,

irrespective of the fact that any one or more subsections, sentences, clauses or phrases be declared invalid or unconstitutional.]

SECTION 5. This ordinance shall take effect and be in force immediately upon the date of final passage, as a tax measure, pursuant to City Charter Section 610.

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STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

AYES :  
NOES :  
ABSENT:  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2008

Mayor Approval/No Return: \_\_\_\_\_, 2008

Mayor Veto: \_\_\_\_\_, 2008

Council Override Vote: \_\_\_\_\_, 2008

REBECCA E. KLISCH  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY:                     R                    1-22-08                      
Robert R. Coyle  
Senior Deputy City Attorney

RRC:sn:skl [43064sn/rcc/ORD] 11/14/07rvsdRRC1/22/08