

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

**AN ORDINANCE AMENDING CHAPTERS 4.46 AND 4.47 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE REVISING THE REFERENCE TO THE VALUATION TABLES USED TO CALCULATE THE BUILDING AND STRUCTURE CONSTRUCTION TAX AND COMMERCIAL-RESIDENTIAL-MOBILEHOME PARK BUILDING TAX FROM THE CURRENT INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS (ICBO) TO ITS CURRENT SUCCESSOR ORGANIZATION, THE INTERNATIONAL CODE COUNCIL (ICC), AND TO FUTURE SUCCESSOR ORGANIZATIONS' BUILDING VALUATION TABLES**

WHEREAS, the City of San Jose has always imposed its Building and Structure Construction Tax and its Commercial-Residential-Mobilehome Park Building Tax as a percentage rate of the value of construction being approved at the time of the issuance of a building permit; and

WHEREAS, the same construction valuation also used to be used for the calculation of building permit fees; and

WHEREAS, the determination of the construction valuation has always been made by reference to building valuation data tables published annually by nationally recognized building official organizations; and

WHEREAS, the name of the building official organizations has changed over time and may change in the future; and

WHEREAS, building valuation is no longer used for the calculation of building permit fees; and

WHEREAS, as the result of the changes described above outdated references have remained in certain sections of the San Jose Municipal Code; and

WHEREAS, the City Council desires to revise the references to the valuation tables to be used in imposition of construction taxes but does not wish to change the tax rates or the methodology for imposing the rates;

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

**Section 1.** Section 4.46.050 of Chapter 4.46 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

**4.46.050 Rate of tax.**

A. The rate of tax imposed under this Chapter shall be based on construction valuation derived from the most current building valuation data table published by the International Code Council (ICC), or its successor, at the time the rate is being updated (Building Valuation Data Table) and shall be calculated as follows:

1. One and three-quarters percent of eighty-eight percent of the valuation determined and used by the Building Official, if the building or structure, or portion thereof, is designed or intended to be used for residential purposes;
2. One and one-half percent of one hundred percent of the valuation determined and used by the Building Official, if the building or structure, or portion thereof, is designed or intended to be used for commercial purposes;
3. One percent of one hundred percent of the valuation determined and used by the building official, if the building or structure, or portion thereof, is designed or intended to be used for industrial purposes; and
4. The rates imposed under subsections 1, 2 and 3 above shall be imposed according to the following methodology:
  - a. The building official shall establish the residential, commercial and industrial valuation rates on or before the city fiscal year. Each rate will be effective until a new rate is set. The "average" rate shown in the sections for "Residential – multiple and one and two family, Type VB Construction" of the Building Valuation Data Table shall be used in imposing the residential rate.
  - b. The valuation rate utilized will be derived from the Building Valuation Data Table.
  - c. The valuation rate will be rounded to the nearest fifty-cent increment.
  - d. The regional modifier will not be used in calculating the valuation rate.
  - e. The entire valuation will be utilized in calculating the taxes for each project.
  - g. For the construction of commercial or industrial shell buildings, 80 per cent of the valuation established above or the construction bid cost, whichever is higher, shall be used.
  - h. For alteration, remodeling or repair of any residential, commercial or industrial construction projects, 20 per cent of the valuation established above or the construction bid cost, whichever is higher, shall be used.

- B. For the purposes of subsection A. of this section:
1. If the building or structure or portion thereof is designed or intended to be used for more than one purpose, the rate of tax shall be applied in accordance with the following rules:
    - a. In the case where a building permit is issued for improvements to construct a building shell only for an industrial use and no tenant improvements have been determined for uses within the building, the rate of tax for industrial use may be applied for the entire structure, subject to reassessment in accordance with Subsections b. and c. below.
    - b. For each portion of a building or structure for which a building permit for the first tenant improvements for that portion of the building is issued, the rate of tax for the use designated for those tenant improvements shall be applied.
    - c. In the case where the rate of tax for an industrial use was paid at the time of issuance of the building shell and a building permit for first tenant improvements for a use other than an industrial use is being issued, then the rate of tax for the non-industrial use shall also include a reassessment of the rate of tax applicable to a portion of the assessment of the building shell which is proportional to the square footage of the tenant improvements for the non-industrial use to the total square footage of the building or structure.
    - d. In the case where there are secondary non-industrial uses which directly support the industrial uses designated for a parcel (campus) containing more than one building and there is a single business which directly operates both uses in conjunction with each other, then such secondary non-industrial uses shall be assessed at the rate of tax for industrial uses.
  2. All buildings or structures or portions thereof shall be deemed to be designated or intended to be used for residential, commercial or industrial purposes or for two or more of such purposes.
  3. "Used for industrial purposes" means:
    - a. Used for one of the following purposes:
      - (1) Laboratories, including bioscience laboratories, devoted exclusively to research, product development and testing, engineering development, and sales development.
      - (2) Manufacturing facilities.
      - (3) Photographic processing and developing.

- (4) Miniwarehouses.
  - (5) Production, preservation and preparation of food products for human consumption, excluding public dining.
  - (6) Trade and business schools.
  - (7) Repair, cleaning, and servicing of commercial or industrial equipment or products.
  - (8) Storage, warehousing and distribution establishments.
  - (9) Construction and corporation yards.
  - (10) Repair and cleaning of vehicles, including boats, excluding gasoline service stations and repair shops, installation of tire, battery, brake, muffler and shock absorber, and wheel aligning.
  - (11) Nine and eighteen-hole golf courses.
- b. Used for a use for which the city council has approved a development agreement by ordinance because the city council determined, among other required findings, that the proposed development will make a substantial contribution to the economic development of the city, in that it will have as its primary use: research, experimental and engineering laboratories, wholesale sales, manufacturing, repair and servicing of industrial and commercial equipment, printing, or general business offices, consistent with Title 20 of this Code, or in the case of a development where there is no development agreement, the city council has determined a use to be an industrial use for the purposes of collection of the tax imposed by this chapter in a special ordinance adopted by the city council.
4. Used for commercial purposes" means used for a use which, under said Title 20, is first permitted (with or without a conditional use permit) in the general commercial district (GC), as such order of restrictiveness is set forth in Section 20.10.060 of this Code, except those uses set forth in the following Subdivision 5 as being residential uses.
5. Used for residential purposes" means used for any of the following uses: One-family dwellings, two-family dwellings, multiple dwellings, boardinghouses, lodging houses, guesthouses, residential care facilities for six or fewer persons, family day care homes for six or fewer children, and automobile trailer parks, as said terms are used in Chapter 20.200.
- C. The suspension on the collection of taxes provided for in Subsection B.3.b. of this section shall be in effect for such period set forth in the ordinance granting the suspension.

**Section 2.** Section 4.47.050 of Chapter 4.4 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

**4.47.040 Rate of tax.**

- A. The rate of tax imposed under this chapter shall be based on construction valuation derived in the same manner as in Section 4.46.050 A and shall be implemented as follows:
1. Two and seventy-five hundredths percent of eighty-eight percent of the valuation determined and used by the Building Official for calculation of the tax imposed under Section 4.46.050 A 1, if the building or structure, or portion thereof, is designed or intended to be used for residential purposes.
  2. Three percent of one hundred percent of the valuation determined and used by the Building Official for calculation of the tax imposed under Section 4.46.050 A 2, if the building or structure, or portion thereof, is designed or intended to be used for commercial purposes.
- B. For each mobilehome lot in a mobilehome park, the sum of nine hundred fifty dollars, except as provided in subsection C. hereof.
- C. Commencing on May 1, 1979, and continuing annually thereafter on May 1st of each year until May 1, 1992, the rate imposed by subsection B. of this section on said mobilehome lots shall increase or decrease in accordance with the changes in the annual San Francisco-Oakland metropolitan area consumer price index-all items (1967 = 100), as promulgated by the Bureau of Labor Statistics of the United States Department of Labor. The changed rate on each May 1st shall bear the same ratio to nine hundred fifty dollars as the said annual consumer price index for the calendar year ending the December 31st immediately preceding the May 1st on which the change is to be made bears to such annual consumer price index for the year ending December 31, 1978. In no event shall the rate decrease below nine hundred fifty dollars. In the event that such consumer price index (or its successor or substitute index) is not available, or is substantially changed, a reliable governmental or other nonpartisan publication, evaluating the information thereto for use in determining the consumer price index, shall be used in lieu of such consumer price index, as determined by the director of finance.
- D. On May 1, 1992, the rate for mobilehome lots shall drop to an amount equal to twenty-two percent of the rate as it exists on April 30, 1992. Thereafter the May 1, 1992, rate shall continue to increase or decrease on each successive May 1st in the same manner as provided in subsection C. for the May 1, 1979, rate.
- E. For the purposes of subsection A.:
1. If the building or structure, or portion thereof, is designed or intended to be used for more than one purpose, including "industrial purposes" as that

term is used in Chapter 4.46 of this Code, the rate of tax shall be applied in accordance with the provisions of Section 4.46.050B.1. of Chapter 4.46 of Title 4 of this Code;

2. All buildings or structures, or portions thereof, shall be deemed to be designed or intended to be used for residential, commercial or industrial purposes or for two or more of such purposes;
3. "Used for commercial purposes" means used for a use which, under the provisions of Title 20 of this Code, is first permitted (with or without a conditional use permit) in the general commercial district (GC or C-3) or more restrictive districts (as such order of restrictiveness is set forth in Section 20.10.060 of this Code) except those uses set forth in the following Subsection 4 as being residential uses;
4. "Used for residential purposes" means used for any of the following uses: One-family dwellings, two-family dwellings, multiple dwellings, boardinghouses, lodging houses, guesthouses, residential care facilities for six or fewer persons, and automobile trailer parks, as said terms are used in Chapter 20.200.

PASSED FOR PUBLICATION OF TITLE this \_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE  
City Clerk