

*Michelle W. Smith*  
CITY ATTORNEY

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2003 SEP 25 PM 3:47  
C.M.S.

**REVISED**

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

**AN ORDINANCE AMENDING SECTION 5.04.151 OF THE OAKLAND MUNICIPAL CODE TO PROVIDE THAT ALL BUSINESSES REGARDLESS OF LOCATION ARE ELIGIBLE TO PARTICIPATE IN THE TAX ABATEMENT PROGRAM, TO CODIFY THE DEFINITION OF THE BENCHMARK YEAR FOR BOTH NEW AND EXISTING BUSINESSES, TO REQUIRE THE COMPLETION OF AN APPLICATION FOR ANY BUSINESS THAT WANTS TO ENROLL IN THE PROGRAM, AND TO CODIFY THE SUNSET DATE FOR ENROLLMENT IN THE PROGRAM**

**WHEREAS**, Section 5.04.151 of the Oakland Municipal Code (the "Municipal Code"), establishes the Tax Abatement Program for the City of Oakland; and

**WHEREAS**, in order to enroll in the tax abatement program all businesses are required by the Financial Services Agency, Business Tax Section to complete an application; and

**WHEREAS**, the Business Tax Section must identify a twelve-month period of a business enrolling in the tax abatement program in order to determine the base tax year liability for such business; and

**WHEREAS**, this Council has heretofore determined that the last date for businesses to enroll in the Tax Abatement Program shall be December 31, 2003; and

**WHEREAS**, the Municipal Code provides that businesses not physically located in Oakland are barred from participating in the Tax Abatement Program; and

**WHEREAS**, this Council desires to remove the limitation prohibiting businesses without physical locations within the City of Oakland from participating in the Tax Abatement Program; and

**WHEREAS**, Council desires to amend Municipal Code to codify the definition of the benchmark year for both new and existing businesses, to require the completion of an application for any business that wants to enroll in the Tax Abatement Program, to codify the sunset date for enrollment in the Tax Abatement Program and to remove the limitation against businesses physically located outside of the City of Oakland;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:**

**10.22CC**  
**ORA/COUNCIL**  
**SEP 30 2003**

**SECTION 1.** The City Council finds and determines the forgoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

**SECTION 2.** The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

**SECTION 3.** Section 5.04.151 of the Municipal Code is hereby amended in its entirety to read as follows:

**5.04.151. Tax abatement and liability caps.**

A. ~~for~~ For years one through ten, starting with the first year the business is enrolled in the tax abatement program, ~~of the effective date of the ordinance codified in this chapter~~, the annual tax liability of a taxpayer within the targeted industries designated below will be calculated as per the rate applicable to that industry. Once calculated, a reduced tax liability will be determined by applying the percentage, as per Schedule A, to the initial calculation above. This reduced figure will not exceed the current cap in effect adjusted by the CPI as described in subsection B of this section.

B. The business tax will be capped at one hundred fifty thousand dollars (\$150,000.00) for all new and existing businesses whose business activity is classified by the ~~Budget and Finance~~ Financial Services Agency to be within one of the five-targeted industries (food processing, transportation, bioscience/biotechnology, software/multimedia, and telecommunications). Thereafter, the cap will be adjusted every odd year to reflect cost of living increases as reflected in the Consumer Price Index for Urban Consumers (CPI-U).

C. All new businesses in one of the five-targeted industries shall be eligible to receive a phased-in abatement of their business tax for a period of ten years (see Schedule A). The abatement will amount to a tax calculated in increments of ten percent of the full tax liability annually until the full tax liability without abatement is reached. In the eleventh year, the business shall pay the full measure of tax that is then applicable to the taxpayer pursuant to the Business Tax Ordinance, provided that the tax does not exceed the current cap in place. There will be no collection of that portion of taxes abated during the prior ten years.

D. A new business is defined as one conforming to the provisions of Section 5.04.030 of this code, except the following shall be excluded therefrom:

1. ~~An existing business in the city that changes its business name and or its business location within the city, but does not satisfy change of ownership requirements under Section 5.04.030 of this code;~~

2. ~~A business located outside the city that has no physical location within the city;~~

23. ~~A business located within the city that does not conform to the provisions of the Business Tax Ordinance by the March 1 following its application to the program within thirty (30) days of its business start date due;~~

34. A business of short term, promotional or infrequent event in nature;

45. Building contractors (general or subcontractor) who establish a location within the city for the sole purpose of obtaining and/or working on a job(s) in Oakland.

E. If application to the tax abatement program is received between January 1 and March 1 of any year, the calendar year the application is received will be the "effective year" for purposes of the tax abatement program. If application to the tax abatement program is received at any time between March 2 and December 31, the "effective year" for such business will be the immediately succeeding calendar year.

EF. Any existing business in one of the targeted industries also would be eligible for an abatement of its their business tax liability. The gross receipts total for the calendar year preceding a businesses enrollment in the tax abatement program is used to determine the base-year business tax liability (or "benchmark") for an existing business. The benchmark for a new business is sixty dollars (\$60.00). In the first year of the policy, each firm's existing business tax would be benchmarked. This benchmark does not change and to be is the base tax liability to which the following abatement is added: any tax due on growth beyond the benchmark would be prorated at ten percent of this growth factor per year for the next ten consecutive years (see Schedule B). In the eleventh year, the business shall pay the full measure of tax that is then applicable to the taxpayer's industry classification pursuant to the Business Tax Ordinance, provided the tax does not exceed the applicable cap in effect at the time.

Notwithstanding anything in this Section to the contrary, if the tax liability for a business participating in the tax abatement program would exceed the tax liability for said business without regard to the tax abatement program, said business shall pay the lesser of the two.

FG. No business incentive shall apply to a business that is (or has been at any time during the immediately preceding 3-year period

prior to applying for enrollment in the tax abatement program) delinquent or is identified through the City's noncompliance program.

H. A business may only participate once in the tax abatement program.

I. In order to determine eligibility for the tax abatement program, a business must first complete and submit an application to the Business Tax Section. A business will be enrolled in the tax abatement program, only upon approval of the application by the Director of the Financial Services Agency or her designee. An application may be obtained from the City of Oakland, Financial Services Agency, Business Tax Section, 250 Frank H. Ogawa Plaza, Suite 1320, Oakland, California 94612, (510) 238-3704.

G-J. Tax incentives are applicable to any firm in one of five targeted industries:

1. Food processing;
2. Telecommunications;
3. Transportation;
4. Bioscience/biotechnology;
5. Software/multimedia.

#### Schedule A

BLT Payment Schedule for New Businesses	Year Effective
(Base fee—Currently \$60)	Year 1
<u>Benchmark + 10% of tax due above base benchmark</u>	Year 2
<u>Benchmark + 20% of tax due above base benchmark</u>	Year 3
<u>Benchmark + 30% of tax due above base benchmark</u>	Year 4
<u>Benchmark + 40% of tax due above base benchmark</u>	Year 5
<u>Benchmark + 50% of tax due above base benchmark</u>	Year 6
<u>Benchmark + 60% of tax due above base benchmark</u>	Year 7
<u>Benchmark + 70% of tax due above base benchmark</u>	Year 8
<u>Benchmark + 80% of tax due above base benchmark</u>	Year 9
<u>Benchmark + 90% of tax due above base benchmark</u>	Year 10
Firm pays full tax liability, not to exceed the cap	Year 11

Schedule B

BLT Payment Schedule for Existing Businesses	Year Effective
Benchmark** (which never changes)	Year 1
Benchmark + 10% of tax due above benchmark	Year 2
Benchmark + 10% of tax due above benchmark	Year 3
Benchmark + 10% of tax due above benchmark	Year 4
Benchmark + 10% of tax due above benchmark	Year 5
Benchmark + 10% of tax due above benchmark	Year 6
Benchmark + 10% of tax due above benchmark	Year 7
Benchmark + 10% of tax due above benchmark	Year 8
Benchmark + 10% of tax due above benchmark	Year 9
Benchmark + 10% of tax due above benchmark	Year 10
Firm pays full tax liability, not to exceed the cap	Year 11

\*\* - ~~The benchmark for calculating the base-year tax liability of each tax-paying entity an existing business is defined as that taxpayer's tax liability for the year prior to the year the gross receipts total for the calendar year preceding a businesses enrollment in the tax abatement program. in which such taxpayer becomes eligible for the business tax incentive.~~

The benchmark for a new business is \$60.00.

The city City relies on the integrity of the taxpayer in the filing of business tax declarations and, therefore, if a subsequent audit reveals that a taxpayer has been misreporting or underreporting the measure of the tax, the benchmark is subject to change or this incentive cancelled.

K. The first and second year taxes to be paid by new businesses enrolled in the tax abatement program shall be calculated in accordance with Sections 5.04.110 and 504.120 of this Chapter.

L. The last date for enrollment in the tax abatement program provided in this Section is December 31, 2003.

**SECTION 4.** All actions heretofore taken by the officers and agents of the City Council with respect to the amendments contemplated hereby are hereby ratified, confirmed and approved.

**SECTION 5.** This ordinance shall become effective immediately upon its final copy adoption by a two-thirds vote of all members of the City Council of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2003

**PASSED BY THE FOLLOWING VOTE:**

AYES-                BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND  
                              PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
CEDA FLOYD  
City Clerk and Clerk of the  
Council of the City of Oakland, California

*Michelle W. Sexton*

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NOTICE AND DIGEST  
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The ordinance codifies the definition of the benchmark year for both new and existing businesses; requires the completion of an application for any business that wants to enroll in the Tax Abatement Program; codifies sunset date for enrollment in the Tax Abatement Program; and removes the limitation against businesses physically located outside of the City of Oakland from participating in the Tax Abatement program.

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SEP 30 2003**