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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL PRESIDENT KAPLAN, PRESIDENT PRO TEMPORE KALB,
AND COUNCILMEMBER TAYLOR

As revised by the City Council at its June 4, 2019 meeting


CITY ATTORNEY'S OFFICE
Ravi S. Patel

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 5, CHAPTER 5.04, SECTION 5.04.480 AND SECTION 5.04.481, TO REDUCE TAX RATES FOR CANNABIS BUSINESSES WITH GROSS RECEIPTS LESS THAN OR EQUAL TO \$500,000.00

WHEREAS, Chapter 5.04 of the Oakland Municipal Code contains the business tax ordinance, which applies to all persons engaged in business activities in Oakland; and

WHEREAS, the business tax applicable to non-medical cannabis businesses is contained in Section 5.04.481 of the Oakland Municipal Code and is the highest rate of any business tax in Oakland; and

WHEREAS, the City of Oakland's business tax rate for non-medical cannabis businesses is 10% of gross receipts, while the business tax rate for medical cannabis businesses is 5% of gross receipts; and

WHEREAS, Oakland's 10% tax rate for non-medical cannabis businesses is higher than almost all of our regional competitors, putting our cannabis industry at a competitive disadvantage risking potential loss of certain cannabis businesses in Oakland; and

WHEREAS, on November 6, 2018, Oakland voters passed Measure V, which authorized the Oakland City Council, in relevant part, to change Section 5.04.481 in any manner that does not increase the applicable tax rate; and

WHEREAS, Oakland has a cannabis equity program with the goal of helping equity eligible businesses—mostly small businesses—thrive and stay competitive in the marketplace; and

WHEREAS, high tax rates for legal cannabis business activity is likely to continue bolstering the illegal 'underground' market, thereby reducing potential tax revenue for Oakland after it has been supportive and inviting of the cannabis industry in years past; and

WHEREAS, the City of Oakland seeks to enhance our competitiveness, attract additional cannabis businesses, and ultimately optimize our cannabis tax revenues by imposing competitive tax rates that allow our cannabis businesses to thrive and stay in Oakland; and

WHEREAS, 2020 cannabis business taxes will be levied at the tax rates authorized by this Ordinance and based on gross receipts earned in 2019.

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

SECTION 1. Title 5, Chapter 5.04 of the Oakland Municipal Code containing the business tax requirements applicable to medical and non-medical cannabis businesses is 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 regulations not cited or not shown in underscoring or strike-through are not changed.

SECTION 2. Code Amendments.

Title 5, Chapter 5.04, sections 5.04.480 and 5.04.481, are amended as follows:

5.04.480 – Cannabis businesses. ~~Medical cannabis businesses~~

For the purposes of this section:

- ~~A.~~ "Medical Cannabis Business" means any activity regulated or permitted by Chapter 5.80 and/or Chapter 5.81 of this Code that involves planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing any part of the plant *Cannabis sativa L.* or any of its derivatives, pursuant to Health and Safety Code Sections 11362.5 and 11362.7-11362.83.
- ~~B.~~ Every person engaged in a "medical cannabis business" not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of \$50.00 for each \$1,000.00 of gross receipts or fractional part thereof.
- ~~C.~~ Medical cannabis businesses engaged in manufacturing and/or cultivating activities shall be allowed to make deductions from gross receipts in the manner applicable to manufacturing businesses subject to Section 5.04.390.
- ~~D.~~ Notwithstanding Sections 5.04.080, 5.04.110, and 5.04.120 of this Chapter, medical cannabis businesses may elect to remit business taxes on a quarterly basis according to such rules and procedures adopted by the Director of Finance.

- A. The following definitions apply to this section:
1. “Cannabis Business” means any business that involves planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing any part of the plant Cannabis sativa L. or any of its derivatives.
 2. “Medical Cannabis Business” means any Cannabis Business conducted pursuant to Health and Safety Code Sections 11362.5 and 11362.7—11362.83.
 3. “Non-medical Cannabis Business” means any Cannabis Business not conducted pursuant to Health and Safety Code Sections 11362.5 and 11362.7—11362.83.
- B. Every person engaged in a Cannabis Business with total gross receipts less than or equal to five hundred thousand dollars (\$500,000.00) shall pay a business tax of one-dollar and twenty cents (\$1.20) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof.
- C. Every person engaged in a Cannabis Business with total gross receipts greater than five hundred thousand dollars (\$500,000.00) shall pay a business tax of:
1. Fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, derived from any Medical Cannabis Business activity; *plus*
 2. One hundred dollars (\$100.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, derived from any Non-medical Cannabis Business activity.
- D. Before applying the rates described above, persons will be allowed to make deductions from any gross receipts entirely or partially derived from any manufacturing cannabis activity or cannabis cultivation activity carried on within Oakland in the same manner as manufacturing businesses subject to section 5.04.390(A).
- E. To the extent that the tax rates described in this Section are less than the maximum rates approved by City of Oakland Measure V, as submitted to voters on November 6, 2018, the reduction in the tax rate is intended as a provisional adjustment that the City Council may reconsider and eliminate, in part or in whole, in the future.
- F. Notwithstanding Sections 5.04.080, 5.04.110, and 5.04.120 of this Chapter, any Cannabis Business may elect to remit business taxes on a quarterly basis according to rules and procedures adopted by the Director of Finance.

- G. The business tax rates defined by this Section apply to any gross receipts subject to taxation as of January 1, 2020 and beyond.

5.04.481 – Non-medical cannabis businesses [Repealed]

For the purpose of this section:

- ~~A. "Non-medical cannabis business" means any of the activities described in Subsection 5.04.480 A. that are not conducted pursuant to Health and Safety Code Sections 11362.5 and 11362.7 11362.83, but are otherwise authorized by State law.~~
- ~~B. Every person engaged in a "non-medical cannabis business" not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of \$100.00 for each \$1,000.00 of gross receipts or fractional part thereof.~~
- ~~C. Non-medical cannabis businesses engaged in manufacturing and/or cultivation activities shall be allowed to make deductions from gross receipts in the manner applicable to manufacturing businesses subject to section 5.04.390.~~
- ~~D. Notwithstanding Sections 5.04.080, 5.04.110, and 5.04.120 of this Chapter, non-medical cannabis businesses may elect to remit business taxes on a quarterly basis according to rules and procedures adopted by the Director of Finance.~~

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise, this ordinance shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 5, CHAPTER 5.04, SECTION 5.04.480 AND SECTION 5.04.481, TO REDUCE TAX RATES FOR CANNABIS BUSINESSES WITH GROSS RECEIPTS LESS THAN OR EQUAL TO \$500,000.00

This ordinance will reduce the City of Oakland's tax rate for cannabis businesses from \$50.00 per \$1,000.00 of gross receipts or fraction thereof for medical cannabis businesses and \$100.00 per \$1,000.00 of gross receipts or fraction thereof for non-medical cannabis business to \$1.20 per \$1,000.00 of gross receipts, or fractional part thereof, for any cannabis businesses with total annual gross receipts equal to or less than \$500,000.00. The City of Oakland's tax rate for cannabis businesses with total annual gross receipts greater than \$500,000.00 will remain unchanged.