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2003 SEP 11 PM 2:06

CITY OF OAKLAND

Agenda Report

To: Office of the City Manager
Attn: Deborah A. Edgerly
From: Finance and Management Agency
Date: September 23, 2003

Re: Report and Ordinance Amending Municipal Code 5.04.151, the Business Tax Incentive Program, to Provide that All Businesses are Eligible to Participate in the Program, to Codify the Definition of Benchmark Year, to Require the Completion of an Application and to Codify the Sunset Date for Enrollment in the Program

SUMMARY

At the Council meeting held on May 21, 2002, staff introduced a report and recommendation on the duration of the Business Tax Incentive Program and amendments to clarify language in the legislation. This report addresses those amendments, new findings, and determinations associated with the tax abatement program, as well as, a recommendation for the codification of the sunset date.

In response to the report provided in May 2002, Council clarified its intent regarding the duration of the program. Therefore, Municipal Code Section 5.04.151 needs to be amended to provide these modifications by codifying the sunset date for enrollment in the program. In addition to clarifying the duration of the program, Municipal Code Section 5.04.151 needs to be amended to codify the definition of the benchmark year for both new and existing businesses and to advise of the requirement of an application process.

According to Municipal Code Section 5.04.151, businesses without a physical location within the City of Oakland cannot participate in the tax abatement program. However, the City Attorney's Office has determined that Federal law requires that the program be extended to all businesses regardless of physical location.

Item: 
Finance and Management Committee
September 23, 2003

FISCAL IMPACT

When Council enacted the Business Tax Incentive Program (BTIP) in 1998, the fiscal impact was estimated at \$400,000. This accompanied the legislation, which supported a finite ten years, ending in 2008. Since Council has provided clarification that participation in the program is to be ten full years from enrollment, the program could extend to 2018. The fiscal impact to extend the additional years for the life of the program can range from \$400,000 to \$800,000 loss of business tax revenue for the remainder of the program (16 years).

The determination that the program must be extended to all businesses, regardless of location, could result in an additional \$240,000 to \$480,000 of lost business tax revenue for the remainder of the program (16 years).

Thus, by modifying the participation in the program to a full ten years from enrollment and by allowing the participation of non-Oakland based businesses the total possible fiscal impact is \$640,000 to \$1,280,000 of lost business tax for the duration of the program (additional 16 years).

Existing Oakland-based businesses	\$332,000 - \$666,000
New Oakland-based businesses	\$68,000 - \$134,000
Existing non-Oakland-based businesses	\$70,000 - \$140,000
New non-Oakland-based businesses	\$170,000 - \$340,000
Total	\$640,000 - \$1,280,000

BACKGROUND

On May 21, 2002, staff submitted a report and recommendation on the duration of the tax abatement program and recommended amendments to clarify language in the legislation. In addition, staff requested clarification in those areas that are silent and are contradictory. The attached ordinance ratifies Council intent.

In addition to the May 2002 report, on November 5, 2002, Measure JJ was adopted by Oakland voters. Measure JJ addressed constitutional issues regarding the taxation of businesses based upon the physical location of the business. The issues resolved with the adoption of Measure JJ are similar to the issues presented by the tax abatement program.

KEY ISSUES AND IMPACTS

The basic intent of the tax abatement program is to attract, retain and expand businesses located within Oakland borders. However, it has been determined

Item: **4**
 Finance and Management Committee
 September 23, 2003

that the legislation must be amended to allow the participation of all businesses, regardless of their location.

Measure JJ (adopted by the voters on November 5, 2002) amended the City's business tax so that all businesses engaged in manufacturing, regardless of business location, receive a tax deduction for the cost of raw materials used in the process. The intent of Measure JJ is to ensure that all businesses that pay the business tax are treated equally. Since, the Business Tax Incentive Program provides benefits to taxpayers within Oakland's borders, the same benefits must be provided to those taxpayers that pay the tax outside of Oakland's borders. Accordingly, like Measure JJ, the program must be extended to businesses outside Oakland's borders.

PROGRAM DESCRIPTION

The Business Tax Incentive Program was enacted on September 15, 1998. The program was developed using the guiding principles of the City's Economic Development Strategy to target incentives and services to strategic industry sectors and small businesses in order to attract, retain and expand businesses. The specific industries in the economic strategy were:

- Food Processing
- Transportation
- Telecommunications
- Bioscience/Biotechnology
- Software/Multimedia

The Business Tax Incentive Program was one part of a multi-pronged approach to business attraction and retention. The program established a cap of \$150,000 per firm in each industry for any given year.

Currently, 45 accounts participate in the Business Tax Incentive Program (see Attachment A). Each account is located within Oakland's borders. Staff has implemented the program in accordance with the parameters set forth in the 1998 report. The amending ordinance will clarify and codify the nebulous sections in the ordinance that have been difficult to interpret.

SUSTAINABLE OPPORTUNITIES

The Business Tax Incentive Program continues to support the City's Economic Development (Target Sector) Strategy, but does diminish this goal as revised by permitting non-Oakland firms to qualify, to the extent those firms participate.

DISABILITY AND SENIOR CITIZEN ACCESS

This section is not applicable.

Item: 
Finance and Management Committee
September 23, 2003

RECOMMENDATION AND RATIONAL

Recommendation would be to amend the proposed sections of the ordinance to provide clarity to the nebulous sections of Municipal Code Section 5.04.151 and to continue the program and extend the program to businesses outside Oakland's borders.


ALTERNATIVE RECOMMENDATION

Staff believes that the changes to the tax abatement program set forth in the ordinance diminish the original intent of the program: to attract, retain and expand businesses located within Oakland borders. Accordingly, an alternative recommendation is presented for Council's consideration which changes the sunset date for enrollment in the program to December 31, 2003. This change eases the burden caused by the tax abatement program, while at the same time allows existing participants to continue to benefit from the program.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the Council approve the proposed amendments to Municipal Code Section 5.04.151.

Respectfully submitted,



WILLIAM E. NOLAND
Interim Director, Finance and
Management Agency

Prepared by:
Debra Taylor Johnson
Revenue Manager

APPROVED FOR FORWARDING TO THE
FINANCE AND MANAGEMENT COMMITTEE:



Office of the City Manager

Item: **4**
Finance and Management Committee
September 23, 2003

ATTACHMENT A**Current BTIP Participants**

	<u>Business Name</u>	<u>Business Activity</u>
1.	Accelerant Systems, Inc.	Software/Multimedia
2.	Adachi Consulting	Software/Multimedia
3.	Air-Transit Shuttle	Transportation
4.	Aldon Computer Group	Manufacturing
5.	Amberpoint, Inc.	Software/Multimedia
6.	Animated Design	Software/Multimedia
7.	Apex Telecom, Inc.	Telecommunication
8.	Arie Associates, Inc.	Software/Multimedia
9.	Axis Healthcare Communication, Llc.	Software/Multimedia
10.	Berillian Technologies, Inc.	Software/Multimedia
11.	Bowman, Judith	Software/Multimedia
12.	California Cereal Products, Inc.	Manufacturing
13.	Cam Huong Bakery	Manufacturing
14.	Clariana International	Software/Multimedia
15.	CMC Training & Consulting, Inc.	Software/Multimedia
16.	Database Specialist, Inc.	Software/Multimedia
17.	Georgie Design	Software/Multimedia
18.	GIS Consultants	Software/Multimedia
19.	Gnomon Systems	Software/Multimedia
20.	JMB & Associates, Inc.	Software/Multimedia
21.	Just Desserts, Inc.	Manufacturing
22.	Kim Son Food Co.	Manufacturing
23.	Lingraphicare America, Inc.	Manufacturing
24.	Logiciel, Inc.	Software/Multimedia
25.	Martyn-Larsen Media, Inc.	Software/Multimedia
26.	Network Mechanics, Inc.	Software/Multimedia
27.	P & C Pacific Bakeries	Manufacturing
28.	PCG Systems, Llc.	Software/Multimedia
29.	Production Robotics, Inc.	Manufacturing
30.	R B Matheson Postal Service, Inc.	Transportation
31.	RJR Polymers, Inc.	Manufacturing
32.	Safarik Media, Inc.	Software/Multimedia
33.	Salzman Consulting Services	Software/Multimedia
34.	Svenhard's Swedish Bakery, Inc.	Manufacturing

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| 35. | Switch Management | Software/Multimedia |
| 36. | Tech Soft America | Software/Multimedia |
| 37. | Technoid Data Systems, Inc. | Software/Multimedia |
| 38. | Terrace Consulting, Inc. | Software/Multimedia |
| 39. | The FM Group | Software/Multimedia |
| 40. | Tim Huson Consulting | Software/Multimedia |
| 41. | Tom Sawyer Software Corp. | Software/Multimedia / Manufacturing |
| 42. | Training Jumpstart | Software/Multimedia |
| 43. | Viznetix, Inc. | Software/Multimedia |
| 44. | Web By Angel | Software/Multimedia |
| 45. | Xeodesign | Software/Multimedia |

INTRODUCED BY COUNCILMEMBER _____

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2003 SEP 11 PM 2:06

APPROVED AS TO FORM AND LEGALITY

Michelle S. ...
CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

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, 2008; 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;

Item # 4
Finance and Mgmt. Committee
September 23, 2003

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

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.

~~E.F.~~ 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 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, 2008.

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

Item # 4
Finance and Mgmt. Committee
September 23, 2003