



# MEMORANDUM

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Adam Benson  
Finance Director

**SUBJECT:** Questions from the Oakland Metropolitan Chamber Of Commerce Regarding Repeal and Replace Chapter 5.04 of the Oakland Municipal Code To Create A Progressive, Modern, And Equitable Business Tax Structure

**DATE:** July 8, 2020

City Administrator Approval

Date: July 9, 2020

## PURPOSE

The purpose of this memorandum is to transmit to the full City Council and the public, responses to questions posed by the Oakland Metropolitan Chamber of Commerce.

The Oakland Metropolitan Chamber of Commerce sent to Councilmembers several questions regarding the proposed ballot measure. The questions were forwarded in its entirety to the Finance Department. After review, not every question is in the purview of the Finance Department to answer. However, the Finance Department has responded to the following questions.

**1. Can you provide a draft apportionment guide for all classifications? This is just as critical to be made public as the rates.**

Apportionment is not based on classifications. Rather, apportionment is based on business activities carried on within and without the City. Gross receipts are subject apportionment only when the taxpayer can document that the gross receipts are attributed to substantial out of the City performance by the taxpayer's employees. It is the responsibility of the taxpayer to provide necessary documentation to support out of City activities. Otherwise, no apportionment and/or exclusion will be allowed.

<u>Business Classification</u>	<u>Business Activity</u>	<u>Qualify Apportionment</u>
Grocery	All activities occur in Oakland	No
Lawyer	Activities occur In/Outside of Oakland	Yes

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**2. Can you release a draft business tax computation worksheet so impacted businesses can assess their potential increase or decrease?**

We do not have a draft computation worksheet. See proposed legislation for tax rates.

**3. What is the formula and method for calculating gross receipts under the new proposal? Can the authors provide examples for each new proposed tax category and how that differs (if at all) from the current system?**

Example of the tax calculation under alternative 3 (Current vs Proposed):

Tax Structure	Gross Receipts Brackets	Tax Rate (per \$1K in GR)	Gross Receipts Subject to Tax	Total Tax Amount
Example: A professional firm grossing \$10,000,000 in gross receipts				
Proposed	\$0 - \$1M	\$4.00	\$1,000,000	\$4,000
	\$1M+ - \$2.5M	\$4.50	\$1,500,000	\$6,750
	\$2.5M+ - \$25M	\$5.00	\$7,500,000	\$37,500
	\$25M+ - \$50M	\$5.50	n/a	
	\$50M+	\$7.50	n/a	
Total			\$10,000,000	\$48,250
Current	All	\$3.60	n/a	\$36,000
Difference (in \$)				\$12,500
Difference (in %)				34.03%

**4. Taxes are paid in March for the previous tax year. For which tax year will this be effective (as opposed to the effective date of the ordinance)?**

There appears to be some confusion in this question. The business tax is not an income tax. The tax basis on which the current year taxes are calculated is typically previous calendar year gross receipts or gross payroll. The proposed ordinance if passed by a simple voter majority is to be implemented no sooner than January 1, 2022. For example, all existing business owners will be required to obtain a new business tax certificate in 2022, the tax payment is due not later than March 1, 2022. The taxes paid will be based on the new ordinance as applied to calendar year 2021 gross receipts or gross payroll.

**5. What is the formula and method for calculating raw materials deduction for manufacturing under the new proposal? Are labor costs included? Can the authors provide an example?**

The method for calculating raw materials deduction has not changed. Labor costs are not and never have been considered a raw material.

Section 5.04.266 Raw Materials. Any person engaging in the business activity of a manufacturer may deduct the value of raw materials actually used from their calculation of annual gross

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receipts. Only the value of raw materials actually used during the same time period as the time period used to calculate the person's annual gross receipts may be deducted.

**6. Which - if any - of these tax rates are marginal?**

With the exception of the minimum tax for small businesses generating up to \$250,000 in gross receipts, all of the proposed new tax rates are marginal.

**7. Does the definition of a public utility include the Port of Oakland?**

Please clarify what definition to which you are referring.

**8. The Port of Oakland bundles and remits their tenant's electricity user fee to the City. The measure says it's not a sales or use tax. If the Port of Oakland's gross receipts is based on the volume of electricity sales and overall "use," how is that not a user fee? The gross receipts model also does not consider the Port's cost to purchase the electricity and maintain the infrastructure.**

Pursuant to City of Oakland Charter section 700, the Port of Oakland is a department of the City of Oakland. As a department of the City, the Port is not required to hold a business tax certificate for gross receipts derived from Port activity. This status will remain unchanged under the proposed legislation.

Utility user tax is a pass-through tax that is paid by the user of the utility, collected by the utility provider, and remitted to the City by the utility provider. This will remain unchanged by the proposed legislation.

**9. How will related entities be determined in the "master certificate" process?**

See proposed legislation section 5.04.320

**10. Businesses that submit bids to the city or county for projects include the estimated tax liability generated by the project in the bid. For those that have already been submitted, would this proposal make allowances for that or will those businesses be expected to absorb the cost?**

The tax is gross receipts earned during the previous calendar year. We cannot opine on a private company's business model.

**11. How will salons be classified? Salons that also sell products?**

Hair salons that generate gross receipts over \$250,000 will be classified and taxed as G-business services. If a business has more than one type of classified activity, refer to proposed legislation Section 5.04.265 Optional Method for Determining the Tax.

**12. Are employee tips included in gross receipts under proposed new calculations? Currently they are for salons, which inflates gross receipts.**

“Gross receipts” means the total amount of money, credits, reimbursed expenses, value of any free or reduced rent, or other things of value actually received or receivable in connection with any transfer or sale of any materials, goods, wares, merchandise, or other things of value, or for the performance of any act or service, of any nature, for which a charge is made, credit allowed, or other thing of value received, without any deduction on account of the cost of property sold, cost of materials used, labor or service costs, interest paid or payable, reimbursed or passed through expenses, or losses or other expenses. For the purpose of this definition, “other things of value” includes any discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, or other emoluments, however designated. Gross receipts includes all payments made to a lessor, or paid to third parties on behalf of a lessor as part of a lease agreement, including but not limited to, taxes, business taxes, insurance, mortgage payment, rent, and the cash value of all services rendered to or on behalf of the lessor by a lessee.

Notwithstanding the foregoing, the following shall be excluded from the definition of gross receipts:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
5. Receipts of community chest funds, foundations, or corporations organized and operated for religious or charitable purposes, which are not conducted for profit and no part of the net earnings of which inures to the benefits of any private shareholder or individual;
6. Receipts of nonprofit educational institutions of collegiate grade, defined herein to mean institutions incorporated as colleges or seminaries under the laws of the State of California; receipts of nonprofit secondary schools which are duly accredited by the University of California; and receipts of nonprofit elementary schools in which instruction is given to students in the preprimary grades in the several branches or studies required to be taught in the public schools of the State of California;
7. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of gross receipts for the period when they are recovered;
8. Receipts from services or sales in transactions between related entities, as defined by 5.04.310.

**13. Are revenues that go toward credit card service fee included in gross receipts under proposed new calculations? Currently, they are which inflates gross receipts.**

See definition of gross receipts above.

**14. How are franchises treated in this proposal given that they are independently owned but affiliated with larger networks?**

See Section 5.04.320 Master Certificates—Aggregation of gross receipts

**15. Does this proposal make any changes to the flat \$95 business registration fee?**

The business registration fee is in the Master Fee Schedule, which is updated on an annual basis.

**16. Can the authors provide a breakdown of the number of businesses in Oakland in each current and proposed tax category?**

Categories	No. of Businesses
A - RETAIL SALES	5,477
B - GROCERS	342
C - AUTOMOBILE SALES	116
D - WHOLESALE SALES	784
E- BUSINESS/PERSONAL SVCS	7,933
F - PROFESSIONAL/SEMI-PROFESSIONAL	8,593
G - RECREATION/ENTERTAINMENT	522
H - CONTRACTORS	5,608
I - MANUFACTURING	870
J - MANUFACTURING 2	9
K - ADMIN HEADQUARTERS	110
L - TRUCKING/TRANSPORTATION	348
M - RESIDENTIAL RENTAL PROPERTY	25,367
N - COMMERCIAL RENTAL PROPERTY	3,561
O - COMMERCIAL RENTAL	4
P - HOTEL/MOTEL	203
T - MEDIA FIRMS	67
U - UTILITY COMPANIES	179
W - MISCELLANEOUS	26
X - TAXICABS	90
Y - AMBULANCES & LIMOUSINES	27

\*\* Excluding Cannabis

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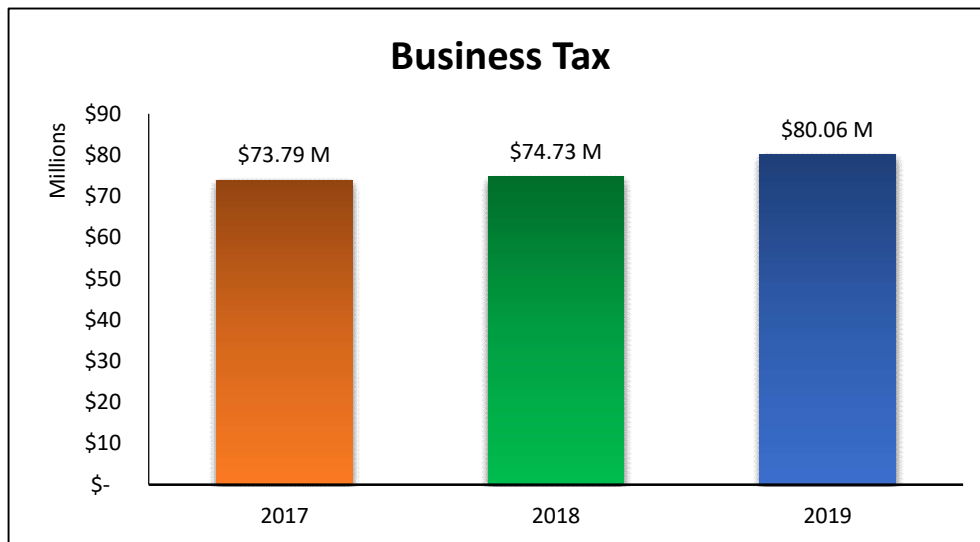
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**17. Can the authors provide an analysis of BLT revenue to the City of Oakland by tax categories and gross receipts, over time since 2005 to current day in order to gain a clearer picture of how revenues behave before, during, and after recessions? The City only has reliable data from 2017 forward.**

<b>BUSINESS TAX REVENUE DURING LAST 3 YEARS</b>			
<b>Categories</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
A - RETAIL SALES	\$ 4,687,421	\$ 4,524,404	\$ 4,452,890
B - GROCERS	\$ 597,139	\$ 566,627	\$ 560,558
C - AUTOMOBILE SALES	\$ 1,201,048	\$ 907,919	\$ 844,755
D - WHOLESALE SALES	\$ 2,745,592	\$ 2,676,519	\$ 2,824,511
E- BUSINESS/PERSONAL SVCS	\$ 5,481,492	\$ 5,231,484	\$ 5,433,650
F - PROFESSIONAL/SEMI-PROFESSIONAL	\$ 17,528,770	\$ 17,594,630	\$18,742,460
G - RECREATION/ENTERTAINMENT	\$ 3,280,907	\$ 3,671,522	\$ 3,783,210
H - CONTRACTORS	\$ 3,973,604	\$ 4,958,087	\$ 7,319,139
I - MANUFACTURING	\$ 981,769	\$ 1,029,737	\$ 975,186
J - MANUFACTURING 2	\$ 3,430	\$ 3,085	\$ 6,183
K - ADMIN HEADQUARTERS	\$ 794,768	\$ 979,967	\$ 872,319
L - TRUCKING/TRANSPORTATION	\$ 20,880	\$ 20,880	\$ 20,880
M - RESIDENTIAL RENTAL PROPERTY	\$ 18,164,144	\$ 18,153,156	\$18,998,886
N - COMMERCIAL RENTAL PROPERTY	\$ 12,464,907	\$ 12,487,675	\$13,319,583
O - COMMERCIAL RENTAL	\$ 7,015	\$ 38,210	\$ 24,921
P - HOTEL/MOTEL	\$ 382,022	\$ 97,469	\$ 404,819
T - MEDIA FIRMS	\$ 546,035	\$ 540,794	\$ 560,729
U - UTILITY COMPANIES	\$ 905,081	\$ 919,403	\$ 873,870
W - MISCELLANEOUS	\$ 18,711	\$ 19,972	\$ 29,449
X - TAXICABS	\$ 5,400	\$ 5,400	\$ 5,400
Y - AMBULANCES & LIMOUSINES	\$ 1,620	\$ 1,620	\$ 1,620
<b>Total</b>	<b>\$ 73,791,764</b>	<b>\$ 74,728,570</b>	<b>\$80,055,018</b>

\*\* Total Excludes Cannabis



**18. Can the authors provide a table including the effective tax rate increase for businesses being consolidated from one category into another since the proposal moves Oakland from 17 categories to 7 as well as outline the current apportionment method and any proposed changes?**

For questions regarding apportionment see Question 1.

Class	Business Activities	Current Business Tax Rates	Proposed Rates				
			\$0-\$1M	\$1M-\$2.5M	\$2.5M-\$25M	\$25M-\$50M	\$50M+
<b>A</b>	retail sales, wholesale sales	.12%	.075%	.1%	.125%	.15%	.2%
<b>B</b>	grocers	.06%	.06%	.1%	.125%	.15%	.2%
<b>C</b>	automobile sales, manufacturing	.12%	.125%	.225%	.325%	.425%	.525%
<b>D</b>	recreation and entertainment	.45%	.45%	.460%	.47%	.48%	.5%
<b>E</b>	hotel, motel, media firms, public utility	Hotel/Motel: .18% Media Firms: .12% Utilities: .1%	.180%	.28%	.38%	.48%	.5%
<b>F</b>	construction contractor	.18%	.3%	.35%	.4%	.45%	.5%
<b>G</b>	business and personal services	.18%	.2%	.3%	.4%	.550%	.6%
<b>H</b>	professional/semi-professional service	.36%	.4%	.45%	.5%	.550%	.75%

Class	Business Activities	Current Business Tax Rates	Proposed Rates				
			\$0-\$1M	\$1M-\$2.5M	\$2.5M-\$25M	\$25M-\$50M	\$50M+
I	administrative headquarters (payroll based)	.12%	.35%	.45%	.55%	.65%	.7%
J	miscellaneous	.12%	.35%	.45%	.55%	.65%	.7%
K	residential rental property, commercial rental property	Unamended	Removed "five-year exemption", 1.395%				
L	cannabis business	Unamended	Unamended				
M	firearms ammunition	Unamended	2.4%				
N	taxi and limousine service	Unamended	\$75 for each ambulance or limousine and \$180 for each taxicab permit				
O	transportation, trucking	Unamended	Tax based on current employee total				
<b>All "Small Businesses" (&lt; \$250,000 in gross receipts) pay a flat rate of \$100 in lieu of the rates stated above, except for those in categories that are unamended.</b>							

**19. How many of the existing 17 categories are seeing a shift in the method of calculation and apportionment (i.e. payroll or number of employees to gross receipts) and what are the anticipated impacts?**

None. If a business' tax basis was previously gross receipts, it is still gross receipts. If a business' tax basis was gross payroll, it is still gross payroll. If a business' tax basis was per permit, employee or vehicle the tax basis is still the same.

**20. How much revenue would have been collected from businesses with gross receipts under \$250,000 under this proposal if they weren't exempted? Under \$500,000? Under \$1 million?**

Gross Receipts Tax Brackets	No. of businesses	Gross Receipts Reported	Business Generating \$0 Gross Receipts pay \$60 fixed, under Current Model	Business Generating \$0 - \$250,000 in Gross Receipts pay \$100 fixed, under Proposed Model
			Business Tax under Current Oakland Model	Business Tax under New Proposed Model
\$0-\$250,000	51,446	\$ 2,223,401,239	\$ 19,030,618	\$ 18,274,785
\$0-\$500,000	54,516	\$ 3,309,836,374	\$ 24,448,919	\$ 23,906,038
\$0-\$1M	56,560	\$ 4,754,660,990	\$ 29,882,931	\$ 29,628,822



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**21. Can the authors provide a side-by-side analysis of this proposal with the taxes of competing jurisdictions including Berkeley, Emeryville, San Leandro, Fremont, San Jose, San Francisco and South San Francisco?**

Jurisdiction	Primary Tax Structure	Tax Rate	
		Minimum	Maximum
Oakland	Gross Receipts	\$0.60 / \$1,000	\$13.95 / \$1,000
Berkeley	Gross Receipts	\$1.20 / \$1,000	\$28.80 / \$1,000
Emeryville	Gross Receipts	\$0.10 / \$1,000	\$0.10 / \$1,000
Hayward	Fixed / Gross Receipts	\$16.00	\$373.35 + \$0.11 / \$1,000
San Francisco	Tiered Gross Receipts	\$0.75 / \$1,000	\$6.50 / \$1,000
San Leandro	Flat Tax Rate & Per Employee	\$141.50 and \$42.50 per Employee	\$709.20 and \$106.50 per Employee

For questions regarding this report, please contact Margaret L. O'Brien, Revenue & Tax Administrator, at 510-238-7480.

Respectfully submitted,



ADAM BENSON  
Director of Finance