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OFFICE OF THE CITY CLERK
OAKLAND

19 MAY -2 PM 4: 11

AGENDA REPORT

TO: City Council and members of the Public

FROM: City Councilmember Dan Kalb & Council President Rebecca Kaplan

SUBJECT: Ordinance amending cannabis business tax rates

DATE: May 2, 2019

RECOMMENDATION

ADOPT AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 5, CHAPTER 5.04, SECTIONS 480 AND 481, TO CREATE A TIERED AND CATEGORY BASED TAX STRUCTURE FOR CANNABIS BUSINESSES, MERGE MEDICAL AND NON-MEDICAL CANNABIS BUSINESS CLASSIFICATIONS, AND REDUCE TAX RATES FOR CANNABIS BUSINESSES OPERATING IN OAKLAND

SUMMARY

This legislation would harmonize what was previously medical and non-medical tax rates, reduce cannabis rates overall and create a progressive tax structure where higher income cannabis businesses pay a higher rate than smaller cannabis businesses operating in our city. The proposed rate structure also considers the differences between retail and non-retail types of cannabis businesses. These rate changes would apply effective January 1, 2020.

BACKGROUND/LEGISLATIVE HISTORY

In 2009, Oakland voters approved Measure F, making Oakland the first City in the nation to impose a tax on medical cannabis businesses. The tax rate was 1.8% of gross receipts. In November 2010, Oakland voters approved Measure V to increase the tax rate on medical cannabis businesses to 5% and create a new tax rate of 10% for non-medical cannabis businesses. Oakland's non-medical cannabis business tax rate became effective in January 2018 following the passage of Proposition 64 in November 2016, legalizing adult use. 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.

ANALYSIS

The tax rates for cannabis businesses operating in Oakland are amongst the highest in the state. The recommended legislation to harmonize the medical and non-medical tax rates,

Item: _____
Finance & Management Committee
May 14, 2019

and reduce the cannabis business tax rate using a progressive structure seeks to help make Oakland regionally competitive.

As made clear by the Administration's Cannabis Business Tax Policy Analysis report dated February 1, 2018 presented to the City Council in the spring, Oakland's 10% tax rate on Adult Use is much higher than most other regional competitors. Since the that report was issued, some jurisdictions have also lowered their own tax rates. Currently, Berkeley's rate is 5% for non-medical and 2.5% for medical. Emeryville is 3% for retail cannabis, and lower on manufacturing (2%) and distribution (1%). Santa Rosa is 3% retail and lower on manufacturing (1%) and 0% on distribution. South San Francisco's tax cannot exceed 5% and can be as low as 1%. Unincorporated Contra Costa County is at 4%. West Sacramento imposes a 2.5% Development Agreement "fee." Sacramento has a 4% across the board tax. San Francisco recently lowered its cannabis taxes and created a progressive structure, with the retail rates ranging from 0% to 5%, and the non-retail categories rates ranging from 0% to 1.5%. These rates are half or less of the Oakland's 10%, which presents a competitive burden for many of our local cannabis businesses.

The state has eliminated the taxation and regulatory distinctions between Medical and Adult Use in the non-retail supply chain. Oakland is also one of the few jurisdictions in California that still distinguishes between Adult Use and Medical business tax rates. Further, for cultivation businesses, it is very difficult to distinguish between what will ultimately be medical vs. non-medical cannabis. By making medical and non-medical business rates the same, the City would avoid the administrative difficulty of needing to separately track which sales end up going to medical patients and which do not.

FISCAL IMPACT

This legislation would reduce tax revenue from cannabis businesses in the short term, but can be expected to stabilize cannabis tax revenue over time by maintaining our businesses and attracting new cannabis businesses to Oakland. In theory, our overall tax revenue from the cannabis sector can increase if we are successful in attracting new cannabis businesses to our city.

PUBLIC OUTREACH / INTEREST

The Council President Pro Tempore's office has conducting outreach about this legislation with several representatives of the cannabis industry.

COORDINATION

The City Attorney's office, Finance Department, and City Administrator were consulted on the legislation.

SUSTAINABLE OPPORTUNITIES

Economic: The ordinance is intended to protect the economic vitality of Oakland by improving the competitiveness of Oakland's cannabis industry.

Environmental: There are no environmental opportunities associated with this report.

Social Equity: The ordinance is intended to promote social equity by protecting smaller Oakland cannabis businesses, who are less economically secure than larger businesses and have a more difficult time absorbing a high tax.

ACTION REQUESTED BY THE CITY COUNCIL

Council President Pro Tempore Kalb and Council President Kaplan recommend the City Council:

ADOPT AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 5, CHAPTER 5.04, SECTIONS 480 AND 481, TO CREATE A TIERED AND CATEGORY BASED TAX STRUCTURE FOR CANNABIS BUSINESSES, MERGE MEDICAL AND NON-MEDICAL CANNABIS BUSINESS CLASSIFICATIONS, AND REDUCE TAX RATES FOR CANNABIS BUSINESSES OPERATING IN OAKLAND.

For questions regarding this report, please contact Oliver Luby, Chief of Staff, Office of Council President Pro Tem Dan Kalb, at 510-238-7013.

Respectfully submitted,



Dan Kalb
Council President Pro Tempore



Rebecca Kaplan
Council President

Prepared by:
Oliver Luby, Chief of Staff
Office of Council President Pro Tempore Dan Kalb

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE
Bari S. Patel

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY PRESIDENT PRO TEMPORE DAN KALB AND COUNCIL PRESIDENT REBECCA KAPLAN

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 5, CHAPTER 5.04, SECTION 5.04.480 AND SECTION 5.04.481, TO CREATE A TIERED AND CATEGORY BASED TAX STRUCTURE FOR CANNABIS BUSINESSES, MERGE MEDICAL AND NON-MEDICAL CANNABIS BUSINESS CLASSIFICATIONS, AND REDUCE TAX RATES FOR CANNABIS BUSINESSES

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, with California legalizing 'Adult Use' cannabis for sales and consumption it no longer makes sense to have separate rates for medical and non-medical cannabis;

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;

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.

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.

NOW, THEREFORE, THE CITY 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. Every person engaged in Retail Cannabis Sales shall pay a business tax of:

If gross receipts are less than or equal to five million dollars (\$5,000,000.00):

- 1. Fifteen-hundred dollars (\$1,500.00) for the first one hundred thousand dollars (\$100,000.00) of gross receipts, or 5% of gross receipts, whichever is less; plus**
- 2. Thirty dollars (\$30.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over one hundred thousand dollars (\$100,000.00) but less than or equal to one million dollars (\$1,000,000.00); plus**
- 3. Fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over one million dollars (\$1,000,000.00).**

If gross receipts are greater than five million dollars (\$5,000,000.00), fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof.

B. Every person engaged in Manufacturing Cannabis, Cannabis Storage or Packaging, or Cannabis Cultivation shall pay a business tax of:

- 1. Fifteen-hundred dollars (\$1,500.00) for the first one hundred thousand dollars (\$100,000.00) of gross receipts, or 5% of gross receipts, whichever is less; plus**
- 2. Twenty-five dollars (\$25.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over one hundred thousand dollars (\$100,000.00) but less than or equal to one million dollars (\$1,000,000.00); plus**
- 3. Thirty-five dollars (\$35.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over one million dollars (\$1,000,000.00) but less than or equal to five million dollars (\$5,000,000.00); plus**
- 4. Fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over five million dollars (\$5,000,000.00).**

- C. Every person engaged in Cannabis Distribution, Wholesale Cannabis Sales, or Cannabis Testing shall pay a business tax of:**
- 1. Fifteen-hundred dollars (\$1,500.00) for the first one hundred thousand dollars (\$100,000.00) of gross receipts, or 5% of gross receipts, whichever is less; plus**
 - 2. Fifteen dollars (\$15.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over one hundred thousand dollars (\$100,000.00) but less than or equal to one million dollars (\$1,000,000.00); plus**
 - 3. Twenty dollars (\$20.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over one million dollars (\$1,000,000.00) but less than or equal to five million dollars (\$5,000,000.00); plus**
 - 4. Thirty dollars (\$30.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over five million dollars (\$5,000,000.00).**
- 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. Any person who engages in a business that produces gross receipts from more than one of the taxable activities described in this Section shall calculate their tax, in the following order, as the sum of:**
- 1. The tax due from the rate described in 5.04.480(A) as applied to any gross receipts entirely or partially derived from any Retail Cannabis Sales activity carried on within Oakland; plus**
 - 2. The tax due from the rate described in 5.04.480(B) as applied to any gross receipts entirely or partially derived from Manufacturing Cannabis activity, Cannabis Storage or Packaging activity, and Cannabis Cultivation activity carried on within Oakland, but not including any gross receipts partially derived from Retail Cannabis Sales activity carried on within Oakland; plus**
 - 3. The tax due from the rate described in 5.04.480(C) as applied to any gross receipts entirely or partially derived from Wholesale Cannabis Sales activity, Cannabis Distribution activity, and Cannabis Testing activity carried on within Oakland, but not including any gross receipts partially derived from Retail Cannabis Sales activity, Manufacturing Cannabis activity, Cannabis Storage or Packaging activity, or Cannabis Cultivation activity carried on within Oakland.**

- F. 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.
- G. 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.
- H. The business tax rates defined by this Section apply to any gross receipts subject to taxation as of January 1, 2020 and beyond.
- I. 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. "Cannabis Cultivation" means to plant, grow, harvest, dry, cure, grade, or trim cannabis.
 3. "Cannabis Distribution" means any business that does not own but solely distributes cannabis or cannabis products under a license issued by the California Bureau of Cannabis Control pursuant to California Business and Profession's Code section 26070, and as that section may be amended or renumbered.
 4. "Cannabis Manufacturing" means any business that produces, prepares, propagates, or compounds cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
 5. "Cannabis Storage or Packaging" means any business that packages or stores cannabis but only to the extent that the business's packing or storing activity is not attributable to Cannabis Distribution activity, Wholesale Cannabis Sales activity, or Cannabis Testing activity carried on within Oakland.
 6. "Cannabis Testing" means any business that conducts analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.
 7. "Retail Cannabis Sales" includes any business that dispenses or sells cannabis for use or consumption rather than for resale, either in-person or by delivery, and includes any business regulated or permitted by Chapter 5.80 of this Code and as that Chapter may be re-numbered or amended in the future.

8. "Wholesale Cannabis Sales" means any business that sells cannabis or cannabis products to any other Cannabis Business.

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 CREATE A TIERED AND CATEGORY BASED TAX STRUCTURE FOR CANNABIS BUSINESSES, MERGE MEDICAL AND NON-MEDICAL CANNABIS BUSINESS CLASSIFICATIONS, AND REDUCE TAX RATES FOR CANNABIS BUSINESSES

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 the following for any cannabis business:

For cannabis retail businesses: If gross receipts are less than or equal to \$5,000,000, then \$1,500 (but no more than 5% of gross receipts) for gross receipts up to \$100,000, plus \$30.00 per \$1,000 of gross receipts between \$100,000 and \$1,000,000 or fraction thereof, plus \$50.00 per \$1,000 of gross receipts over \$1,000,000 or fraction thereof. If gross receipts are greater than \$5,000,000 then \$50.00 per \$1,000 of gross receipts or fraction thereof.

For cannabis manufacturing, packaging or storing, and cultivation businesses: \$1,500 (but no more than 5% of gross receipts) for gross receipts up to \$100,000, plus \$25.00 per \$1,000 of gross receipts between \$100,000 and \$1,000,000 or fraction thereof, plus \$35.00 per \$1,000 of gross receipts between \$1,000,000 and \$5,000,000 or fraction thereof, plus \$50.00 per \$1,000 of gross receipts over \$5,000,000.

For cannabis distribution, wholesale, and testing businesses: \$1,500 (but no more than 5% of gross receipts) for gross receipts up to \$100,000, plus \$15.00 per \$1,000 of gross receipts between \$100,000 and \$1,000,000 or fraction thereof, plus \$20.00 per \$1,000 of gross receipts between \$1,000,000 and \$5,000,000 or fraction thereof, plus \$30.00 per \$1,000 of gross receipts over \$5,000,000.