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19 JAN 24 PM 4:07

AGENDA REPORT

TO: City Council and members of the Public

FROM: Dan Kalb & Rebecca Kaplan,
City Councilmembers

SUBJECT: Ordinance harmonizing cannabis business tax rates

DATE: January 24, 2019

RECOMMENDATION

ADOPT AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 5, CHAPTER 5.04, SECTION 481, NON-MEDICAL CANNABIS BUSINESSES, TO REDUCE THE TAX RATE FOR NON-MEDICAL CANNABIS BUSINESSES TO BE THE SAME AS THE MEDICAL CANNABIS BUSINESS RATE OF \$50.00 PER \$1,000.00 OF GROSS RECEIPTS OR FRACTION THEREOF

SUMMARY

This legislation would reduce the existing 10% tax rate for non-medical cannabis businesses to be the same as the existing 5% rate for medical cannabis businesses. This rate change would apply effective January 1, 2019 and expire January 1, 2034.

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.

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ANALYSIS

On March 1, 2019, business taxes will be due from cannabis businesses operating in the City of Oakland. The tax rates for these businesses are amongst the highest in the state. The recommended legislation to reduce the non-medical business tax rate to the same as that for medical businesses helps Oakland to be regionally competitive, reduces the administrative burden on the Finance Department, and comports with the expectations of the voters regarding the passage of Measure V in November 2018.

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 that report was issued, some jurisdictions have also lowered their own tax rates. Currently, Berkeley's rate is 5% (and half again for medical). Emeryville is only 3%--and even less on manufacturing (2%) and distribution (1%). Santa Rosa is 3% retail and even lower on manufacturing (1%) and 0% on distribution. South San Francisco's tax cannot exceed 5% and can be as low as 1%. Even unincorporated Contra Costa County is lower at 4%. West Sacramento imposes a 2.5% Development Agreement "fee." Sacramento has a 4% across the board tax. All of these are half or less of the Oakland 10%, which sticks out like a sore thumb.

Additionally, treating medical and non-medical businesses similarly for tax purposes makes sense for other reasons. For example, 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 be able to track which sales end up going to medical patients and which do not.

FISCAL IMPACT

This legislation would reduce the General Fund budget by approximately \$1.8 million in Fiscal Year 18-19 and lower revenues for future years.

PUBLIC OUTREACH / INTEREST

The Council President Pro Tempore's office has been conducting outreach about this legislation with 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 recommends the City Council:

Adopt an Ordinance Amending the Rent Adjustment Ordinance (O.M.C. 8.22.020 et seq) and Tenant Protection Ordinance (O.M.C. 8.22.600 et seq) to Eliminate Exemptions for Owner-Occupied Duplexes and Triplexes

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

Respectfully submitted,



Dan Kalb
Council President Pro Tempore



Rebecca Kaplan
Council President

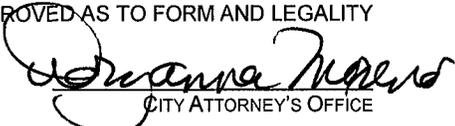
Prepared by:
Oliver Luby, Chief of Staff
Office of Council President Pro Tempore Dan Kalb

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

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 TTITLE 5, CHAPTER 5.04, SECTION 5.04.481, NON-MEDICAL CANNABIS BUSINESSES, TO REDUCE THE TAX RATE FOR NON-MEDICAL CANNABIS BUSINESSES TO BE THE SAME AS THE 2019 MEDICAL CANNABIS BUSINESS TAX RATE OF \$50.00 PER \$1,000.00 OF GROSS RECEIPTS OR FRACTION THEREOF

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

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, 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 on for non-medical cannabis businesses out of line with its regional competitors, putting our industry at a competitive disadvantage; and

WHEREAS, the Oakland City Council wishes to immediately reduce the non-medical cannabis business tax on a temporary basis to be the same as Oakland's 2019 medical cannabis business tax rate, which is \$50.00 for each \$1,000.00 of gross receipts or fractional part thereof;

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 non-medical cannabis 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, section 5.04.481 is amended as follows:

5.04.481 - Non-medical cannabis businesses.

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. From January 1, 2019 until December 31, 2033, Every person engaged in a "non-medical cannabis business" not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a reduced business tax of \$40050.00 for each \$1,000.00 of gross receipts or fractional part thereof. On January 1, 2034 and thereafter, the reduced tax rate shall expire and the tax rate shall return to \$100.00 for each \$1,000.00 of gross receipts or fractional part thereof unless the City Council adopts legislation providing a lower rate.

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.

2650215v1

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
TTITLE 5, CHAPTER 5.04, SECTION 5.04.481, NON-
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THEREOF**

This ordinance will reduce the City of Oakland's tax rate for non-medical cannabis businesses from \$100.00 per \$1,000.00 of gross receipts or fraction thereof to \$50.00 per \$1,000.00 of gross receipts or fraction thereof earned in the prior year.