

19 MAY 23 PM 4:58

APPROVED AS TO FORM AND LEGALITY

As revised by the City Council at its May 21, 2019 meeting


CITY ATTORNEY'S OFFICE
Kari 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 AND REDUCE TAX RATES FOR CANNABIS BUSINESSES~~
~~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:

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

1. One-dollar and twenty cents (\$1.20) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, less than or equal to five hundred thousand dollars (\$500,000.00) of gross receipts; plus
2. Fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over five hundred thousand dollars (\$500,000.00) to the extent the person is engaged in a Medical Cannabis Business; plus
2. One hundred dollars (\$100.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over five hundred thousand dollars (\$500,000.00) to the extent the person is engaged in a Non-medical Cannabis Business. Thirty dollars (\$30.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over five hundred thousand dollars (\$500,000.00) 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);
3. 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. One-dollar and twenty cents (\$1.20) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, less than or equal to five hundred thousand dollars (\$500,000.00) of gross receipts; plus
2. Fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over five hundred thousand dollars (\$500,000.00) to the extent the person is engaged in a Medical Cannabis Business; plus
2. One hundred dollars (\$100.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over five hundred thousand dollars (\$500,000.00) to the extent the person is engaged in a Non-medical Cannabis Business. Twenty-five dollars (\$25.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof.

over five hundred thousand dollars (\$500,000.00) 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

4.3. Forty-five dollars (\$45.00) 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. One-dollar and twenty cents (\$1.20) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, less than or equal to five hundred thousand dollars (\$500,000.00) of gross receipts; plus

2. Fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over five hundred thousand dollars (\$500,000.00) to the extent the person is engaged in a Medical Cannabis Business; plus

2. One hundred dollars (\$100.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over five hundred thousand dollars (\$500,000.00) to the extent the person is engaged in a Non-medical Cannabis Business. Fifteen dollars (\$15.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, over five hundred thousand dollars (\$500,000.00) 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

4.3. 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. "Medial Cannabis Business" means any Cannabis Business conducted pursuant to Health and Safety Code Sections 11362.5 and 11362.7—11362.83.
- 6-8. "Non-medical Cannabis Business" means any Cannabis Business not conducted pursuant to Health and Safety Code Sections 11362.5 and 11362.7—11362.83.
- 7-9. "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.
- 8-10. "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 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: \$1.20 per \$1,000.00 of gross receipts, or fractional part thereof, up to \$500,000.00, *plus* \$50.00 per \$1,000.00 of gross receipts, or fractional part thereof, over \$500,000.00 to the extent the business is engaged in a medical cannabis business, *plus* \$100.00 per \$1,000.00 of gross receipts, or fractional part thereof, over \$500,000.00 to the extent the business is engaged in a non-medical cannabis business.

For cannabis manufacturing, packaging or storing, and cultivation businesses: \$1.20 per \$1,000.00 of gross receipts, or fractional part thereof, up to \$500,000.00, *plus* \$50.00 per \$1,000.00 of gross receipts, or fractional part thereof, over \$500,000.00 to the extent the business is engaged in a medical cannabis business, *plus* \$100.00 per \$1,000.00 of gross receipts, or fractional part thereof, over \$500,000.00 to the extent the business is engaged in a non-medical cannabis business.

For cannabis distribution, wholesale, and testing businesses: \$1.20 per \$1,000.00 of gross receipts, or fractional part thereof, up to \$500,000.00, *plus* \$50.00 per \$1,000.00 of gross receipts, or fractional part thereof, over \$500,000.00 to the extent the business is engaged in a medical cannabis business, *plus* \$100.00 per \$1,000.00 of gross receipts, or fractional part thereof, over \$500,000.00 to the extent the business is engaged in a non-medical cannabis business.