

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 5, CHAPTER 5.04, TO CREATE A CATEGORY AND TIER BASED TAX STRUCTURE, AND REDUCE THE TAX RATE FOR CANNABIS BUSINESSES BY IMPLEMENTING A REBATE PROGRAM FOCUSED ON EQUITY AND LOCAL WORKFORCE EMPOWERMENT

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, 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 minus the cost of raw materials, while the business tax rate for medical cannabis businesses is 5% of gross receipts minus the cost of raw materials; and

WHEREAS, for businesses without raw materials costs they can deduct from gross receipts, Oakland's 10% tax rate for non-medical cannabis businesses is higher than many of our regional competitors putting those Oakland businesses at a competitive disadvantage risking potential loss of certain cannabis businesses in Oakland; and

WHEREAS, Oakland created its cannabis equity program with the goal of allowing those Oakland residents who have been most affected by the War on Drugs to benefit from the legalization of those same drugs – enabling them to establish financial security and build wealth by starting and growing cannabis businesses; and

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; and

WHEREAS, the City of Oakland seeks to enhance our competitiveness, attract additional cannabis businesses, and ultimately increase our cannabis tax revenues by establishing competitive tax rates that allow our cannabis businesses to thrive in Oakland and grow into national and international industry leaders.

THE 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 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, 5.04.481, and 5.04.482, are amended and added as follows:

5.04.480 – Medical Cannabis Businesses.

A. Definitions.

The following definitions apply to this section and sections 5.04.481 and 5.04.482.

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 and Transportation" means any business that sells at wholesale and any business that transports cannabis between licensees, including any business that operates under a "Distributor" 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 Cultivation, Cannabis Manufacturing, or Retail Cannabis 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. "Equity Cannabis Business" means a Cannabis Business that satisfies the "Equity Criteria" as that term is defined and applied in Sections 5.81.050 and 5.81.060.
8. "General Cannabis Business" shall mean any Cannabis Business that is not an Equity Business.
9. "Medical Cannabis Business" means any Cannabis Business conducted pursuant to Health and Safety Code Sections 11362.5 and 11362.7—11362.83.
10. "Medical Cannabis Patient" means a person with a physician's or surgeon's recommendation to use cannabis for a medical purpose.
11. "Non-Medical Cannabis Business" means any Cannabis Business not conducted pursuant to Health and Safety Code Sections 11362.5 and 11362.7—11362.83.
12. "Retail Cannabis" means any business that dispenses or sells cannabis for use or consumption by end-users, either in-person, by delivery, or in conjunction with another party, and includes any business regulated or permitted by Chapter 5.80 of this Code and as that Chapter may be renumbered or amended.

B. ~~Every person engaged in a Cannabis Business with total gross receipts less than or equal to five hundred thousand dollars (\$500,000.00) shall pay a business tax of one-dollar and twenty cents (\$1.20) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof.~~

Equity Cannabis Businesses.

Every person engaged in a Medical Cannabis Business that also qualified as an Equity Cannabis Business in the calendar year preceding the year for which the business seeks a business tax certificate shall pay business tax as follows:

1. Any business with total gross receipts of less than or equal to one million five hundred thousand dollars (\$1,500,000.00) shall pay a business tax of one-dollar and twenty cents (\$1.20) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof.

2. Any business with total gross receipts of greater than one million five hundred thousand dollars (\$1,500,000.00) shall pay a business tax of fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

C. ~~Every person engaged in a Cannabis Business with total gross receipts greater than five hundred thousand dollars (\$500,000.00) shall pay a business tax of:~~

1. ~~Fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, derived from any Medical Cannabis Business activity; plus~~

2. ~~One hundred dollars (\$100.00) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof, derived from any Non-medical Cannabis Business activity.~~

General Cannabis Businesses.

Every person engaged in a Medical Cannabis Business that did not qualify as an Equity Cannabis Business in the calendar year preceding the year for which the business seeks a business tax certificate shall pay business tax as follows:

1. Any business with total gross receipts of less than or equal to five hundred thousand dollars (\$500,000.00) shall pay a business tax of one-dollar and twenty cents (\$1.20) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof,

2. Any business with total gross receipts of more than five hundred thousand dollars (\$500,000.00) shall pay a business tax of fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

D. Deductions for Raw Materials.

Before applying the rates described above, persons engaged in a Medical Cannabis Business 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. Maximum Rates.

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.

F. Quarterly Reporting.

Notwithstanding Sections 5.04.080, 5.04.110, and 5.04.120 of this Chapter, any Medical Cannabis Business may elect to remit business taxes on a quarterly basis according to rules and procedures adopted by the Director of Finance.

G. ~~The business tax rates defined by this Section apply to any gross receipts subject to taxation as of January 1, 2020 and beyond.~~

Effective Date.

The tax rates described in this section will be effective for any business tax certificate issued pursuant to Section 5.04.110 for a business newly established in calendar year 2019 and for all business tax certificates issued thereafter.

H. Alternative Method for Applying Medical Cannabis Rates.

Notwithstanding the definition of "Medical Cannabis Business," the City Administrator, or their designee, may allow any Cannabis Business to pay the rates applicable to a Medical Cannabis Business to the extent that the business generates gross receipts either from retail sales of cannabis products to Medical Cannabis Patients or from non-retail sales of cannabis products that are ultimately sold to Medical Cannabis Patients. With respect to any given calendar year, the City Administrator may allow Retail Cannabis businesses to report sales to Medical Cannabis Patients by reporting gross receipts received directly from such persons. The City Administrator may publically report the average percentage of total gross receipts that all Oakland Retail Cannabis businesses derived from sale to Medical Cannabis Patients for the calendar year. The City Administrator may allow non-Retail Cannabis businesses to assume that the percentage of their cannabis products that were ultimately sold to Medical Cannabis Patients for any given calendar year is the same as the average percentage of total gross receipts that all Oakland Retail Cannabis businesses derived from sale to Medical Cannabis Patients in that same calendar year.

5.04.481 – Non-Medical Cannabis Businesses.

A. Definitions.

The definitions stated in section 5.04.480(A) also apply to this Section.

B. Equity Cannabis Businesses.

Every person engaged in a Non-Medical Cannabis Business that also qualified as an Equity Cannabis Business in the calendar year preceding the year for which the business seeks a business tax certificate shall pay business tax as follows:

1. Any business with total gross receipts of less than one million five hundred thousand dollars (\$1,500,000.00) shall pay a business tax of one-dollar and twenty cents (\$1.20) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof.
2. Any business with total gross receipts of more than one million five hundred thousand dollars (\$1,500,000.00) shall pay a business tax of fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

C. General Cannabis Businesses.

Every person engaged in a Non-Medical Cannabis Business that did not qualify as an Equity Cannabis Business in the calendar year preceding the year for which the business seeks a business tax certificate shall pay business tax as follows:

1. Any business with total gross receipts of less than or equal to five hundred thousand dollars (\$500,000.00) shall pay a business tax of one-dollar and twenty cents (\$1.20) for each one thousand dollars (\$1,000.00) of gross receipts, or fractional part thereof.
2. Any business with total gross receipts of more than five hundred thousand dollars (\$500,000.00) that is engaged in:
 - a. Cannabis Cultivation activity shall pay a business tax of one hundred dollars (\$100.00) for each one thousand dollars (\$1,000) of gross receipts or fractional part thereof;
 - b. Cannabis Manufacturing, Cannabis Retail, or Cannabis Storage and Packaging activity shall pay a business tax of eighty dollars (\$80.00) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof;
 - c. Cannabis Distribution and Transportation or Cannabis Testing activity shall pay a business tax of fifty dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

D. Deductions for Raw Materials.

Before applying the rates described above, persons engaged in a Non-Medical Cannabis Business will be allowed to make deductions from any gross receipts entirely or partially derived from any manufacturing or cultivation activity carried on within Oakland in the same manner as manufacturing businesses subject to section 5.04.390(A).

E. Maximum Rates.

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.

F. Quarterly Reporting.

Notwithstanding Sections 5.04.080, 5.04.110, and 5.04.120 of this Chapter, any Medical Cannabis Business may elect to remit business taxes on a quarterly basis according to rules and procedures adopted by the Director of Finance.

G. Effective Date.

The tax rates described in this section will be effective for any business tax certificate issued pursuant to Section 5.04.110 for a business newly established in calendar year 2019 and for all business tax certificates issued thereafter.

I. Vertically Integrated Businesses.

Any person who engages in a business subject to taxation pursuant to 5.04.481(C)(2) that produces gross receipts from more than one of the taxable activities identified in that subsection shall calculate their tax as the sum of:

1. The tax due from the rate described in 5.04.480(C)(2)(a) as applied to any gross receipts entirely or partially derived from any Cannabis Cultivation activity attributable to Oakland; plus
2. The tax due from the rate described in 5.04.480(C)(2)(b) as applied to any gross receipts entirely or partially derived from any Cannabis Manufacturing, Cannabis Retail, or Cannabis Storage and Packaging activity attributable to Oakland, but not including any gross receipts partially derived from Cannabis Cultivation activity attributable to Oakland; plus

3. The tax due from the rate described in 5.04.480(C)(2)(c) as applied to any gross receipts entirely or partially derived from any Cannabis Distribution and Transportation or Cannabis Testing activity activity attributable to Oakland, but not including any gross receipts partially derived from Cannabis Cultivation, Cannabis Manufacturing, Cannabis Retail, or Cannabis Storage and Packaging activity attributable to Oakland.

5.04.482 – Cannabis Equity Tax Rebate Program

A. Definitions.

The definitions stated in section 5.04.480(A) also apply to this Section. In addition the following definitions apply to this Section:

1. “Equity Employee” means:
 - a. An employee who lives in any combination of Oakland police beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X; or
 - b. An employee who lives anywhere in Oakland and was arrested after November 5, 1996 and convicted of a cannabis crime in California.
2. “Essential Roles” means employment roles that are within the usual course of the hiring entity’s business.
3. “Full Time Employee” means employment in which an employee is employee for at least thirty-six 36 hours per week.
4. “Managerial Roles” means employment roles that involve supervision of other employees or regular exercise of business judgment.

B. Equity, Small Business, and Workforce Empowerment Rebate Program.

1. Rebate Program.

Any Cannabis Business that timely and fully pays business taxes owed pursuant to either Section 5.04.480 or 5.04.481 for operation in any given calendar year shall be entitled to a rebate, payable in any form deemed appropriate by the City Administrator, for each Rebate Condition, described below, that the business can demonstrate it satisfied with respect to that calendar year.

The rebate program described in this section will be effective for any business tax certificate issued for operation in calendar year 2020 and for all business tax certificates issued thereafter.

2. Rebate Conditions.

The following "Rebate Conditions" apply to this Section:

a. Local Equity Hiring Rebate Conditions.

- i. During at least one-hundred and eighty-two (182) days of the relevant calendar year, Equity Employees represented at least 50% of the business's total workforce.
- ii. During at least one-hundred and eighty-two (182) days of the relevant calendar year, Equity Employees in Essential Roles represent at least 30% of the business's total workforce.
- iii. During at least one-hundred and eighty-two (182) days of the relevant calendar year, Equity Employees in Managerial Roles represent at least 30% of the business's employees in Essential Roles.

b. Equity Supply Chain Rebate Conditions.

- i. With respect to the relevant calendar year, at least 50% of the value of cannabis products delivered to the business are delivered by a Cannabis Distribution and Transportation business that was an Equity Cannabis Business.
- ii. With respect to the relevant calendar year, at least 50% of the value of cannabis products delivered to the business were originally cultivated or manufactured by a Cannabis Cultivation or Cannabis Manufacturing business that was an Equity Cannabis Business.

c. Workforce Quality of Life Rebate Conditions.

- i. Throughout the relevant calendar year, none of the employees of the business earned a wage less than \$20 per hour, exclusive of benefits.
- ii. Throughout the relevant calendar year, at least 80% of employees of the business's employees were Full Time Employees.

3. Rebate Amount.

With respect to each satisfied Rebate Condition, the business shall be entitled to a rebate equal to one-percent (1%) of business taxes paid for the calendar year. But, in no case will a business be entitled to cumulative rebates that would reduce its overall tax rate for the calendar year to less than twenty dollars (\$20.00) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

4. Process for Applying for and Granting Rebates.

Requests for rebates must be made at the time and with any documentary evidence requested by the City Administrator. A business will not be eligible for any rebate if it has not timely and fully paid all business taxes owed for the relevant calendar year. A business may be required to return any granted rebates if the City discovers that the businesses misreported its gross receipts for any relevant calendar year.

C. Review of Rebate Program.

No later than July 1, 2022, the chair of the Finance & Management Committee, or another councilmember designated by them, shall prepare a report evaluating the effectiveness of the Rebate Program described in this Section, and proposing potential revisions.

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 CATEGORY AND TIER BASED TAX STRUCTURE, AND REDUCE THE TAX RATE FOR CANNABIS BUSINESSES BY IMPLEMENTING A REBATE PROGRAM FOCUSED ON EQUITY, AND LOCAL WORKFORCE EMPOWERMENT

This ordinance substantially amends the business tax structure and rates applicable to all cannabis businesses operating in the City of Oakland. The ordinance defines various categories of cannabis businesses including: Cannabis Cultivation, Cannabis Distribution, Cannabis Manufacturing, Cannabis Storage and Packaging, and Retail Cannabis. The ordinance defines tax rates ranging from .12% to 10% of annual gross receipts. The ordinance defines a process for applying tax rates to businesses operating in multiple defined categories. The ordinance also creates a tax rebate program that rewards achievement of equity, supply chain, and workforce empowerment goals. Cannabis businesses operating in Oakland should review the text of the ordinance to determine the tax rates applicable to their particular operation.