

**DRAFT**

CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBERS LOREN TAYLOR, LARRY REID, NOEL GALLO

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**RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION, AN ORDINANCE REPEALING AND REPLACING CHAPTER 5.04 OF THE OAKLAND MUNICIPAL CODE TO CREATE A PROGRESSIVE, MODERN, AND EQUITABLE BUSINESS TAX STRUCTURE; AND DIRECTING THE CITY CLERK TO TAKE ALL ACTIONS NECESSARY TO PREPARE FOR AND CONDUCT A NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION**

**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**, Oakland's business tax structure has not been critically re-examined in decades; and

**WHEREAS**, Oakland's current flat business tax structure imposes the same rates on business regardless of the amount of gross receipts they earn;

**WHEREAS**, neighboring cities, including San Francisco and San Jose, have adopted a progressive tax structure that imposes higher rates on business that earn more gross receipts; and

**WHEREAS**, a progressive tax structure would create a better business environment for small businesses and provide additional funding for city services;

**WHEREAS**, Oakland's small businesses employ the majority of Oakland workers and as such are a foundation of the local economy, and tax relief for very small businesses would help support their ongoing viability and service to residents; and

**WHEREAS**, the revenues received from the proposed business tax ordinance may be expended for any governmental purpose; and

**WHEREAS**, public polling conducted by David Binder Research in May 2020 confirms that Oakland voters want the City to adopt a progressive rate structure that asks those with the greatest means to contribute the most to critical city services; and

**WHEREAS**, the act of transforming a city’s business tax system has significant impact on a wide variety of stakeholders, many of whom have yet to be engaged in an open and transparent process of deliberating alternative ways of achieving a more progressive and tax structure that achieves the goals of (1) increasing city revenues, (2) reducing racial and other disparities, (3) modernizing and simplifying our tax code, (4) stimulating equitable economic development, and (5) creating more living wage jobs; and

**WHEREAS**, According to the report drafted by Beacon Economics to conduct a Business Mobility Assessment, “The best step forward is to proceed with all of the salient knowledge and foresight and engage relevant business stakeholders in any process of business tax revision.”; and

**WHEREAS**, Most relevant business stakeholders have expressed concerns about having less than four weeks to review and provide feedback on the extensive tax proposal between first introduction on June 18, 2020 and the deadline for final Council action on July 14, 2020, while the process in San Francisco and San Jose to establish a new progressive business tax system included the formation of a taskforce, and much more extensive analysis and community/ stakeholder engagement; and

**WHEREAS**, City staff has represented that, barring any unforeseen circumstances, they will be able to take steps necessary to implement the new business tax in January 2023 if Council adopts the final tax rates to be included in the ballot measure no later than December 15, 2021 and the measure passes on November 8, 2022; and

**WHEREAS**, in accordance with CEQA Guidelines Section 15061, subd. (b)(3), the City finds that there is no possibility that the activity authorized by this Ordinance may have a significant effect on the environment; and now therefore be it

**RESOLVED:** That the Oakland City Council finds and determines the forgoing recitals are true and correct and adopts and incorporates them into this Resolution; and be it

**FURTHER RESOLVED:** That as soon as is practical following the adoption of this Resolution, the City Council shall adopt an ordinance to: (1) create an “Oakland Business Tax Blue Ribbon Advisory Commission” (the “Commission”) charged with a duty to review the tax rates, tax structure, and administrative provisions of the business tax ordinance proposed to be presented to voters by this Resolution and issue a report to the City Council no later than August 31, 2021; and (2) require the City Council to consider and take any appropriate action on the Commission’s recommendations no later than December 15, 2021, without limiting the city council’s authority to amend or repeal this resolution as may be allowed by law; and be it

**FURTHER RESOLVED:** That the ordinance to be adopted shall be in substantially the following form:

**SECTION 1. ESTABLISHMENT**

Pursuant to Section 601 of the Charter of the City of Oakland, there is hereby created an Oakland Business Tax Blue Ribbon Advisory Commission (hereinafter referred to as the “Blue Ribbon Commission” or “Commission”).

## **SECTION 2. DUTIES AND FUNCTIONS**

It shall be the duty and function of the Blue Ribbon Commission to, after thorough analysis and extensive community and stakeholder engagement, deliver for Council adoption a comprehensive recommendation for a modernized progressive business tax structure that achieves the City’s goals for revenue enhancement, reduction of race and equity disparities, tax code modernization, equitable economic development, and living wage job creation. The scope of the Commission’s analysis, stakeholder engagement, and deliberation shall include:

- a. Provide advice and recommendations to the City of Oakland on how the City Council should establish progressive business tax rates to ensure the economic vitality of the business ecosystem in Oakland. The items for consideration by the Commission may include identifying businesses that should be considered “regulated industries” in order to make recommendations.
- b. Conduct analysis to inform business tax structure including, but not limited to:
  1. Impact of the COVID-19 pandemic on business recovery and other impacts on business activity, employment, geographic location, and impact on business tax revenues. This analysis should consider the potential for tying future business tax increases for COVID-19 impacted businesses to an economic trigger such as the unemployment rate.
  2. Potential use of alternative tax structure models not already considered as a means of diversifying and broadening the tax base including the use of payroll tax, value-added tax
  3. Appropriate definition of a small business in Oakland, including whether or not the definition should be industry-specific, and how alternative definitions might affect the Oakland business landscape
  4. Mechanisms for using tax policy to repair harms of systemic racism, e.g., targeted tax breaks to businesses or sectors located in neighborhoods in need of services like grocery stores, banks, retail, and other investments
  5. Alternatives for improved alignment between industries groupings in the tax classification system to include similarities between business activity, typical gross margins.
  6. More detailed and thorough business mobility analysis to gauge a business’s propensity to relocated under a shifted tax burden.

7. Comparison of proposed Oakland tax rates to those charged by neighboring Bay Area cities and other major US cities that have been recent destinations for departing Bay Area companies, broken down by industry.
  8. Additional means of providing small business tax relief such as the proposal of providing an exemption to businesses below a specified gross revenue threshold, including the potential operational cost savings to the city for doing so.
  9. How fixed dollar-value tax brackets could/ should be tied to inflation
- c. Thoroughly engage broad set of stakeholders including, but not limited to:
    1. Conducting meetings and using other public forums to collect and receive public input on the above subject matter.
    2. Establish and convene advisory groups to allow greater and more thorough participation from key stakeholders.
  - d. Provide recommendations to the City Council about budget allocations to support small businesses and contribute towards a thriving business community in the City of Oakland.
  - e. Review, draft and submit in writing for City Council consideration, recommended business tax rates relevant to the above subject matter, by August 31, 2021.
  - f. Provide analyses and policy recommendations to the City Council of the economic impacts of the recommended business tax rates relevant to the above subject matter, in consultation with the City's Departments of Finance and Economic and Workforce Development, by August 31, 2021.

### **SECTION 3. MEMBERSHIP AND QUORUM**

- a. The Commission shall consist of 9 members, at least 6 of whom shall be Oakland residents. Members of the Commission shall be appointed by the Mayor and confirmed by the Council in accordance with Section 601 of the City Charter.
- b. The Mayor and each Councilperson shall nominate one Commission member to be appointed and confirmed in accordance with Section 601 of the City Charter.
- c. Designees of the City Administrator from the Department of Finance and the Economic & Workforce Development Department shall be non-voting members of the Commission.
- d. Six (6) members shall constitute a quorum.
- e. Each Commission member shall serve as a volunteer without pay.

f. All members shall be appointed to one term beginning on the date their appointment is confirmed by City Council and ending on November 8, 2022. Upon expiration of the term, the Blue Ribbon Commission shall be deemed dissolved unless the term is extended by appropriate Council action.

g. All members of the Blue Ribbon Commission shall be persons who are active in the local community, at least 2/3 of whom are Oakland residents. Members of the Blue Ribbon Commission shall represent the following criteria, with no more than two (2) members representing any one criteria and at least one from each criteria to the extent possible:

1. Members representing the very small business community (those businesses with gross receipts below \$2.5M);
2. Members representing the small to mid-sized business community (those businesses with gross receipts below \$10M);
3. Members representing large businesses (those businesses with gross receipts above \$25M);
4. Members of an organization which focuses on economic development, entrepreneurship, or business development, with experience working in the City of Oakland;
5. An economic expert or tax professional who has more than 10 years of experience analyzing economic trends and business tax structures;
6. A member of a community organization or labor union who has experience with City budgets and/or City services;
7. Members representing Oakland headquartered companies; and
8. Members representing businesses in one of the top private sector job-producing industries in Oakland.

An individual Commission member may be a representative for more than one of the above criteria.

#### **SECTION 4. VACANCY AND REMOVAL**

a. A vacancy on the Blue Ribbon Commission will exist whenever a member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the Council within 30 days of appointment.

b. Pursuant to Charter Section 601, a member may be removed for cause, after a hearing, by the affirmative vote of at least six (6) Council members.

c. Vacancies shall be filled in accordance with Section 601 of the Charter.

**SECTION 5. COMMISSION GOVERNANCE**

**a. OFFICERS AND ELECTIONS**

At the first regular meeting, members of the Blue Ribbon Commission shall elect a chairperson and a vice chairperson

**b. MEETINGS AND VOTING**

The Blue Ribbon Commission shall meet at an established regular interval, day of the week, time and location suitable for its purpose. Such meetings shall be designated regular meetings. Other meetings scheduled for a time or place other than the regular day, time and location shall be designated special meetings. Written notice of special meetings shall be provided to the Blue Ribbon Commission members and all meetings of the Commission shall comport with the Ralph M. Brown Act and the City’s “Sunshine Ordinance” (Chapter 2.20 of the Oakland Municipal Code) to the extent possible given the COVID-19 local health emergency.

No later than the third regular meeting of Commission, the Blue Ribbon Commission shall, in consultation with the City Administrator, adopt rules and procedures for the conduct of its business by a majority vote of the members present. Voting shall be required for the adoption of any motion or resolution.

Any action by the Commission shall be approved by a majority of members present provided a quorum exists.

**c. STAFF AND BUDGET**

Staff assistance shall be provided to the Blue Ribbon Commission as determined by the City Administrator pursuant to his or her authority under the Charter to administer all affairs of the City under his or her jurisdiction.

The City shall allocate up to one hundred thousand dollars (\$100,000) for the provision of technical assistance/consulting support for the Commission.

**SECTION 6. COUNCIL ACTION**

The City Council shall consider and take any appropriate action on the Commission’s recommendations no later than December 15, 2021.

; and be it

**FURTHER RESOVLED:** That the City Administrator or designee is authorized to take any and all steps necessary to prepare for the implementation of the new business tax in January 2023, if the tax measure passes on November 8, 2022; and be it

FURTHER RESOLVED: That, if at the meeting during which the City Council votes to introduce the Ordinance, the Council amends provisions of the Ordinance published with the meeting notice, then the City Attorney is authorized to edit the Ordinance as necessary to ensure that all provisions of the Ordinance are consistent and in conformity with the amendment adopted by City Council.

**FURTHER RESOLVED:** That the Oakland City Council submits to the qualified voters of the City, at the November 8, 2022 election, an Ordinance that reads as follows:

**THE CITY COUNCIL AND PEOPLE OF CITY OF OAKLAND DO ORDAIN AS FOLLOWS:**

**PART 1. General**

**SECTION 1. Title and Purpose.**

- A. TITLE. This Ordinance may be cited as the **Oakland Business Tax**.
- B. PURPOSE. In Oakland, nearly all businesses regardless of gross receipts, pay a flat tax rate, and very small businesses pay a flat amount. This disproportionately affects small businesses, which contribute a large proportion of Oakland’s total business tax revenue. Other major jurisdictions in the Bay Area have implemented progressive gross receipts tax structures, in which businesses with more gross receipts are taxed at a higher rate than smaller businesses.

Oakland’s business tax system is complicated and antiquated. By modernizing our tax system, the City can give needed tax relief to small businesses and generate increased revenue needed to protect vital City services that keep Oakland’s neighborhoods clean, well maintained, and safe.

**SECTION 2. Findings**

This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* (“CEQA”), since in accordance with CEQA Guidelines Section 15061, subd. (b)(3), it can be seen with certainty that there is no possibility that the activity authorized herein may have significant effect on the environment.

**SECTION 3. Use of Proceeds.**

The tax proceeds raised by the general tax created by this Ordinance may be used for any governmental purpose.

**SECTION 4. Conflicting Measures**

This measure is intended to be comprehensive. It is the intent of the people of City of Oakland that in the event this measure and one or more measures relating to business taxes appear on the same ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void. If this measure is approved by a majority of the voters but does not receive a greater number of affirmative votes than any other measure appearing on the same ballot regarding the business tax, this measure shall take effect to the extent not in conflict with said other measure or measures.

**SECTION 5. Liberal Construction**

This measure shall be liberally construed to effectuate its purposes.

**SECTION 6. Municipal Affair**

The People of City of Oakland declare that the taxation provided for this ordinance constitutes a municipal affair.

**SECTION 7. Not a Sales and Use Tax.**

The tax imposed by this ordinance is a general tax on the privilege of conducting business within City of Oakland. It is not a sales tax or use tax or other excise tax on the sale, consumption, or use of any products.

**SECTION 8. Effective Date.**

This ordinance shall be effective only if approved by a majority of the voters at the November 2022 Statewide General Election and shall go into effect ten (10) days after the vote is declared by the City Council. Notwithstanding the effective date provided for by this section, the tax rates imposed by this ordinance shall only be imposed when and as stated in this ordinance.

**SECTION 9. Council Amendments.**

The City Council of City of Oakland is authorized to amend Chapter 5.04 of the Oakland Municipal Code as adopted by this ordinance in any manner that does not increase the business tax or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California constitution.

**SECTION 10. Savings Clause**

If any provision, sentence, clause, section, or part of this ordinance is found to be unconstitutional, illegal, or invalid by a court of competent jurisdiction, such unconstitutionality, illegality, or invalidity shall affect only such provision, sentence, clause, section, or part of this ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this ordinance. It is declared that this ordinance would have been adopted had



such unconstitutional, illegal, or invalid provision, sentence, clause, section, or part not been included.

**PART 2. Business Tax Code Amendments**

As of December 31, 2022, Chapter 5.04 of Title 5 of the Oakland Municipal Code, governing imposition of Oakland’s business tax, is repealed in full and restated to read as follows:

**5.04.010 Short title.**

This chapter shall be known as the Business Tax Ordinance.

**5.04.020 Business Tax.**

- A. *Imposition of Business Tax.* Pursuant to the terms of this Chapter, the city imposes, and every person engaging in business activities within the city shall pay, an annual business tax.
- B. *Business Certificate Requirements.* Every person conducting any business activity in the city shall pay the annual business tax and obtain an annual business tax certificate from the city. Except as otherwise specifically provide, the city shall collect business taxes and issue business tax certificates on a calendar year basis. The carrying on of any business without procuring a certificate shall constitute a violation of this code for every day that such business is carried on. A separate certificate must be obtained for each and every business activity at each and every branch establishment or separate place of business at which business activity takes places, subject to the requirements to obtain a “master certificate” as defined in 5.04.320.
- C. *Use of Funds.* The business tax is a tax imposed upon persons engaging in business within the city for the privilege of engaging in a business or occupation in the city. The business tax is imposed for general governmental purposes. Proceeds from the tax may be deposited in the city’s general fund and may be expended for any purposes of the city.
- D. *Intent.* This chapter authorizes application of the business tax in the broadest manner consistent with the provisions of this municipal code and the requirements of the California Constitution, the United States Constitution, and any other applicable provision of federal or state law.

**5.04.100 Definitions and Classifications.**

Except where the context otherwise requires, the definitions and classifications in Sections 5.04.110 and 5.04.120 apply to this Chapter 5.04.

**5.04.110 General Definitions.**

**Moved up [1]: Business Tax Code Amendments**

**Moved (insertion) [1]**

**Deleted: Sunset of New Building Exemption**

**Moved up [1]: Business Tax Code Amendments**

**Deleted:** As of the effective date of this ordinance, as provided in Section 8 of Part 1 of this resolution, Section 5.04.430 of Chapter 5.04 of Title 5 of the Oakland Municipal Code is amended to read as follows (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strikethrough type. Portions of any law not cited or not shown in underscoring or strikethrough are not changed): ¶

**5.04.430 Rental of commercial/industrial property-Exemption-Gross Receipts¶**

Every person engaged in the business of renting or letting a building, structure, or other property for commercial/industrial purposes, or a portion of such building, structure or property within the city for a purpose other than dwelling, sleeping, or lodging to a tenant shall pay a business tax of thirteen dollars and ninety-five cents (\$13.95) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.¶

A lessor otherwise subject to the business tax described in subsection A of this section shall not be exempt therefrom by reason of the fact that one or more persons may reside within a building or structure where the primary purpose of the particular tenancy or the primary use or right to use by the tenant is for some purpose other than dwelling, sleeping, or lodging.¶

**Five-Year Exemption.¶**

All new buildings and those buildings on which major renovations are completed after July 1, 1981 will be eligible for a five-year exemption from the business tax rate described in subsection A of this section.¶

A lessor that qualifies for this exemption shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three thousand three hundred thirty-five dollars (\$33,335.00) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of forty-four thousand four hundred forty-five dollars (\$44,445.00), during the five-year exemption period.¶

In determining the five-year exemption period:¶

The five-year exemption shall be deemed to commence in the year in which new buildings and/or major renovations are completed and to end in the fifth year from the year of completion irrespective of the date on which an application for exemption is filed.¶

There will be no extensions of the five-year exemption period for subsequent major renovations after the first major renovations are completed.¶

... [1]

**Deleted: ¶**

As of December 31, 2021—or, in the discretion of the City Council if exercised by ordinance, as of December 31, 2022—...

"Business" means any activity, enterprise, profession, trade, or undertaking of any nature conducted or engaged in, with the object of gain, benefit or advantage, whether direct or indirect, to the taxpayer or to another or others. "Business" shall include any transaction which is or which, in effect results in a sale, but shall not include the services rendered by an employee to their employer.

"Certificate" means a business tax certificate issued to a person pursuant to this chapter evidencing the payment of or declared intent to pay the business tax.

"City" means City of Oakland, a California Charter City.

"Engaging in business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators hold themselves out to the public as conducting such business.

"Firearms" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion, or other form of combustion. The term also includes any rocket, rocket-propelled projectile launcher, or similar device containing any explosive or incendiary material and not designed for emergency or distress signaling purposes.

"Firearms ammunition" means any projectiles with their fuses, propelling charges, or primers fired from weapons, and any of the individual components of such projectiles, including, but not limited to, black powder and reloading primers.

"Gross payroll" means and includes the total gross amount of all salaries, wages, commissions, bonuses, or other money payment of any kind that a person received from, or is entitled to receive from or be given credit for by, their employer for any work done or personal service rendered in any trade, occupation, or profession, including any kind of deductions before "take home" pay is received. "Gross payroll" does not mean or include amounts paid to traveling salespersons or other workers as allowance or reimbursement for traveling or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to the employer.

"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.

“NAICS” means the numerical classification for business activities established in the North American Industry Classification System used by federal governmental agencies to classify business establishments; references in this Chapter to particular numerical NAICS codes are intended to apply the definitions and descriptions adopted in that system as of the effective date of this Chapter.

“Newly established business” is defined as:

1. A person conducting a particular business activity in the city for the first time; or

2. A business which resumes operation in the city after having been out of operation in the city during the entire previous tax year.

In any case, “newly established business” does not include a person for whom a “related entity” as defined by 5.04.310 is already in operation in the city.

"Person" means any natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, limited liability company, municipal corporation, political subdivision of the state of California, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof, and any natural person, who as an individual or with a spouse, owns fifty-one percent (51%) or more of the capital stock of a corporation obligated to file a declaration and pay tax pursuant to this chapter; and in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations under the provisions of this chapter. A person as defined herein, who is also an officer or director of a corporation obligated to file declarations and pay tax pursuant to this chapter, shall be presumed to be a person with the power to control the fiscal decision-making process. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to any association shall mean the owners or part owners of such association, and as applied to any corporation, shall mean the officers of such association.

“Residential and non-residential rental businesses” means engaging in any of the following business activities, as defined below: “residential rental” and “non-residential rental.”

"Sale" and "sell" means any transfer of title to property for a price by any manner or means, and to the serving, supplying, or furnishing, for a price, of any property fabricated or made at the special order of consumers who do or do not directly or indirectly furnish the specifications for such special order. “Sale” also includes any transaction where the possession of property is transferred, but the seller retains the title as security for the payment of the price.

“Shall” and “may.” “Shall” is mandatory, "may" is permissive.

“Tax” or “business tax” means the charge for issuance of a certificate pursuant to chapter 5.04 of the city’s municipal code.

#### **5.04.120 Business Activity Definitions.**

“Administrative headquarters” means a location where the principal business transacted consists of providing administrative or management related services such as, but not limited to, recordkeeping, data processing, research, advertising, public relations, personnel administration, legal, and corporate headquarters services, to other locations where the operations of the same business are conducted which lead more directly to the production of gross receipts.

“Ambulance service” means either providing transportation of patients by ground or air, along with medical care, in vehicles that are equipped with lifesaving equipment operated by

medically trained personnel or otherwise meeting the NAICS classification for “ambulance services” (NAICS 62191).

“Automobile sales” means the selling of new or used motor vehicles at wholesale or retail.

“Business and personal services” means any business providing services such as, but not limited to, website hosting, internet and data exchange, repairs or improvements to or on real and personal property, renting or leasing personal property to businesses or persons, packaging, transshipping, storing, or stevedoring or providing services to persons such as, but not limited to, laundries, cleaning and dyeing, shoe repair, barber and beauty shops, photographic studios, parking lots and garages, and title guarantee companies.

“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.

“Construction contractor” means a person who conducts or carries on a business that is licensed as a contractor by the state of California and who undertakes to, or offers to undertake to, or purports to have the capacity to undertake to, or submits bids to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure project, development, or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, is defined as a contractor.

“Non-residential rental” means renting or letting all or a portion of a building, structure, billboard, or other property for commercial, industrial, or advertising purposes, or a portion of such building, structure, billboard or property within the city for a purpose other than dwelling, sleeping, or lodging to a tenant. “Non-residential rental” includes offering, renting, or letting co-working spaces in any building or space, either as individual offices or shared working space, to businesses, independent contractors, or persons regardless of whether the person offering the co-working space owns the building or space or offers other related services, space, or products.

“Firearms and ammunition sales” means the selling, leasing, or transferring of firearms or firearms ammunition, except for wholesale sales. This definition shall not include establishments exclusively involved in the sales of firearms or firearms ammunition to law enforcement officials or any business licensed as a pawnbroker pursuant to the Oakland Municipal Code that (1) receives firearms or firearms ammunition as bond or other security for loans, advances, or other forms of compensation, or (2) sells or resells firearms or firearms ammunition wholesale to properly licensed and registered dealers exclusively.

“Grocer” means a retailing of perishable and non-perishable food type items, such as, but not limited to, meats, fish, poultry, vegetables, fruits, nuts, breads, dairy products, non-alcoholic beverages, etc., from a fixed location.

“Hotel” and “motel” means providing short-term lodging in facilities known as hotels, motor hotels, resort hotels, and motels that may offer food and beverage services, recreational services, conference rooms, convention services, laundry services, parking, and other services, or otherwise meeting the NAICS classification for “Hotels (except Casino Hotels) and Motels” (NAICS 72111). “Hotel” and “motel” also includes offering all or portion of a residential building or structure for short-term dwelling, sleeping, or lodging, for example, by offering a bedroom, home, or other living space on a third-party platform for short-term residential use.

“Manufacturing” means manufacturing or processing any goods, wares, merchandise, articles, or commodities at a location within or outside of the City of Oakland and selling such items at retail and/or wholesale in the City of Oakland.

“Media firms” means providing published or electronic media, including newspapers, publishing, radio, and broadcast television companies.

“Miscellaneous” means any business activity not otherwise defined in this section.

“Professional/semi-professional service” means any professional services not specifically taxed by other business tax provisions of this chapter. The term includes, but is not limited to: business management services; website development services; finance services; insurance services, real estate services; medical and other health services; educational services, legal services; engineering and architectural services; accounting, auditing, and bookkeeping services; commission merchants; conducting, managing, or carrying on the business of furnishing reports on persons to insurance companies for underwriting purposes; or furnishing reports on persons to mercantile concerns as a basis for extending credit savings and loan and other financial institutions; conducting, managing or carrying on the business of lending money or advancing credit or arranging for the loan of money or the advancing of credit as principal or agent, where the obligation to repay the money lent or debt incurred or to compensate for the advance of credit is secured by a lien on real property, or some interest in real property, unless such business is exempt therefrom by law; software as a service; platform as a service; and infrastructure as a service.

The term "commission merchant" means a person who, for compensation in the form of a commission, engages in selling activities, including the solicitation or negotiation of a sale, or the forwarding of sales orders, which lead to the sale of goods, wares, or merchandise owned by some person other than the commission merchant. The business of a commission merchant shall be deemed to include also the buying and selling of goods, wares, or merchandise by a person to the extent that the person:

- (1) Does not engage in the business of manufacturing, refining, fabricating, milling, treating, or other processing of the goods, wares, or merchandise bought and sold, and does not cause said goods, wares, or merchandise to be manufactured, refined, fabricated, milled, treated, or otherwise processed; and
- (2) Does not obtain or retain title to said goods, wares, or merchandise except in one or more of the following situations: while such may be in transit or for short periods of time before transportation commences or after it ceases; and

- (3) Does not store or warehouse such goods, wares, or merchandise except during one or more of the following situations: while such goods, wares, or merchandise are actually in transit or for short periods of time before transportation commences or after it ceases.

“Recreation and entertainment” means providing entertainment, recreation, or amusement. The business of providing entertainment, recreation, or amusement shall include, but is not limited to, the following: theatrical or musical entertainment, all shows or exhibits, exhibiting motion pictures, athletic clubs, sports and athletic exhibitions or contests, pools or billiard rooms, bowling alleys, golf courses, circuses, or penny arcades.

“Residential rental” means conducting or operating an apartment house, lodging house, and every person engaged in the business of conducting or letting rooms, and/or any building structure, for dwelling, sleeping, or lodging, including, and limited to, a single-family house, duplex, townhouse, condominium, or co-operative.

“Retail sales” means the sale of goods, wares, or merchandise for any purpose other than resale in the regular course of business, including restaurants.

“Taxi and limousine service” means providing passenger transportation by automobile or van or providing any specialty or luxury passenger transportation services via limousine or luxury sedan on a reserved or unreserved basis or otherwise meeting the NAICS classification for “taxi and limousine service” (NAICS 4853).

“Transportation” and “trucking” refers to the use of transportation equipment such as airplanes, trains, boats, cars, trucks, vehicles, or pipelines as productive assets to move people and goods and includes businesses engaged in NAICS codes 481 through 487, air transportation, rail transportation, water transportation, truck transportation, transit and ground passenger transportation, pipeline transportation, and scenic and sightseeing transportation.

“Public utility” means conducting or operating a public utility. This section includes, but is not limited to, establishments providing to the general public or to private business sectors the following services: gas, electric, sanitary and garbage, cable television, and P.U.C.-related telephone services.

“Wholesale sales” the sale of goods, wares, or merchandise for the purpose of resale in the regular course of business.

**5.04.130 Business Activity Classifications**

For the purpose of imposing the business tax, business activities are classified as follows:

<b>Class A</b>	retail sales, wholesale sales
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<b>Class B</b>	grocers
<b>Class C</b>	automobile sales, manufacturing
<b>Class D</b>	recreation and entertainment
<b>Class E</b>	hotel, motel, media firms, public utility
<b>Class F</b>	construction contractor
<b>Class G</b>	business and personal services
<b>Class H</b>	professional/semi-professional service
<b>Class I</b>	administrative headquarters
<b>Class J</b>	miscellaneous
<b>Class K</b>	residential rental, non-residential rental
<b>Class L</b>	cannabis business
<b>Class M</b>	firearms ammunition
<b>Class N</b>	taxi and limousine service
<b>Class O</b>	transportation, trucking

**5.04.200 Tax Rates**

Except as otherwise provided in this Chapter, persons engaged in business activities in the city shall pay the business tax at the rate provided for in Sections 5.04.205 through 5.04.230. All rates stated as an amount per \$1,000 shall be paid for each full \$1,000 of taxable gross receipts and every fractional part thereof.



**5.04.205 Tax Rates for Class A through Class G—Progressive Rates**

A. **Class A.** Persons engaged in Class A business activities shall pay a business tax as follows:

<b>If annual gross receipts are:</b>	<b>Then the business tax is:</b>
Not over \$1,000,000	\$0.75 per \$1,000 of annual gross receipts
Over \$1,000,000 but not over \$2,500,000	\$750, plus \$1.00 per \$1,000 of annual gross receipts over \$1,000,000
Over \$2,500,000 but not over \$25,000,000	\$2,250, plus \$1.25 per \$1,000 of annual gross receipts over \$2,500,000
Over \$25,000,000 but not over \$50,000,000	\$30,275, plus \$1.50 per \$1,000 of annual gross receipts over \$25,000,000
Over \$50,000,000	\$67,875, plus \$2.00 per \$1,000 of annual gross receipts over \$50,000,000

B. **Class B.** Persons engaged in Class B business activities shall pay a business tax as follows:

<b>If annual gross receipts are:</b>	<b>Then the business tax is:</b>
Not over \$1,000,000	\$0.60 per \$1,000 of annual gross receipts
Over \$1,000,000 but not over \$2,500,000	\$600, plus \$1.00 per \$1,000 of annual gross receipts over \$1,000,000
Over \$2,500,000 but not over \$25,000,000	\$2,100, plus \$1.25 per \$1,000 of annual gross receipts over \$2,500,000
Over \$25,000,000 but not over \$50,000,000	\$30,225, plus \$1.50 per \$1,000 of annual gross receipts over \$25,000,000
Over \$50,000,000	\$67,725, plus \$2.00 per \$1,000 of annual gross receipts over \$50,000,000

C. **Class C.** Persons engaged in Class C business activities shall pay a business tax as follows:

<b>If annual gross receipts are:</b>	<b>Then the business tax is:</b>
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Not over \$1,000,000	\$1.25 per \$1,000 of annual gross receipts
Over \$1,000,000 but not over \$2,500,000	\$1,250, plus \$2.25 per \$1,000 of annual gross receipts over \$1,000,000
Over \$2,500,000 but not over \$25,000,000	\$4,625, plus \$3.25 per \$1,000 of annual gross receipts over \$2,500,000
Over \$25,000,000 but not over \$50,000,000	\$77,750, plus \$4.25 per \$1,000 of annual gross receipts over \$25,000,000
Over \$50,000,000	\$184,000, plus \$5.25 per \$1,000 of annual gross receipts over \$50,000,000

D. **Class D.** Persons engaged in Class D business activities shall pay a business tax as follows:

<b>If annual gross receipts are:</b>	<b>Then the business tax is:</b>
Not over \$1,000,000	\$4.50 per \$1,000 of annual gross receipts
Over \$1,000,000 but not over \$2,500,000	\$4,500 plus \$4.60 per \$1,000 of annual gross receipts over \$1,000,000
Over \$2,500,000 but not over \$25,000,000	\$11,400, plus \$4.70 per \$1,000 of annual gross receipts over \$2,500,000
Over \$25,000,000 but not over \$50,000,000	\$117,150, plus \$4.80 per \$1,000 of annual gross receipts over \$25,000,000
Over \$50,000,000	\$237,150, plus \$5.00 per \$1,000 of annual gross receipts over \$50,000,000

E. **Class E.** Persons engaged in Class E business activities shall pay a business tax as follows:

<b>If annual gross receipts are:</b>	<b>Then the business tax is:</b>
Not over \$1,000,000	\$1.80 per \$1,000 of annual gross receipts
Over \$1,000,000 but not over \$2,500,000	\$1,800, plus \$2.80 per \$1,000 of annual gross receipts over \$1,000,000

Over \$2,500,000 but not over \$25,000,000	\$6,000, plus \$3.80 per \$1,000 of annual gross receipts over \$2,500,000
Over \$25,000,000 but not over \$50,000,000	\$91,500, plus \$4.80 per \$1,000 of annual gross receipts over \$25,000,000
Over \$50,000,000	\$211,500, plus \$5.00 per \$1,000 of annual gross receipts over \$50,000,000

F. **Class F.** Persons engaged in Class F business activities shall pay a business tax as follows:

<b>If annual gross receipts are:</b>	<b>Then the business tax is:</b>
Not over \$1,000,000	\$3.00 per \$1,000 of annual gross receipts
Over \$1,000,000 but not over \$2,500,000	\$3,000, plus \$3.50 per \$1,000 of annual gross receipts over \$1,000,000
Over \$2,500,000 but not over \$25,000,000	\$8,250, plus \$4.00 per \$1,000 of annual gross receipts over \$2,500,000
Over \$25,000,000 but not over \$50,000,000	\$98,250, plus \$4.50 per \$1,000 of annual gross receipts over \$25,000,000
Over \$50,000,000	\$210,750, plus \$5.00 per \$1,000 of annual gross receipts over \$50,000,000

G. **Class G.** Persons engaged in Class G business activities shall pay a business tax as follows:

<b>If annual gross receipts are:</b>	<b>Then the business tax is:</b>
Not over \$1,000,000	\$2.00 per \$1,000 of annual gross receipts
Over \$1,000,000 but not over \$2,500,000	\$2,000, plus \$3.00 per \$1,000 of annual gross receipts over \$1,000,000
Over \$2,500,000 but not over \$25,000,000	\$6,500, plus \$4.00 per \$1,000 of annual gross receipts over \$2,500,000

Over \$25,000,000 but not over \$50,000,000	\$96,500, plus \$5.50 per \$1,000 of annual gross receipts over \$25,000,000
Over \$50,000,000	\$234,000, plus \$6.00 per \$1,000 of annual gross receipts over \$50,000,000

H. **Class H.** Persons engaged in Class H business activities shall pay a business tax as follows:

<b>If annual gross receipts are:</b>	<b>Then the business tax is:</b>
Not over \$1,000,000	\$4.00 per \$1,000 of annual gross receipts
Over \$1,000,000 but not over \$2,500,000	\$4,000, plus \$4.50 per \$1,000 of annual gross receipts over \$1,000,000
Over \$2,500,000 but not over \$25,000,000	\$10,750, plus \$5.00 per \$1,000 of annual gross receipts over \$2,500,000
Over \$25,000,000 but not over \$50,000,000	\$123,250, plus \$5.50 per \$1,000 of annual gross receipts over \$25,000,000
Over \$50,000,000	\$260,750, plus \$7.50 per \$1,000 of annual gross receipts over \$50,000,000

I. **Class I.** Persons engaged in Class I business activities shall pay a business tax as follows:

<b>If annual gross payroll is:</b>	<b>Then the business tax is:</b>
Not over \$1,000,000	\$3.50 per \$1,000 of annual gross payroll.
Over \$1,000,000 but not over \$2,500,000	\$3,500, plus \$4.50 per \$1,000 of annual gross payroll over \$1,000,000
Over \$2,500,000 but not over \$25,000,000	\$10,250, plus \$5.50 per \$1,000 of annual gross payroll over \$2,500,000
Over \$25,000,000 but not over \$50,000,000	\$134,000, plus \$6.50 per \$1,000 of annual gross payroll over \$25,000,000
Over \$50,000,000	\$296,500, plus \$7.00 per \$1,000 of annual gross payroll over \$50,000,000.

J. **Class J.** Persons engaged in Class J business activities shall pay a business tax as follows:

<b>If annual gross receipts are:</b>	<b>Then the business tax is:</b>
Not over \$1,000,000	\$3.50 per \$1,000 of annual gross receipts.
Over \$1,000,000 but not over \$2,500,000	\$3,500, plus \$4.50 per \$1,000 of annual gross receipts over \$1,000,000
Over \$2,500,000 but not over \$25,000,000	\$10,250, plus \$5.50 per \$1,000 of annual gross receipts over \$2,500,000
Over \$25,000,000 but not over \$50,000,000	\$134,000, plus \$6.50 per \$1,000 of annual gross receipts over \$25,000,000
Over \$50,000,000	\$296,500, plus \$7.00 per \$1,000 of annual gross receipts over \$50,000,000.

**5.04.210 Class K: Residential Rental, Non-Residential Rental.**

- A. Persons engaged in Class K business activities shall pay a business tax of \$13.95 for each \$1,000 of annual gross receipts.
- B. A person otherwise subject to the business tax described in subsection A of this section shall not be exempt by reason of the fact that one or more persons may reside within a building or structure where the primary purpose of the particular tenancy or the primary use or right to use by the tenant is for some purpose other than dwelling, sleeping, or lodging.
- C. Five-Year Exemption for buildings and major renovations; Sunset December 31, 2022.
  - 1. All new buildings and those buildings on which major renovations are completed after July 1, 1981 will be eligible for a five-year exemption from the business tax rate described in subsection A of this section.
  - 2. A person that qualifies for this exemption shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three thousand three hundred thirty-five dollars (\$33,335.00) or less of annual gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of annual gross receipts or fractional part thereof in excess of forty-four thousand four hundred forty-five dollars (\$44,445.00), during the five-year exemption period.
  - 3. In determining the five-year exemption period:

- a. The five-year exemption shall be deemed to commence in the year in which new buildings and/or major renovations are completed and to end in the fifth year from the year of completion irrespective of the date on which an application for exemption is filed.
  - b. There will be no extensions of the five-year exemption period for subsequent major renovations after the first major renovations are completed.
  - c. All lessors are entitled to only one five-year exemption for each business location. The five-year exemption applies to the building or structure and not the lessor.
  - d. There will be no proration in applying for the first year of the five-year exemption. The year in which new buildings are completed or major renovations are completed shall be considered to be a full year regardless of the date of completion.
4. To qualify for an exemption, the person must file an annual exemption on a form prescribed by the city.
  5. Definitions applicable to this subsection are as follows:

"Major renovation" means any instance where the cost of renovation is equal to or exceeds fifty (50%) percent of the after-renovation appraised value of the building as determined by a certified, independent appraiser.

"New building" means any newly constructed building completed after July 1, 1981 for which a temporary certificate of occupancy or certificate of occupancy has been issued by the city.

"New lessor" means any change which results in an eighty (80%) percent or more change of ownership.
  6. Notwithstanding any other terms of this Section, the exemption described in this subpart applies only to persons engaged in the business of renting or letting a building, structure, or other property for commercial/industrial purposes, or a portion of such building, structure, or property within the city for a purpose other than dwelling, sleeping, or lodging to a tenant. Notwithstanding any other terms of this Section, the exemption created by this Section 5.04.210(C) shall not apply to any new buildings completed after December 31, 2022 or buildings on which major renovations are completed after December 31, 2022.

D. Tax Exemption/Reduction for Owner-Occupied Rental Property.

1. For the purpose of this subsection D, “Owner” is defined as a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property.
2. For the purposes of this subsection D, “household income” shall not include the income of a person renting a room in a single-family house, townhouse, or condominium unless the person is a member of the Owner’s family.
3. An Owner of a single-family house, townhouse, or condominium who offers for rent no more than two (2) rooms in said house, townhouse, or condominium shall be exempt from the business tax described in subsection A of this section if:
  - a. the Owner currently lives in the house, townhouse, or condominium as his or her principal place of residence and has received the homeowner property tax exemption on their County property assessment under California Revenue and Taxation Code section 218; and
  - b. the Owner has owned and lived in the house, townhouse, or condominium as his or her principal place of residence for at least one (1) year immediately preceding the application of this exemption; and
  - c. the Owner’s total household income from all sources is less than or equal to 150% of the Area Median Income (AMI); and
  - d. the Owner has no ownership interest in any other residential rental property in the City of Oakland.
4. An Owner of a single-family house, townhouse, or condominium who offers for rent three (3) rooms in said house, townhouse, or condominium shall only be required to pay the business tax described in subsection A of this section on one-third (1/3) of the total annual gross receipts if the Owner satisfies all of the conditions set forth above in subsections D.3.a-d of this section.
5. An Owner of a duplex, or a single-family house with one or two accessory dwelling unit(s) (ADUs) shall be exempt from the business tax described in subsection A of this section if:
  - a. the Owner currently lives in one of the dwelling units as his/her principal place of residence and has received the homeowner property tax exemption on their County property assessment under California Revenue and Taxation Code section 218; and

- b. the Owner has owned the property and lived in one of the dwelling units as his/her principal place of residence for at least one (1) year immediately preceding the application of this exemption; and
  - c. for duplexes, the rental unit is a “Covered Unit” as defined in Oakland Municipal Code section 8.22.020; and
  - d. the Owner’s total household income from all sources is less than or equal to 150% of the Area Median Income (AMI); and
  - e. the Owner has no ownership interest in any other residential rental property in the City of Oakland
6. The exemption and reduction to the business tax described in subsection A provided for in this subsection D shall apply only to rental agreements with a tenancy term of 30 days or more; it shall not apply to Short Term Residential Rentals.
  7. The exemption and reduction to the business tax described in subsection A provided for in this subsection D shall not be applied retroactively to taxes paid or due on or before December 31, 2019.
  8. The exemption and reduction to the business tax described in subsection A provided for in this subsection D is a provisional adjustment to the business tax and shall be effective from January 1, 2020 through December 31, 2030 (“Effective Term”). On January 1, 2031 and thereafter, the tax rate described in subsection A shall be applied without consideration of subsection D, unless the Effective Term is further extended by the City Council.
  9. The City Administrator or designee may create regulations to implement this subsection including, but not limited to, documentation requirements to verify Owner occupancy and income requirements set forth in this subsection D, and an administrative option of receiving tax savings pursuant to subsection D through rebate to property owner. Prior to adoption of any regulations pursuant to this section, the City Administration must publicize and hold at least one community meeting for stakeholders and the public.

**5.04.215 Class L: Cannabis Business**

*Former Oakland Municipal Code section 5.04.480, “Cannabis businesses,” as that section is stated and effective as of June 1, 2020, will be renumbered as section 5.04.215. The substantive provisions of that section will not be amended, except as follows:*

1. All references to section “5.04.080” shall be amended to “5.04.300”; and
2. All references to section “5.04.110” shall be amended to “5.04.240”; and



3. All references to section "5.04.120" shall be amended to "5.04.245 and 5.04.250"; and
4. All references to section "5.04.390" shall be amended to "5.04.266"; and
5. All references to section "5.04.480" shall be amended to "5.04.215"; and
6. The reference to "5.81.050" in Section 5.04.480(A)(7) is amended to "5.80.050."

*Prior to final adoption of this resolution, the text of this section will be replaced with the full text of the proposed legislation.*

**5.04.220 Class M: Firearms Ammunition**

Persons engaged in Class J business activities shall pay a business tax of \$60.00 per year or fractional part thereof for the first \$2,500 or less of annual gross receipts, plus \$24.00 per year for each additional \$1,000 of annual gross receipts in excess of \$2,500.

**5.04.225 Class N: Taxi and Limousine Service**

Persons engaged in Class K business activities shall pay a business tax of \$75 for each ambulance or limousine and \$180 for each taxicab permit.

**5.04.230 Class O: Transportation and Trucking**

- A. Persons engaged in Class L business activities shall pay an annual business tax based upon the average number of persons employed by such business in the city as follows:
  1. \$72 for the first person employed;
  2. \$18 per person for the next 19 persons employed;
  3. \$9 per person for the next 80 persons employed;
  4. \$7.50 per person for the next 100 persons employed;
  5. \$4.50 per person for all other persons employed.
- B. "Average number of persons employed" means the average number of persons employed daily in the business for the period of one year, and shall be determined by ascertaining the total number of hours of service performed by all employees during the previous year, and dividing the total number of hours of service thus obtained by the number of hours of service constituting a day's work, according to the custom or laws governing such employments, and by again dividing the sum thus obtained by the number of business days in each year. In computing the

"average number of persons employed," fraction of numbers shall be excluded. "Employee," as used in this section, means all persons engaged in the operation or conduct of the business, whether as owner, any member of the owner's family, partner, manager, and any and all other persons employed or working in said business.

**5.04.240 "Annual Gross Receipts"—Definition—First Certificate.**

"Annual gross receipts" for a newly established business receiving its first business tax certificate shall mean the total gross receipts received from the initiation of any business activities to the expiration of the person's first business tax certificate.

Every person applying for the first business tax certificate for a newly established business shall provide a reasonable estimate of their anticipated gross receipts for the period from the initiation of any business activities to the expiration of its first business tax certificate. The applicant shall pay an initial tax payment based on the estimate.

In a manner and time prescribed by the city administrator, the city shall allow a credit against future taxes for any overpayment in comparison to actual gross receipts and the applicant shall make an additional payment for any undercharge in comparison to actual gross receipts. The true up required by this paragraph shall proceed regardless of whether the person seeks a second business tax certificate.

The city administrator may demand any information necessary to verify any estimate, reject any estimate, or unilaterally amend any estimate to conform to the city administrator's understanding of a reasonable estimate of any person's anticipated gross receipts based on any factual information in the city administrator's possession.

**5.04.245 "Annual Gross Receipts"—Definition—Second Certificate.**

"Annual gross receipts" for a business receiving its second business tax certificate means the total gross receipts received from January 1 to December 31 of the year for which the business tax certificate is issued.

Every person applying for a second business tax certificate shall provide a reasonable estimate of their anticipated gross receipts for the period from January 1 to December 31 of the year for which the business tax certificate is issued. The applicant shall pay an initial tax payment based on the estimate.

In a manner and time prescribed by the city administrator, the city shall allow a credit against future taxes for any overpayment in comparison to actual gross receipts and the applicant shall make an additional payment for any undercharge in comparison to actual gross receipts. The true up required by this paragraph shall proceed regardless of whether the person seeks a further business tax certificate.

The city administrator may demand any information necessary to verify any estimate, reject any estimate, or unilaterally amend any estimate to conform to the city administrator's

understanding of a reasonable estimate of any person's anticipated gross receipts based on any factual information in the city administrator's possession.

**5.04.250 "Annual Gross Receipts"—Definition—Third Certificate and Thereafter.**

"Annual gross receipts" for a business receiving its third business tax certificate, and for any business tax certificates, means the total gross receipts received from January 1 to December 31 of the year immediately preceding the year for which the business tax certificate is issued.

**5.04.251 "Annual Gross Receipts"—Definition—Construction Contractors.**

Any person engaging in the business of a construction contractor shall apply the method for determining "annual gross receipts" defined in section 5.04.240 with respect to its first business tax certificate.

Any person engaging in the business of a construction contractor shall apply the method for determining "annual gross receipts" defined in section 5.04.245 with respect to its second business tax certificate and for all business tax certificates applied for thereafter, notwithstanding any terms to contrary in section 5.04.245 or 5.04.250.

**5.04.260 Alternative Rate: Small business enterprises.**

- A. Notwithstanding any other provisions of this chapter, small business enterprises may elect to pay business tax either at the rates stated above or, as an alternative, at a flat amount of \$100 for each business tax certificate. The city may require any small business enterprise to submit any documentation deemed necessary by the city administrator to monitor the application of this exemption.

Any person claiming exemption pursuant to this section shall be required to obtain a business license and timely file for the alternative rate and subsequent renewals before the applicable delinquency date. The failure to timely file or renew prior to the date the taxes would otherwise have been delinquent shall render the alternative rate inapplicable and shall subject the person to the tax that would otherwise be payable as well as to any applicable interest and penalties.

- B. The term "small business enterprise" shall mean and include any person who meets both of the following criteria:
  - 1. Annual gross receipts that do not exceed \$250,000; and
  - 2. Business activity is not classified as Class K, residential rental or non-residential rental, or Class L, cannabis businesses.

**5.04.261 Exemption: Buildings rented by the city.**

A person who rents or leases a building to the city shall be exempt from the business tax to the extent the taxpayer receives gross receipts from the city with respect to the rental or lease of the building, if the city and the person enter into an agreement pursuant to which the city assumes responsibility for payment of the business tax.

**5.04.262 Exemption: Affordable housing developments.**

- A. *General Rule.* A person engaged in residential rental of a property that is eligible for a partial property tax exemption pursuant to Section 214(g) of the California Revenue and Taxation Code shall be exempt from business tax liability with respect to the property in an amount to equal to the gross receipts derived from the property multiplied by the percentage calculated for the purpose of determining the amount of the property tax exemption allowed pursuant to Section 214(g) for the most recent property tax bill issued for the property.
- B. *Conditions.* Any person entitled to a deduction pursuant to this section shall provide the city with any information deemed necessary by the city administrator to confirm that the property is eligible for a partial property tax exemption pursuant to Section 214(g) of the California Revenue and Taxation Code and the extent to which such property is eligible for such exemption.
- C. *Denial of Exemption.* The city may deny the deduction provided for by this section, in part or in whole, to any person who the city administrator reasonably believes does not qualify for, or has miscalculated, the partial property tax exemption created by Section 214(g) of the California Revenue and Taxation Code, regardless of any determinations made or exemptions granted by any other public or private party.

**5.04.263 Exemption: Family daycare.**

Every person licensed by the State of California Department of Social Services as a family daycare provider, and maintaining a state license permitting up to fourteen (14) children or less per facility, shall be exempt from the business tax imposed under this chapter to the extent that they derive gross receipts from such activity. Persons seeking an exemption pursuant to this section must submit an annual statement, as described in Section 5.04.300, together with a copy of the most current license issued by the State of California Department of Social Services to the city.

**5.04.264 Exemption: Parking Stalls**

Parking stall operators who are subject to the parking stall fee shall be exempt from business tax under this section to the extent they derive gross receipts from such activity.

**5.04.265 Optional method of determining tax.**

When a person engages in two or more business activities, other than manufacturing, which are taxed on the basis of gross receipts under different provisions of this chapter, such person may elect to combine all such gross receipts and pay a tax determined by applying the rate of tax applicable to that business activity producing the greatest amount of gross receipts, subject to the following provisions:

- A. All businesses must be conducted at the same location; and
- B. The gross receipts of all business activities, except the business producing the greatest amount of gross receipts, must not exceed twenty (20%) percent of the total combined gross receipts of all business activities.

Each person required to obtain a business tax certificate for engaging in the business of selling firearms or firearms ammunition shall not be required to obtain a business tax certificate for activities covered by any other section of this chapter and shall pay tax on gross receipts derived from any activity covered by any section of this chapter at the rate prescribed for gross receipts from the sale of firearms or firearms ammunition.

**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 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.

**5.04.267 Cannabis Equity Tax Rebate Program**

*Former Oakland Municipal Code section 5.04.481, "Cannabis equity tax rebate program," as that section is stated and effective as of June 1, 2020, will be renumbered as section 5.04.267. The substantive provisions of that section will not be amended, except as follows:*

- 1. All references to section "5.04.095" shall be amended to "5.04.370"; and
- 2. All references to section "5.04.480" shall be amended to "5.04.215"; and
- 3. All references to section "5.04.481" shall be amended to "5.04.267."

*Prior to final adoption of this resolution, the text of this section will be replaced with the full text of the proposed legislation.*

**5.04.270 Constitutional Apportionment.**

- A. *Right to Apportionment.* No taxes, penalties, fees, or interest provided for by this chapter shall be applied so as to impose an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the constitutions of the United States and of the State of California.
- B. *Submission of Application.* If any person believes that any business tax places an undue burden upon interstate commerce or violates the constitution of the United States or State of California, the person may apply to the city administrator for an adjustment of the tax. Such application must be in writing within one-year after the original deadline to pay the underlying tax. If the person does not make such request within one-year, they shall be conclusively deemed to have waived any adjustment for that year.

Each person submitting an application shall by sworn statement and supporting testimony, show the proposed apportionment method, describe the extent to which the person conducts any business activities within and outside of the city and provide any other information that the city administrator may deem necessary to determine the extent, if any, of the undue burden or violation.

- C. *Consideration of Application.* With respect to any application, the city administrator shall conduct an investigation, and shall fix as the tax an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the city administrator shall have the power to base the tax upon a percentage of gross receipts or any other measure that will assure that the tax assessed is uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter. In no event is any taxpayer entitled to a refund that results in a windfall to such taxpayer. If the city administrator determines no adjustment is necessary, they may require the person to submit a sworn statement of the gross receipts and pay the amount of tax determined by the city administrator.
- D. *Guidelines.* The city administrator may issue guidelines to be used to determine the appropriate apportionment method for any given business. Such guidelines may be general or specific to a particular industry or industries.

**5.04.300 Certificates—Issuance, Declaration, Content, Due Date**

- A. *Annual Certificate and Written Declaration.* Every person engaging in business activities in the city shall file with the city an annual written statement setting forth the then applicable factor or factors that constitute the measure of the tax, together with such other information as may be required by the city administrator. Written statements shall include a declaration confirming, under penalty of perjury, that the information contained in the application is true and correct. Each applicant who is subject to the contractor’s license law, shall state that they are licensed under such law, that this license is in full force and effect, and the number of the license.
- B. *New Business Registration.* Every person applying for a first business tax certificate for a newly established business shall provide any information to the city that the city administrator deems reasonably necessary to properly categorize the person’s business activities and pay a registration fee in the amount set forth in the city’s master fee schedule (as amended from time to time) within thirty (30) days from the date of commencement of business activity. Failure to register shall subject the taxpayer to penalty and interest.
- C. *Due Date - Rental Businesses.* With respect to any persons engaging in residential and non-residential rental businesses activities, annual declarations and business tax payments shall be due by or before March 1 of each calendar year for which a person is issued a business tax certificate, unless the city council, in its discretion, declares a different due date.
- D. *Due Date - All Other Businesses.* With respect to any persons engaging in any business activities other than residential and non-residential rental businesses activities, annual declarations and business tax payments shall be due by or before July 1 of each calendar year for which a person is issued a business tax certificate, unless the city council, in its discretion, declares a different due date.
- E. *Estimates.* Persons who are unable to provide final figures before the due date for annual declarations and business tax payments shall provide estimates following procedures established by city administrator.
- F. *Holidays and Weekends.* To the extent any deadlines in this section fall on holidays or weekends, such deadlines shall be extended to the next business day.
- G. *Certificate Contents.* Certificates shall contain the name of the business, the place where the business is to be carried on, the business activity, the date of the expiration of such business tax certificate, and such other information as the city administrator may deem appropriate.

- H. *Refusal to Issue Certificate.* The city administrator may refuse to issue any person a business tax certificate for the same or any other business if such person has outstanding and unpaid liabilities pursuant to this chapter.
- I. *Extensions.* The city administrator may grant extensions of up to forty-five (45) days for the payment of business tax or for the making and filing of declarations. No penalty shall be added to the amount due and payable if said tax is paid within the extension period. During such extension period, the amount subject to the extension may, in the city administrator's discretion, bear interest beginning with the original due date to the date of filing of the declaration and full payment of the tax at a rate of one percent (1%) per month or fraction thereof, notwithstanding the granting of the extension.
- J. *No Intent to Continue Business.* A person who does not intend to carry on usual and customary business activities beyond December 31st of any given year is not liable to obtain and pay for a business tax certificate, unless otherwise provided by any section of this chapter. A person did not intend to carry on "usual and customary business activities" beyond December 31st of any given year if:
  - 1. It is established by written documentation (i.e., opening escrow, bill of sale, etc) that the person was in the act of selling, liquidating, transferring, or otherwise permanently disposing of its business on or before December 31st of the year preceding the calendar year such business was terminated or transferred, and such sale, liquidation, transfer, or other permanent disposal is not made to or for the direct benefit of a related entity; and
  - 2. Such termination, liquidation, transfer, or disposition is final with no gross receipts either received or attributable to the taxpayer eligible for the subject proration as of the 15th day of April of the calendar year after action to terminate, transfer, liquidate or otherwise dispose of the business was initiated.

**5.04.310 Related Entities**

- A. *Definition.* "Related entities" means any business units that are commonly owned and integrated in a way that transfers value among the business units and includes any business units that comprise part of a "unitary business" as defined by California law and any business units that are required to, actually do, or may, file a combined report pursuant to California Revenue & Taxation Code section 25102, or any statute or law that amends or supersedes that section.
- B. *Indicia of Related Entities.* The city administrator may presume that entities with common ultimate ownership and any of the following indicia, as determined by the city administrator, are related entities:



1. *Same type of business:* Entities that engage in the same general line of business activity.
2. *Steps in a vertical process:* Entities that engage in different steps in a large, vertically structured enterprise.
3. *Strong centralized management:* Entities with strong central management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing.

**5.04.320 Master Certificates—Aggregation of gross receipts**

- A. *Applicability.* The following persons shall apply for a collective master certificate and any appropriate subsidiary certificates pursuant to the terms of this section:
1. All persons and their related entities that generate gross receipts attributable to the city by engaging in similarly categorized business activities from separate branch establishments or places of business; and
  2. All persons who receive goods, wares, merchandise, services, or similar advantages in exchange for compensation that is excluded from the definition of “gross receipts” pursuant to exception 8 in section 5.04.110 and the person who provided such goods, wares, merchandise, services, or similar advantages.
- B. *Effect of Master Certificate--Aggregation of Gross Receipts.* For the purpose of determining the business tax due for any master certificate, all persons and related entities conducting business activities pursuant to a master certificate shall aggregate the applicable annual gross receipts from all persons and related entities subject to the master certificate before applying the rates described in this chapter. Other subsidiary certificates shall not be subject to further tax.

With respect to any master certificate issued pursuant to subsection (A)(2) of this section, “annual gross receipts” shall include any gross receipts received on account of any goods, wares, merchandise, services, or similar advantages received in exchange for compensation that was excluded from the definition of “gross receipts” pursuant to exception 8 in section 5.04.110, in addition to any other applicable annual gross receipts.

- C. *Maintenance of Master Certificate.* All persons required to apply for a master certificate pursuant to subsection (A)(1) of this section shall maintain such master certificate for at least as long as the persons or related entities generate gross receipts attributable to the city by engaging in similarly categorized business activities from separate branch establishments or places of business.

All persons required to apply for a master certificate pursuant to subsection (A)(2) of this section shall maintain such master certificate at least until:

1. They receive gross receipts on account of all goods, wares, merchandise, services, or similar advantages received in exchange for compensation that was excluded from the definition of “gross receipts” pursuant to the exclusion for “transactions between related entities” in section 5.04.110; or
2. Demonstrate, to the satisfaction of the city administrator, that they will never generate gross receipts on account of such goods, wares, merchandise, services, or similar advantages.

**5.04.330 Public inspection.**

- A. The following information for each business tax certificate under this chapter shall be available for inspection by the public during normal working hours:
  1. The name and address of the business;
  2. The name of the owner of the business, if such name is shown on the records filed pursuant to this chapter;
  3. Industrial classification;
  4. Expiration date;
  5. Account number.
- B. The city administrator may enact such regulations as are necessary to permit reasonable public access to the information. Such regulations may prescribe the time and manner in which to receive and act upon requests for such information.

**5.04.340 Procedure for changes to business tax certificate.**

No business tax certificate may be transferred or assigned or authorize any person other than the person named in the business tax certificate to carry on the business named or to transact such business in any place other than the place or location named without the written consent of the city. Any time the place of location for the carrying on of such business or the business name is changed, the person applying for such change shall pay a fee in the amount set forth in the city’s master fee schedule.

**5.04.350 Business tax certificate to be conspicuously posted—Exception.**

Every person having a business tax certificate and carrying on a business at a fixed place of business shall keep the business tax certificate conspicuously posted and exhibited while in force in a part of said place of business accessible to the view of the public.

Every person having such a business tax certificate and not having a fixed place of business shall carry such business tax certificate with him or her at all times while carrying on the business for which the same was granted.

The city administrator may designate appropriate staff who shall have the right to enter, free of charge and during business hours, any place of business for which a business tax certificate is required, for the sole purpose of verifying the existence of and to demand the exhibition of such tax business tax certificates for the current term from any person engaged or employed in the transaction of such business.

**5.04.260 Lost certificate.**

The city shall issue a duplicate business tax certificate to replace any business tax certificate issued under the provisions of this chapter that has been lost or destroyed at no cost to the taxpayer for the first duplicate business tax certificate. Each replacement business tax certificate issued thereafter will be issued for the amount set forth in the city's master fee schedule (as amended from time-to-time).

**5.04.370 Notice of business termination.**

Any business that ceases their normal and customary business activities within the city must notify the city within thirty (30) days of cessation of business activities. This notification must be in writing and signed by the registered business owner or authorized agent. Failure to file a timely notification will be subject to a late filing fee.

**5.04.400 Penalty for nonpayment.**

- A. The following non-payments are declared delinquent:
  - 1. Every annual business tax or portion thereof that is not paid on or before the deadline to make such payment;
  - 2. Every registration fee and portion thereof for a newly established business, that is not paid within thirty (30) days after commencing business; and
  - 3. Any other tax, penalty, fee, or interest, or portion thereof, that is not paid by any date and time established or declared pursuant to this chapter.
- B. Any person whose non-payments are declared delinquent shall pay a penalty as follows:
  - 1. Ten percent (10%) of the total amount that remains delinquent as of the expiration of the deadline to make such payment; *plus*
  - 2. Twenty-five percent (25%) of the total amount that remains delinquent as of the expiration of sixty (60) days after the deadline to make such payment, not including any penalty amount. For the purpose of this subsection, any

partial payments shall be first credited against any outstanding penalties and then against the principal delinquent amount.

- C. Proof of payment of Business Tax or Registration Fee. If a dispute arises regarding the date a payment was received by the city, the burden of proof is on the taxpayer to demonstrate that the taxpayer made and the city received timely payment. Payment is considered timely made and received if it is either actually received by the city or deposited in the United States mail on or before the date the payment is due. The following shall be considered proof of timely payments:
1. Cash register or electronic receipt issued by the city through an authorized employee, or through an online transaction, to those taxpayers making payment;
  2. Certificate of mailing issued by the U.S. Post Office;
  3. Certificate of registered or certified mail issued by the U.S. Post Office;
  4. Receipt of delivery to private mail services; or
  5. Postmark issued by the U.S. Post Office.

**5.04.405 Interest.**

In addition to the penalties imposed, any person whose non-payments are declared delinquent shall pay interest at the rate of one percent (1%) per month or fraction thereof, on the amount of the non-payment inclusive of penalties from the date on which the non-payment first became delinquent until paid. Interest is not a penalty. Interest is charged in order to compensate the city for the loss of the use of revenue after the due date of the tax.

**5.04.410 Business tax a debt—Liens.**

The amount of any business tax and penalty imposed by this chapter shall be deemed a debt to the city; and any person carrying on any business without first having procured a business tax certificate from the city, or without having paid all appropriate and due taxes, penalties, interest, and fees city shall be liable to an action in the name of the city in any court of competent jurisdiction, for the amount of taxes, penalties, interest, and fees imposed on such person.

The city must commence an action to collect any tax, penalty, or interest within the time required by California law and subject to any applicable tolling periods. To the extent allowed by California law “applicable tolling periods” includes, but is not limited to, any period during which the city is unaware of the existence of a business or the ongoing activities of a business due to the taxpayer's failure to obtain a business license or failure to comply with annual reporting requirements, the time during which a taxpayer pursues any administrative review or appeals, and the time during which the city pursues any lawful audit. (See *City of Los Angeles v. Centex Telemangement, Inc.* (1994) 29 Cal.App.4th 1384.)

The amount of taxes, penalties, interest, and fees imposed under the provisions of this chapter is assessed against the business property on which the tax is imposed in those instances where the owner of the business and the business property are one and the same. If the taxes are not paid when due, such tax, penalty and interest shall constitute an assessment against such business property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record.

**5.04.415 Notice of hearing on lien.**

The city administrator shall prepare a written notice of those persons against whose property the city will file liens and submit that notice to the city council. The city council shall forthwith fix a time and place for a public hearing on such notice.

The city administrator shall cause a copy of such notice to be served upon the owner of the business/business property not less than ten days prior to the time fixed for such hearing. Mailing a copy of such notice to the owner of the business/business property at the address listed in the most recent property ownership records provided to the city by the County Assessor as of the date that the city administrator causes notice to be mailed shall comprise proper service. Service shall be deemed complete at the time of deposit in the United States mail.

**5.04.420 Collection of delinquent taxes by special tax roll assessment.**

With the confirmation of the report by the City Council, the listed delinquent business tax charges that remain unpaid by the owner of the business/business property shall constitute a special assessment against said business property and shall be collected at such time as is established by the County Assessor for inclusion in the next property tax assessment.

The city administrator shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent business tax charges consisting of the delinquent business taxes, penalties, interest at the rate of one percent per month or fraction thereof from the date of recordation to the date of lien, an administrative charge in the amount set forth in the City of Oakland master fee schedule (as amended from time-to-time) and a release of lien filing fee in an amount equal to the amount charged by the Alameda County Recorder's Office.

Thereafter, said assessment may be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and the same procedure of sale as provided for delinquent ordinary property taxes. The assessment liens shall be subordinate to health and safety liens except for those of state, county, and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and charges due and payable thereon are paid. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to said special assessments.

**5.04.425 Recordation of lien for delinquent charges.**

Upon confirmation of the report of delinquent business tax charges by the City Council, a lien on the real property for delinquent business tax charges which were assessed will be recorded with the Recorder of the County of Alameda.

**5.04.430 Audit—Examination of books, records, witnesses.**

The city may conduct audits and examinations pursuant to the terms of this section.

The city administrator or any authorized employee is authorized to examine the books, papers, tax returns, and records of any person subject to this chapter for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

Every person subject to the provisions of this chapter is directed and required to furnish to the city administrator, the means, facilities, and opportunity for making such examination and investigations. The city administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax or registration fees due under this chapter. In order to ascertain the business tax or registration fees due under this chapter, the city administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

The refusal to submit to such examination or production by any employer or person subject to the provisions of this chapter shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable state law.

**5.04.435 Results of audit—Reclassification Determination**

- A. *Notice of Determination.* If, pursuant to an audit or examination conducted pursuant to Section 5.04.430, the city determines that a person's business activity should be reclassified, the city may issue a notice of determination ordering such reclassification.
- B. *Reclassification-Prospective Only.* If an audit or examination results in reclassification, not made necessary by earlier misclassification based upon incorrect and/or incomplete information supplied by a taxpayer to the city, the reclassification shall be effective in the current year only and shall not be retroactive.
- C. *Reclassification-Retroactive.* If an audit or examination results in reclassification made necessary by earlier misclassification based upon incorrect or incomplete information supplied by a taxpayer to the city, penalties and interest pursuant to Sections 5.04.400 and 5.04.405 shall be retroactively assessed upon amounts underpaid from the date the correct taxes would have been due.

**5.04.440 Results of Audit—Deficiency determination.**

- A. *Notice of Determination.* If, pursuant to an audit or examination conducted pursuant to Section 5.04.430, the city determines that a person's has not properly completed any declaration, has failed to make a declaration, has improperly calculated the amount of business tax owed, or made some similar error or omission, the city may issue a notice of determination ordering an appropriate correction.
- B. *Recomputation of Tax—Authority to Make—Basis of Recomputation.* If the city administrator, in the exercise of reasonable discretion, is not satisfied with the declaration or declarations of the tax or the amount of tax computed, the city administrator may compute and determine the amount required to be paid upon the basis of the facts contained in the declaration or declarations or upon the basis of any factual information within the city administrator's possession or that may come into the city administrator's possession. One or more deficiency determination may be made of the amount due for one or for more than one period.
- C. *Interest and Penalties on Deficiency.* The amount of the determination in excess of that amount timely paid by the taxpayer, inclusive of penalties, shall bear interest and penalties in the amount and manner set forth in Sections 5.04.400 and 5.04.405 of this chapter.
- D. *Offsetting of Overpayments.* In making a determination, the city administrator may offset overpayments for a period or periods against underpayments for any period or periods, and against any city debt.

**5.04.445 Determination if no declaration filed—Penalty**

- A. *Notice of Determination.* If any person fails to file a declaration as required by this chapter, the city administrator may issue a notice of determination imposing a penalty pursuant to the terms of this Section.
- B. *Estimate, Computation, Penalty.* If any person fails to file a declaration as required by this chapter, the city administrator may, in the exercise of reasonable discretion, make an estimate of the amount of the gross receipts or other measure of tax applicable to the person or persons subject to the tax. The estimate shall be made for the period or periods for which the person failed to file a declaration and shall be based upon any factual information in the city's possession or which may come into the city's possession. Upon the basis of this estimate, the city administrator may impose a penalty of up to ten percent (10%) of the tax estimated to be owed, in addition to any penalties and interest that may be due pursuant to Section 5.04.400 and Section 5.04.405.

**5.04.450 Notice of determination—Service of—Finalization—Payment .**

Any notice of determination issued by the city pursuant to this Chapter shall be served personally or mailed to the taxpayer at the taxpayer's last address shown on the city's records. If served personally, such service is deemed complete at the time

of personal service. If mailed, such service is deemed complete at the time of deposit in the United States mail. All notices of determination shall state any related penalties or interest.

Notices of determination become final twenty (20) after service is deemed complete, unless an extension is granted by the city or the taxpayer files a timely petition for redetermination pursuant to section 5.04.500.

The taxpayer shall have twenty (20) days after a notice of determination becomes final to pay any additional tax liability described in the notice of determination. If full payment is not timely received, the unpaid amount is deemed to be delinquent. Interest pursuant to Section 5.04.405 shall begin accruing upon delinquent amounts and penalties shall be assessed upon delinquent amounts pursuant to Section 5.04.400.

**5.04.500 Redetermination.**

- A. *Right of Petition For—Time to File Petition.* Any person issued a notice of determination under this chapter, or any person directly interested, may file a petition for a redetermination within twenty (20) days after service of the notice of determination. The city administrator in individual cases may, in the exercise of reasonable discretion in administering the provisions of this chapter, extend the twenty (20) day period. If a petition for redetermination is not filed within the twenty (20) day period, or within the extension period granted by the city administrator, the determination becomes final at the expiration of the twenty (20) day period. The city administrator's decisions on applications for extension of time in which to file petitions for redetermination must be served in the manner provided in Section 5.04.450.
- B. *Grant of Oral Hearing—Notice—Continuances.* If a petition for redetermination is timely filed, the city administrator shall reconsider the determination and, if the petition includes a request for hearing, shall grant the person an oral hearing, giving the person ten days' notice of the time and place thereof. The city administrator may continue the hearing from time to time as may be necessary. The city administrator shall exercise reasonable discretion in the decision on redetermination.
- C. *Alteration of Determination—Limitation on Right to Increase Amount.* Once a petition for reconsideration has been filed, the city administrator may amend the notice of determination until the notice of determination becomes final; however, the city administrator must assert any claim for increasing any liability owed by the taxpayer at or before the hearing, if a hearing has been requested. If no hearing has been requested, or if the city administrator asserts a claim before the hearing without reasserting it at the hearing, notice of the increase must be served on the person in the manner provided in Section 5.04.450.



- D. *Finality of Order on Petition.* The order or decision of the city administrator upon a petition for redetermination becomes final twenty (20) days after service upon the petitioner of notice thereof in the manner provided in Section 5.04.450, unless appeal of such order or decision is timely filed with the Board of Review pursuant to Section 5.04.520.
- E. *Time for Payment of Amounts Found Due—Penalty for Delinquency.* All determinations made by the city administrator or Board of Review are due and payable at the time they become final.

**5.04.510 Refund of tax, penalty or interest.**

- A. *Illegally or Erroneously Collected Tax.* Any person who alleges that any tax, penalty, or interest has been illegally or erroneously paid to, collected by, or received by the city may file a claim with the city, executed under penalty of perjury and stating the specific grounds upon which the claim is founded. If the city administrator finds, in their reasonable discretion, that claim is valid or partially valid and that the claim was filed within one (1) year of the payment, collection, or receipt of the tax, the city shall compensate the taxpayer to the extent of the illegally or erroneously collected tax.
- B. *Submission of Claim.* A claim made pursuant to this section shall be on a form furnished by the city administrator. A claim for refund may only be signed by the taxpayer, the taxpayer's authorized agent, or other person determined to be liable for the tax or said person's guardian or conservator. Class claims for refunds shall not be permitted. If the claim is approved by the city administrator, the excess amount collected may be refunded or may be credited on any amount due and payable from the person from whom it was collected, or by whom paid, and the balance may be refunded to such person, his or her administrators or executors.

No refund of any tax or registration fee paid under this chapter shall be made by virtue of the discontinuance, dissolution, or other termination of a business.

**5.04.520 Board of review.**

- A. *Composition.* A business tax board of review ("board of review") consisting of the city administrator, the city auditor, an employee of the city selected by the city administrator, and two community members nominated by the mayor and appointed by the city council each for a term of four years is hereby created. The board of review shall select from its members a chairperson who shall serve at its pleasure. The city administrator and the city auditor may each deputize in writing filed with the board of review for such period or for such hearings as may be desired, a person to serve as their designee to the board of review. A majority of members of the board of review shall constitute a quorum.

A board of review member may fully participate in all decisions in which such board member participates while on holdover status and such decisions are not invalid because of the board of review member's holdover status. Neither the members of the board of review nor the members of their offices deputized to serve in their places at any time shall receive any compensation as such members or acting members for their services.

- B. *Right to Appeal.* Any person whose petition for redetermination pursuant to 5.04.500 is denied in whole or in part, and any person granted a waiver by the city administrator, may file an appeal to the business tax board of review.
- C. *Appeals.* Any person entitled to file an appeal pursuant to this Section may file an appeal in writing to the board of review within twenty (20) days from the date of service of the denial of a petition for redetermination or the waiver giving rise to the person's right to appeal. The city may waive or extend the deadline to file an appeal. The board of review shall make findings of fact in support of its decisions on appeal. The board of review shall exercise its reasonable discretion in administering the provisions of this chapter in rendering a decision on appealed rulings and findings. The board of review's decision on appeal becomes final upon giving notice of the decision to the appellant in the manner provided in Section 5.04.450. Any tax, penalty, or interest found to be owing is due and payable at the time the board of review's decision becomes final.
- D. *Extension of Time for Filing and Payment.* On written application showing good cause, the board of review or its chairperson may, with or without hearing, by written order filed with the city administrator, extend for not more than forty-five (45) days the time provided in this chapter for the filing of any declaration or making any payment. In no event will such an extension be granted for an annual tax on any written application received after the applicable annual deadline. For the period of such extension the penalty in regard thereto shall be waived.
- E. *Exhaustion of Remedies.* Any person whose case may be resolved by employing the administrative remedies provided by this section, or in section 5.04.500, must exhaust those remedies before filing suit for refund, rebate, exemption, cancellation, amendment, adjustment, or modification of tax, interest, or penalty.
- F. *Review of Tax Rulings.* The board of review shall, on motion of any one of its members, hold a hearing to ascertain its position regarding any business tax ruling. The board of review may affirm, modify, or reverse such ruling as necessary or advisable to effectuate the purposes of this chapter. The board of review's decision on such ruling shall have only prospective effect.

**5.04.600 Declaration—Confidential documents.**

The statements filed pursuant to the provisions of this chapter are presumed to be confidential in character and will not be subject to public inspection to the fullest extent allowed

by law, and shall be kept so that the contents of such statements will not become known except to the persons charged with the administration of this chapter.

Any officer or employee who willfully violates any provision of this section shall be deemed guilty of an infraction, and such violation may be cause for discharge from the city's service.

**5.04.605 Disclosure of business taxpayers, etc. limitation on rule.**

Notwithstanding any other provision of any city ordinance, the city administrator is authorized to enter into agreements with the California Franchise Tax Board, the State Board of Equalization, or the Internal Revenue Service providing for the exchange of information for official purposes of said agencies, and to implement any such agreement through the exchange of information.

**5.04.610 Return check penalty.**

Whenever a person submits a check for payment of a business tax and said check is subsequently returned unpaid by the bank upon which said check is drawn, and the check is not redeemed prior to the expiration of the renewal or registration due date, the person's non-payment will be declared delinquent and the person will be liable for the tax amount due plus penalties and interest.

**5.04.615 Prior year registration assessments.**

If any person fails to apply for and secure a business tax certificate, the business tax due shall be that amount due and payable from the first date on which the person was engaged in business in the city, together with applicable penalties and interest.

**5.04.620 Notice not required.**

The city is not required to send any renewal, delinquency, or other notices or bills to any person subject to the provisions of this chapter, except as explicitly provided. Failure to send such notices or bills will not affect the validity of any tax, penalty, or interest due under the provisions of this chapter.

**5.04.625 Conviction for violation not waiver of business tax.**

The conviction and punishment of any person for transacting any business without a business tax certificate shall not excuse or exempt such person from the payment of any business tax due or unpaid at the time of such conviction, and nothing herein shall prevent a criminal prosecution of any violation of the provisions of this chapter.

**5.04.630 Duties of the city administrator—Notice of decisions.**

It shall be the duty of the city administrator to collect and receive and keep an accurate record of all taxes imposed by this chapter. The city administrator is charged with the enforcement

of this chapter, except as otherwise provided, and may prescribe, adopt, and enforce those rules and regulations necessary or advisable to effectuate the purposes of this chapter, including provisions for the re-examination and correction of declarations and payments; the exclusive discretionary authority to waive penalties; and the authority to defer the payment due dates as prescribed by Section 5.04.300 by up to 45 days. In individual cases, the city administrator may make findings of fact in support of decisions, determinations, and rulings enforcing this chapter. The city administrator may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

**5.04.640 Savings clause.**

- A. The provisions of this chapter shall not apply to any person, association, or corporation or to any property, as to whom or which it is beyond the power of the city to impose the business tax. If any sentence, clause, section, or part of this chapter, or any business tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this chapter. It is declared to be the intention of the city and voters that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.
- B. Any person claiming an exemption from the business tax imposed by this chapter by virtue of this section, shall submit to the city a statement signed under penalty of perjury setting forth the facts necessary to establish such claim of exemption.

**5.04.645 Late Penalty—Declaration.**

Every person who, without an extension authorized by the city administrator, fails to timely file any business tax declaration or statement of renewal shall pay a late filing fee of fifty dollars (\$50.00) or in the amount set forth in the City of Oakland master fee schedule (as amended from time-to-time), in addition to any other taxes, penalties, fees, or interest that may be due under this chapter.

**5.04.650 Violations, infraction, misdemeanor.**

In the exercise of the duties imposed upon the city administrator, and acting through deputies or duly authorized representatives, the city administrator shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this chapter have been complied with. For the purposes of this paragraph, in the case of a person coming into the city to do business from a location outside the city, the "place of business" shall be deemed to be the place where such person is engaging in business or offering to engage in business in the city.

Any person violating any provision of this chapter shall be guilty of an infraction. Any person knowingly or intentionally misrepresenting to any officer or employee of this city any material fact in procuring the business tax certificate herein provided for shall be guilty of a misdemeanor, and conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment in the county jail for a period of not more than six months or by both fine and imprisonment.

**5.04.655 Records required from taxpayers.**

Every person required to obtain a business tax certificate shall keep and preserve for a period of three years such records as may be necessary to determine the amount of tax for which the person is liable.

**5.04.660 No enjoinder of collection**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the city or any officer thereof, to prevent or enjoin the collection of business taxes sought to be collected.

**5.04.665 Revenue measure does not permit business otherwise prohibited**

The taxes prescribed by the provisions of this chapter constitute a tax for revenue purposes and are not regulatory permit fees.

Persons holding business tax certificates pursuant to this chapter shall comply with all requirements of the Oakland Municipal and Planning Code and all other applicable laws and shall not carry on any business activity that violates of any law.

**5.04.670 Implementation and Delegation**

The city administrator may adopt rules and regulations consistent with this chapter as needed to implement this chapter, subject to the review and approval of the city attorney, and to develop all related forms or other materials, and to take other steps needed to implement this chapter.

The city administrator may delegate any duties, rights, powers, or privileges granted by this chapter to any appropriate subordinate officer, including the director of finance.

**5.04.675 Amendment by City Council**

The city council may amend the terms of this chapter in any manner that does not increase the business tax or otherwise constitute a tax increase for which voter approval is required by Article XIIC of the California constitution.

**5.04.680 Effective Date and Transition**

- A. *Rates Effective as of 2023.* The rates provided in this chapter shall be effective with respect to any 2023 business tax certificate and for each following year. Any business tax certificates issued to a newly established business for operation in 2022 shall pay business tax pursuant to the rates that were effective at the time the person seeking the certificate submitted their initial application.
- B. *Previous Liabilities.* Any taxes, penalties, fees, interest, liens, or debts imposed pursuant to any previous versions of this chapter remain equally collectible and enforceable, notwithstanding any amendments. The city may pursue such taxes, penalties, fees, interest, liens, or debts in any manner allowed by law and the most current version of this chapter.

**FURTHER RESOLVED:** That the City Council of City of Oakland requests that the Board of Supervisors of Alameda County order the consolidation of the Oakland municipal election with the statewide general election of November 8, 2022, consistent with provisions of state law; and be it,

**FURTHER RESOLVED:** That in accordance with applicable law, the City Clerk shall fix and determine a date for submission of arguments for or against the proposed ordinance, and post such dates in accordance with legal requirements; and be it,

**FURTHER RESOLVED:** That each ballot used as the November 8, 2022 election shall have printed, in addition to any other matter required by law, the following:

**Oakland Business Tax**

Measure __. Shall a measure amending the City of Oakland’s business tax to create a progressive rate structure imposing the highest rates on the biggest businesses; closing tax loopholes; and generating approximately \$105,000,000 in annual revenue for municipal services including, public safety, street repairs, and park maintenance by imposing business tax rates of .06% to .75% of gross receipts, and other rates as stated, be adopted?  <b>[BALLOT QUESTION SUBJECT TO CITY ATTORNEY APPROVAL AND MAY BE EDITED AS NECESSARY TO ENSURE COMPLIANCE WITH CALIFORNIA ELECTIONS CODE]</b>	<b>Yes</b>	
	<b>No</b>	

**FURTHER RESOLVED:** That the City Council authorizes and directs the City Clerk of City of Oakland to file certified copies of this resolution with the Alameda County Clerk at least 88 days prior to November 8, 2022; and be it

**FURTHER RESOLVED:** That the City Council requests that the Board of Supervisors of Alameda County include on the ballots and sample ballots recitals and measure language to be voted on by the voters of the qualified electors of City of Oakland; and be it

**FURTHER RESOLVED:** That the City Clerk is directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, Chapter 3 of the Oakland Municipal Code, the Government Code, and the Elections Code of the State of California; and be it

**FURTHER RESOLVED:** That the City Council requests that the Registrar of Voters of County of Alameda perform necessary services in connection with said election; and be it

**FURTHER RESOLVED:** That in accordance with applicable law, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Ordinance, and said date shall be posted in accordance with legal requirements; and be it

**FURTHER RESOLVED:** That in accordance with CEQA Guidelines Section 15061, subd. (b)(3), the City finds that there is no possibility that the activity authorized by this Ordinance may have significant effect on the environment; and be it

**FURTHER RESOLVED:** That the City Clerk and City Administrator are authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2022 state general election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the November 8, 2022 general municipal election, consistent with law; and be it

**FURTHER RESOLVED:** That this resolution shall be effective immediately upon approval by five members of the City Council.

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: \_\_\_\_\_





