



Office of the Mayor

ACTION CALENDAR

February 13, 2018

(Continued from January 30, 2018)

To: Members of the City Council

From: Mayor Jesse Arreguin

Subject: Amending BMC Chapter 9.04: Tax Rate for Non-Medical Cannabis Businesses

RECOMMENDATION

Adopt an Ordinance amending Berkeley Municipal Code Chapter 9.04 to modify the business license tax rate for Non-Medical Cannabis Businesses to \$50/\$1,000 gross receipts (or 5%).

FISCAL IMPACTS OF RECOMMENDATION

Reducing the business license tax rate for Non-Medical Cannabis Businesses may reduce tax receipts to the General Fund. However a lower tax rate will make Berkeley cannabis businesses more competitive in the regional market, and may result in greater business activity and tax revenues to the City.

BACKGROUND

On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). This proposition legalized recreational cannabis use for adults over 21 years old. Berkeley voted overwhelmingly for Proposition 64, with 85% approving the measure. The State of California has developed state-wide regulations for recreational cannabis, allowing temporary licenses for adult-use businesses effective January 1, 2018.

In September 2017, the Berkeley City Council adopted amendments to B.M.C. Chapter 12.26 to permit temporary licenses for existing medical cannabis dispensaries, allowing them to sell recreational cannabis in the City effective January 1, 2018. To date, two of the three existing permitted dispensaries have received city and state licenses and are selling recreational cannabis, and the third dispensary is in the process of securing licenses.

Since longstanding dispensaries have begun selling recreational cannabis on January 1, 2018, there have been many questions regarding the local cannabis tax rate. Local taxes, in addition to State and sales taxes, have added significant costs to cannabis products, and may have the effect of discouraging business, especially if other nearby cities adopt lower tax rates. This would have a negative impact on our General Fund, reducing anticipated revenues, which are estimated to bring in at least \$ 3 million dollars

a year. In order for Berkeley to remain competitive and to attract new cannabis businesses, it should consider lowering its business license tax on Non-Medical Cannabis businesses.

Taxes Applicable to Non-Medical Cannabis Businesses

There are a number of taxes applicable to adult-use cannabis businesses including:

State Cannabis Excise Tax

Effective January 1, 2018, a 15 percent excise tax is imposed upon retail purchasers of all cannabis and cannabis products, including medicinal cannabis. The 15 percent excise tax is calculated based on the average market price from the retail sale.

Local Sales Taxes

In Alameda County, the sales tax rate is 9.25%

City of Berkeley Business License Tax

Measure S, adopted by Berkeley voters in 2010 set the business license tax rate for Non-Medical Cannabis Businesses at 10% or \$100.00 for every \$1,000 of gross receipts. The measure included language allowing City Council to lower the tax rate by ordinance.

The tax business license tax rate for Medical Cannabis Businesses is 2.5% of gross receipts.

Cannabis Tax Rates in Alameda County

Different jurisdictions in Alameda County have set their cannabis tax rates at a range of levels. A detailed summary of tax rates and regulations for other Alameda County cities is in Attachment 2.

- Oakland: taxes recreational cannabis at 10% of gross receipts
- Hayward: voters approved up to 15% but has not yet set the effective rate for cannabis businesses
- San Leandro: Measure NN approved in November 2016 was a voter-approved gross receipts tax on cannabis businesses of up to 10%. It is currently 6% and will increase over time. All cannabis businesses must have annual audits.
- Emeryville: is currently considering setting a tax rate for recreational cannabis

Berkeley's current recreational cannabis tax rate at \$100 for every \$1,000 of gross receipts (or 10%) could drive customers and business to other jurisdictions, especially if they set their tax rates below Berkeley's level. In order to maximize revenue to the

General Fund, and encourage new business, the Council should modify the tax rate for Non-Medical Cannabis Businesses.

While the City is in the process of developing permanent regulations and a licensing process for adult-use cannabis businesses, it is temporarily permitting the existing medical cannabis dispensaries to sell recreational cannabis. When the City Council considers permanent regulations, it can adjust the tax rate if necessary. However, lowering the rate for those businesses with temporary licenses, will have positive economic benefit to the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CONTACT PERSON

Jesse Arreguin, Mayor 510-981-7100

Attachments:

- 1: Ordinance
- 2: Existing Cannabis Tax Rates in Alameda County Cities

ORDINANCE NO. ____-N.S.

AMENDING CHAPTER 9.04 OF THE BERKELEY MUNICIPAL CODE TO DECREASE THE TAX RATE ON NON-MEDICAL CANNABIS BUSINESSES

BE IT ORDAINED by the People of the City of Berkeley as follows:

Section 1. That Section 9.04.240 of the Berkeley Municipal Code is amended to read as follows:

Section 9.04.240 Rates-General.

The base rate for gross receipts business license taxes is established at one dollar and twenty cents for each one thousand dollars gross receipts per year.

Industry Classification Category	Tax Basis	Base Rate Factor	Per Year Tax Rate for \$1,000	Section Reference
Administration headquarters	Gross payroll	1.00	1.20	9.04.190
Business, personal repair services	Gross receipts	1.50	1.80	9.04.160
Medical Cannabis Businesses	Gross receipts	25.00 <u>20.83</u>	25.00	9.04.136
Non-Medical Cannabis Business	Gross receipts	83.25 <u>41.66</u>	100.00 <u>50.00</u>	9.04.136
Construction contractor	Gross receipts	1.50	1.80	9.04.180
Firearms and firearm ammunition	Gross receipts	125.00	150.00	9.04.177
Grocer (retail or wholesale)	Gross receipts	0.50	0.60	9.04.140
Manufacturing	Value added	1.00	1.20	9.04.185
Miscellaneous business	Gross receipts	2.00	2.40	9.04.220
Motor vehicle sales	Gross receipts	1.00	1.20	9.04.145
Nonprofit organizations	Per square foot	Not applicable; see section 9.04.305	Not applicable; see section 9.04.305	9.04.305
Private rubbish haulers	Gross receipts	125.00	150.00	9.04.176
Private franchised/recycling	Gross receipts	1.50	1.80	9.04.176

rubbish haulers				
Professional-Semiprofessional	Gross receipts	3.00	3.60	9.04.165
Professional sports events	Gross receipts	83.33	100.00	9.04.175
Recreation and entertainment	Gross receipts	3.75	4.50	9.04.170
Rental of real property (except five or more dwelling units)	Gross receipts	9.00	10.81	9.04.195
Rental of five or more dwelling units	Gross receipts	24.00	28.80	9.04.196
Retail trade	Gross receipts	1.00	1.20	9.04.135
Wholesale trade	Gross receipts	1.00	1.20	9.04.150

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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At a regular meeting of the Council of the City of Berkeley held on January 30, 2018, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes:

Noes:

Absent:

Alameda County Cannabis Activities by City

	Do you have voter-approved tax? What is it? If no, are you planning on going to ballot/when?
Hayward	Yes. Voters approved up to 15% last November but the actual rate has not been decided by Council.
San Leandro	Yes. Measure NN approved in November 2016 was a voter-approved gross receipts tax on cannabis businesses of up to 10%. It is currently 6% and will increase over time. All cannabis businesses must have annual audits.
Emeryville	No special cannabis tax - they pay standard city business tax (.1% of gross receipts, up to a max tax of \$353,703.72. Might place a cannabis tax on Nov 2018 ballot.
Berkeley	Measure S was approved in 2010, just in case the state ballot measure to legalize cannabis that year passed. It is \$25/\$1,000 gross receipts for medical cannabis, and \$100/\$1,000 gross receipts for non-medical.
Unincorporated Alameda County	We don't have a tax yet, but we expect to have a measure on the November 2018 ballot.
Oakland	Yes, our current tax rates are 5% gross receipts for medical and 10% for adult use.
Piedmont	BAN
Fremont	BAN
Dublin	BAN
Albany	BAN
Pleasanton	BAN