

# CITY OF OAKLAND MEASURE V

<b>V</b> Shall the Measure: (1) allowing cannabis businesses to pay business taxes quarterly; (2) allowing cannabis manufacturing and/or cultivation businesses to deduct the value of raw materials from gross receipts in calculating business taxes in the manner applicable to manufacturing businesses; and (3) authorizing the City Council, without returning to the voters, to amend medical or non-medical cannabis businesses taxes in any manner that does not increase the tax rate, be adopted?	<b>YES</b>
	<b>NO</b>

## CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE V

### TITLE

A Proposed Ordinance To: (1) Amend the Oakland Municipal Code to Allow Cannabis Manufacturing and/or Cultivation Businesses to Deduct the Value of Raw Materials From Gross Receipts in Calculating Business Taxes, (2) Amend the Oakland Municipal Code To Allow Cannabis Businesses to Pay Business Taxes on a Quarterly Basis, and (3) Authorize the City Council to Amend the Medical and/or Non-Medical Cannabis Business Taxes in any Manner that Does Not Increase the Tax Rate

### CITY ATTORNEY'S SUMMARY OF MEASURE V

The City of Oakland's business tax laws are codified in Chapter 5.04 of the Oakland Municipal Code ("Business Tax Ordinance"). The Business Tax Ordinance provides the procedure for calculating the amount of business tax owed for various business activities based on a business's "gross receipts."

The Business Tax Ordinance specifically identifies the amounts that may be excluded from gross receipts in calculating the business tax. For businesses that manufacture or process any goods, wares, merchandise, articles or commodities for sale in the City, the Ordinance expressly allows deduction of the value of raw materials from gross receipts.

The Business Tax Ordinance provides that medical cannabis businesses must pay a business tax of \$50 for each \$1,000 of gross receipts, and that non-medical cannabis businesses must pay a business tax of \$100 for each \$1,000 of gross receipts. Currently, the methodology for calculating the business tax for medical and non-medical cannabis businesses does not allow deduction for the value of raw materials from gross receipts.

This measure would amend the Business Tax Ordinance to allow medical cannabis businesses and non-medical cannabis businesses engaged in manufacturing and/or cultivation activities to deduct the value of raw materials from gross receipts in the same manner that the Ordinance provides for manufacturing businesses.

The Business Tax Ordinance requires that businesses pay taxes on an annual basis. This measure would allow medical and non-medical cannabis businesses to elect to pay business taxes on a quarterly basis according to rules and procedures adopted by the Director of Finance.

Currently, the City Council is authorized to amend the Business Tax Ordinance provisions for medical cannabis businesses in any manner that does not increase the tax rate applicable to medical cannabis businesses, but the Council is not authorized to amend the Ordinance provisions applicable to non-medical cannabis businesses.

This measure would allow the Oakland City Council, after holding a public hearing, to amend the Business Tax Ordinance in any manner that would not increase the tax rate applicable to medical and/or non-medical cannabis businesses.

Passage of this measure requires an affirmative vote of a majority of voters (i.e., more than 50% of the votes cast). A "yes" vote will approve the measure; a "no" vote will reject the measure.

s/BARBARA J. PARKER  
City Attorney

## CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE V

### The City's Business Tax

The City of Oakland's business tax laws are in an ordinance in Chapter 5.04 of the Oakland Municipal Code ("OMC") ("Business Tax Ordinance" or "Ordinance"). The Business Tax Ordinance applies to all "persons" engaged in business activities in Oakland. The definition of "persons" includes but is not limited to any natural person, company, corporation, firm, estate, joint venture, club or association. (OMC section 5.04.030.)

The Business Tax Ordinance provides the procedure to calculate the amount of business tax owed for various business activities based on a business's "gross receipts." "Gross receipts" means the total amount actually received or receivable by a business as a result of its business activities during a fiscal year. The Ordinance specifically identifies the amounts that may be excluded from gross receipts in calculating the business tax.

### Current Business Tax Ordinance Does Not Allow Cannabis Businesses to Deduct the Value of Raw Materials from Gross Receipts

OMC section 5.04.390 provides the methodology to calculate the annual tax for businesses that manufacture or process any goods, wares, merchandise, articles or commodities for sale in the City, and expressly allows deduction of the value of raw materials from gross receipts.

Currently, the methodology for calculating the business tax for medical and non-medical cannabis businesses does not allow deduction of the value of raw materials from gross receipts. OMC section 5.04.480 of the Ordinance provides that each person engaged in a medical cannabis business shall pay a business tax of \$50 for each \$1,000 of gross receipts or fractional part thereof. OMC section 5.04.481 provides that each person engaged in a non-medical cannabis business shall pay a business tax of \$100 for each \$1,000 of gross receipts or fractional part thereof.

### Proposed Amendments Would Allow Cannabis Businesses to Deduct the Value of Raw Materials from Gross Receipts, Pay Business Taxes on a Quarterly Basis, and Allow City Council to Amend the Cannabis Business Tax in Any Manner that Does Not Increase the Tax Rate

This measure would amend the OMC to allow medical cannabis businesses and non-medical cannabis businesses engaged in manufacturing and/or cultivation activities to (1) deduct the value of raw materials from gross receipts in the same manner that OMC section 5.04.390 provides for non-cannabis manufacturing businesses; and (2) elect to pay business taxes on a quarterly basis according to rules and procedures adopted by the Director of Finance.

This measure also would allow the Oakland City Council, after holding a public hearing, to amend OMC sections 5.04.480 and/or 5.04.481 in any manner that would not increase the tax rate applicable to medical and/or non-medical cannabis businesses, or otherwise constitute a tax

increase that would require voter approval.

This measure was placed on the ballot by the Oakland City Council. Passage of this measure requires the affirmative vote of a majority of voters (i.e., more than 50% of the votes cast).

s/BARBARA J. PARKER  
City Attorney

## **CITY AUDITOR'S IMPARTIAL ANALYSIS OF MEASURE V**

### **Summary**

This Measure, if adopted by a majority (more than 50%) of voters, would amend the City of Oakland's Business Tax Municipal Code, related to medical cannabis (Section 5.04.480) and non-medical cannabis (Section 5.04.481) businesses. The code amendments would:

- 1) allow businesses engaged in cannabis manufacturing and/or cultivation to deduct the value of raw materials from gross receipts in the calculation of business tax (similar to manufacturing businesses, Section 5.04.390);
- 2) allow cannabis businesses to remit business taxes on a quarterly basis; and
- 3) authorize the City Council to amend the business tax on medical and non-medical cannabis in any manner that does not increase the tax rate, following a public hearing.

Oakland currently taxes all types of cannabis businesses and the rates are based on whether they operate in the medical or non-medical industries, at 5 percent and 10 percent, respectively, of gross receipts. The tax is applied to every activity in the industry's supply chain, including cultivation, manufacturing, delivery, testing, and retail sales.

The intent of this Measure is to provide the City flexibility to respond competitively to tax rates of neighboring jurisdictions. Cannabis businesses may consider tax rates a factor when deciding where to situate their businesses. City Council may adjust the tax rate for cannabis businesses, but may not increase the tax more than the current stated rates. It cannot be quantified or confirmed that adjusting tax rates would significantly impact tax revenue to the City of Oakland.

### **Financial Impact**

If the Measure passes, the City would incur an estimated \$30,000 capital improvement cost to update its taxpayer system.

This Measure enacts a general tax for unrestricted general revenue purposes and would go into effect ten (10) days after the vote is declared by Oakland City Council.

### **Disclaimer**

The Office of the City Auditor has not audited and, as such, has not validated the City of Oakland Finance Department's financial and statistical analysis that supports this measure. References to this data in our independent analysis represent the best data available at this time.

## ARGUMENT IN FAVOR OF MEASURE V

Measure V makes a few, much-needed technical fixes related to the administration of Oakland's gross receipts tax on our medical and adult use cannabis businesses.

Current Oakland rules that require the payment of estimated business tax in a single annual lump payment can cause unnecessary security risks and operating problems for Oakland cannabis businesses. Because of the unusually high tax rates on gross receipts for cannabis businesses, many smaller cannabis businesses face considerable challenges in paying an entire year's tax payment before receiving the very sales revenue that is being taxed. Additionally, because of the industry's limited access to traditional banking services, the current rules create unnecessary security risk by forcing these businesses to hold a lot more actual cash on hand than would otherwise be necessary. This measure provides a simple fix to these problems by allowing Oakland cannabis businesses to make business tax payments on a quarterly basis.

The additional clean-up provisions in the measure fix unintended oversights from earlier cannabis tax measures. Measure V clarifies that cannabis production businesses may take the same tax deductions for raw materials already taken by other Oakland manufacturing businesses. This measure also gives the City Council authority to modify, but *not* increase, the Adult Use cannabis tax rate in the future—authority it already possesses with respect to the Medical cannabis tax rate.

These common sense fixes will encourage businesses to locate their job-intensive manufacturing operations in Oakland and provide the City with flexibility to optimize tax policy as needed to remain competitive while the state's regulated cannabis market continues to develop. Please join us in voting YES on Measure V.

s/LANESE MARTIN

Oakland Cannabis Regulatory Commissioner

s/FRANK LUCIDO

Oakland Medical Doctor

s/REBECCA KAPLAN

Oakland City Councilmember

s/DAN KALB

Oakland City Councilmember

## NO ARGUMENT AGAINST MEASURE V WAS SUBMITTED

## FULL TEXT OF MEASURE V

**Section 1.** Chapter 5.04 of the Oakland Municipal Code containing the business tax requirements applicable to medical cannabis and non-medical cannabis businesses in Oakland are hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strike-through type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed).

### Section 2. Code Amendments.

That Chapter 5.04, Sections 5.04.480 and 5.04.481 of the Oakland Municipal Code are amended to read as follows:

#### **5.04.480 - Medical cannabis businesses.**

For the purposes of this section:

A. “Medical Cannabis Business” means any activity regulated or permitted by Chapter 5.80 and/or Chapter 5.81 of this Code that involves planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing any part of the plant Cannabis sativa L. or any of its derivatives, pursuant to Health and Safety Code Sections 11362.5 and 11362.7-11362.83.

B. Every person engaged in a “medical cannabis business” not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of \$50.00 for each \$1,000.00 of gross receipts or fractional part thereof.

C. Medical cannabis businesses engaged in manufacturing and/or cultivation activities shall be allowed to make deductions from gross receipts in the manner applicable to manufacturing businesses subject to Section 5.04.390.

D. Notwithstanding Sections 5.04.080, 5.04.110, and 5.04.120 of this Chapter, medical cannabis businesses may elect to remit business taxes on a quarterly basis according to such rules and procedures adopted by the Director of Finance.

#### **5.04.481 - Non-medical cannabis businesses.**

For the purpose of this section:

A. “Non-medical cannabis business” means any of the activities described in Subsection 5.04.480 A. that are not conducted pursuant to Health and Safety Code Sections 11362.5 and 11362.7-11362.83, but are otherwise authorized by State law.

B. Every person engaged in a “non-medical cannabis business” not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of \$100.00 for each \$1,000.00 of gross receipts or fractional part thereof.

C. Non-medical cannabis businesses engaged in manufacturing and/or cultivation activities shall be allowed to make deductions from gross receipts in the manner applicable to manufacturing businesses subject

to section 5.04.390.

D. Notwithstanding Sections 5.04.080, 5.04.110, and 5.04.120 of this Chapter, non-medical cannabis businesses may elect to remit business taxes on a quarterly basis according such rules and procedures adopted by the Director of Finance.

**Section 3. Severability.** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**Section 4. California Environmental Quality Act Requirements.** This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation” Public Resources Code section 21065, CEQA Guidelines 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment.

**Section 5. General Tax; Majority Approval; Effective Date.** This Ordinance enacts a general tax for unrestricted general revenue purposes. Tax revenue collected pursuant to the Ordinance may be used by the City for any municipal governmental purpose. This Ordinance shall be effective only if approved by a majority of the voters voting thereon; and, the Ordinance shall go into effect ten (10) days after the vote is declared by the City Council.

**Section 6. Council Amendments.** Following a public hearing, the City Council of the City of Oakland is hereby authorized to amend Section 5.04.480 and/or Section 5.04.481 of the Oakland Municipal Code as adopted by this Ordinance in any manner that does not increase the tax rate applicable to medical and/or non-medical cannabis businesses engaged in any or all categories of cannabis business activity, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.