



Office of the City Manager

CONSENT CALENDAR

June 10, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Robert Hicks, Director, Finance

Subject: Amending BMC Chapter 9.04: Business Licenses

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 9.04 to define the term subcontractor and the intent of allowing subcontractor deductions from business license gross receipts for the Construction Contractor and Professional Semi-Professional business classification, clarify the interest calculation as simple interest, clarify assessment of penalties and interest when closing/amending a business license, clarify that Finance places property tax liens annually with the county Auditor-Controller, does not place recorded liens with the county Assessor, and set an administrative lien fee by Council Resolution.

FISCAL IMPACTS OF RECOMMENDATION

The proposed amendment will have minimal fiscal impacts because: Finance currently pursues subcontractors to pay the business license tax when the subcontractor is reported as an allowable deduction from the gross receipts of a Construction Contractor and/or Professional --Semi-Professional business; interest is currently calculated as simple interest; penalties and interest are not assessed when a business license is closed/amended, and; Finance currently places property tax roll liens with the county Auditor-Controller annually when a business remains delinquent in paying the business license tax.

CURRENT SITUATION AND ITS EFFECTS

The City Auditor's Office performed a business license tax audit in 2010. The audit involved the Finance Department (Revenue Collection, Treasury, and Accounting Divisions), and the Information Technology Department. The objective of the audit was to determine if: business licenses were assigned correct tax codes, taxes were accurately calculated, and when appropriate, if penalties and interest were accurately assessed.

The Audit Report was submitted to Council on May 29, 2012. The complete Business License Taxes: Providing Better Guidance and Customer Service Will Increase Revenues Audit can be found on the City's website at:

<http://www.cityofberkeley.info/auditor/currentaudits.htm>.

The audit found that Finance accurately assigned tax codes but did not always assess penalties and interest accurately and consistently, primarily due to complex and unclear requirements in the BMC.

The audit also found that Finance does not comply with the BMC requirements to record liens against business properties. Finally, the audit also found that due to limitations in the BMC, Finance could not recover the administrative fee charged by Alameda County to collect delinquent business license fees.

In addition to changing BMC 9.04 based on audit recommendations, Finance is correcting BMC section 9.04.165 to reflect that the North American Industry Classification System (NAICS) manual is used to further identify businesses that fall into Professional -- SemiProfessional tax classification. The NAICS system replaced the Standard Industrial Classification (SIC) manual with the passage of the North American Free Trade Agreement (NAFTA) in 1994.

#### BACKGROUND

The City implemented its Business License Tax Ordinance in 1977 to raise general fund revenue. In Fiscal Year 2011, the year the Business License Tax audit was performed, the general fund received \$13.954 million from approximately 13,000 business licenses. The Audit found that current Finance processes and procedures were not congruent with several sections of BMC chapter 9.04 due to lack of clarity in the BMC and therefore, recommended changes to several sections of the BMC.

#### ENVIRONMENTAL SUSTAINABILITY

The proposed amendments are unlikely to have any effect on environmental sustainability goals relating to zero waste, food, information technology, climate change, habitat, air quality, or emissions.

#### RATIONALE FOR RECOMMENDATION

The proposed amendments will address three of the Business License Tax Audit recommendations by: clarifying the term 'subcontractor' and that Finance pursues collection of a business license tax from subcontractors(audit finding 1.1); clarifying that interest is applied at a simple interest rate (audit finding 1.1); clarifying that penalties and interest are not imposed when a business is closes or is sold (audit finding 1.1 and 1.6), and; clarifies that delinquent business license liens are placed as a property tax lien, once per year via the county Auditor-Controller, and that Finance pursues collection of a delinquent business license until an account is turned over to the county Auditor-Controller(audit finding 3.1). Further, it corrects the error in BMC section 9.04 that indicates that liens are placed with the county Assessor. Finally, it sets and administrative lien fee by Council Resolution (audit finding 3.1).

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Robert Hicks, Director, Finance, 981-7339

Heather Murphy, Revenue Collection Manager, 981-7261

Attachments:

1: Ordinance

2: Ordinance with track changes

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 9.04: BUSINESS LICENSES

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

Section 1. That a new Section 9.04.026 is added to the Berkeley Municipal Code Section to read as follows:

**9.04.026 Subcontractors**

As used in this chapter, "Subcontractor" shall mean a person or business which has a contract (as an "independent contractor" and not an employee) to provide some portion of the work or services on a project which the Construction Contractor or Professional-Semi-professional business has agreed to perform

Section 2. That Berkeley Municipal Code Subsection 9.04.070.C is amended to read as follows:

**9.04.070 Declaration statement required for license and amended tax and renewal for new business.**

C. When any person terminates his/her business during the calendar year, the person shall file an amended declaration within ninety days of the cessation or sale of the business, or during the first annual renewal period after the business ceases operation or is sold, and pay a fee based upon the actual gross receipts generated and fee rate applicable to the business classification for the period of the year that the business was in operation. When a person terminates or sells his/her business, penalties as described in Section 9.04.110 and interest as described in Section 9.04.120 shall not be applicable.

Section 3. That Berkeley Municipal Code Section 9.04.120 is amended to read as follows:

**9.04.120 Interest.**

In addition to the penalties imposed, any person who fails to remit any license fee imposed by this chapter shall pay simple interest at the rate of one percent per month on the amount of the fee and penalties from the date on which the license fee first became delinquent. Interest shall continue to accrue at the simple interest rate of one percent per month and will be assessed on the 1<sup>st</sup> day of every month that an account remains delinquent until paid.

Section 4. That Berkeley Municipal Code Section 9.04.125 is amended to read as follows:

**9.04.125 License a debt.**

The amount of any license fee, penalty, and interest imposed by the provisions of this chapter shall be deemed a debt to the City; and any person carrying on any business without first having procured a license from the City to do so shall be liable to action in the name of the City, in any court of competent jurisdiction, for the amount of license, penalties, and interest imposed on such business.

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 tax roll 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.

The Director of Finance shall notify the owner of the business/business property not less than thirty days prior to notifying the county that a property tax lien will be placed on said property in the amount of the outstanding business license tax.

Annually, no later than August 10<sup>th</sup>, the Director of Finance shall turn over to the county Auditor-Controller for inclusion in the next property tax assessment roll the total sum of unpaid delinquent business tax charges consisting of the delinquent business taxes, penalties, and interest at the rate set in Section 9.04.120, and an administrative fee as adopted by resolution by the City Council to cover the costs of placing delinquent business license tax lien on the county property tax roll. Finance shall pursue collection of delinquent accounts until an account is submitted to the County Auditor-Controller for collection.

Thereafter, said assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties, interest, and the same procedure of sale as provided for delinquent ordinary municipal property taxes. The assessment liens shall be subordinate to other liens except for those of state, county and municipal taxes with which it shall be upon parity. The lien shall continue until the assessments 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.

Section 5. That Berkeley Municipal Code Section 9.04.165 is amended to read as follows:

**9.04.165 Professional--Semiprofessional--Connected business.**

A. Finance, Insurance, Banking (including Savings and Loans) and Real Estate. Every person in any business, profession or occupation within the business field of finance, insurance and real estate, as described in the most practicable version of the U.S. Government Printing Office publication North American Industrial Classification System Manual, except for those persons whose business is primarily renting real property, as defined in Section 9.04.195, shall be classified as a professional-semiprofessional.

B. Health, Veterinary, Legal, Educational, Engineering-Architectural-Surveying, Accounting-Auditing-Bookkeeping, and Miscellaneous Services Not Classified

Elsewhere. Every person in any business, profession, or occupation within the business fields of health, veterinary, legal, education, engineering-architectural-surveying, accounting-auditing-bookkeeping, and miscellaneous services not classified elsewhere, as described in the current U.S. Government Printing Office publication entitled North American Industrial Classification System Manual shall be classified as professional-semi-professional.

C. Nothing contained in this section shall be deemed or construed as applying to any person engaged in any of the professions or occupations enumerated in this section solely as an employee or partner of any other person or entity conducting, managing or carrying on any such business in the City.

D. Any person subject to a license under provisions of this section may exclude from gross receipts the portion of those receipts paid to subcontractors, providing that a list of such subcontractors and the amounts of payment are reported to the Director of Finance. The Finance Department shall pursue collection of the business license tax from all reported subcontractors.

Section 6. That Berkeley Municipal Code Subsection 9.04.180.B is amended to read as follows:

**9.04.180 Construction contractors.**

B. Any person subject to a license under provisions of this section may exclude from gross receipts the portion of those receipts paid to subcontractors, providing that a list of such subcontractors and the amounts of payment is reported to the Finance Department. The Finance Department shall pursue collection of the business license tax from all reported subcontractors.

Section 7. 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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Annually, no later than August 10<sup>th</sup>, the Director of Finance shall turn over to the county Auditor-Controller assessor for inclusion in the next property tax assessment roll the total sum of unpaid delinquent business tax charges consisting of the delinquent business taxes, penalties, interest at the rate set in Section 9.04.120 of eighteen percent per annum from the date of recordation to the date of lien, and an administrative fee as adopted by resolution by the City Council to cover the costs of placing delinquent business license tax lien on the county property tax roll. of fifty dollars and a release of lien filing fee in an amount equal to the amount charged by the Alameda County Recorder's Office. Finance shall pursue collection of delinquent accounts until an account is submitted to the County Auditor-Controller for collection.

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