

ORDINANCE NO. #,### - N.S.

**AMENDING CHAPTER 9.04 OF THE BERKELEY MUNICIPAL CODE TO INCREASE
THE TAX RATE ON CANNABIS BUSINESSES**

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

Section 1. That a new Section 9.04.136 of the Berkeley Municipal Code is adopted to read as follows:

9.04.136 Cannabis Businesses.

A. 1. Every Medical Cannabis Business that is not a Nonprofit Organization as defined in Section 9.04.305, and every Non-Medical Cannabis business, shall pay an annual tax for each thousand dollars of gross receipts as provided in Section 9.04.240. If the "Regulate, Control and Tax Cannabis Act of 2010", on the November 2010 state ballot passes and takes effect, the maximum gross receipts rate that may be applied to Medical Cannabis Businesses shall be reduced to 1.8%, or \$18 per \$1000.

2. Except as provided in paragraph 1 of this subdivision, the tax on Medical Cannabis Businesses that is imposed by this Section shall be phased in as follows:

a. The tax payable in 2011 shall be \$18 per \$1000 of gross receipts after June 30, 2010.

b. The tax payable in 2012 shall be \$25 per \$1000 of gross receipts after January 1, 2011.

c. The tax payable in subsequent years shall be \$25 per \$1000 of gross receipts during the preceding calendar year.

B. For purposes of this Chapter:

1. "Medical Cannabis Business" means any activity regulated or permitted by Chapter 12.26 or Title 23 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 & Safety Code sections 11362.5 and 11365.7-11362.83.

2. "Non-Medical Cannabis Business" means any of the activities described in the preceding paragraph that are not conducted pursuant to Health & Safety Code sections 11362.5 and 11365.7-11362.83, but are otherwise authorized by state law.

3. "Cannabis Business" includes both Medical Cannabis Businesses and Non-Medical Cannabis Businesses.

4. A Cannabis Business shall be deemed a "Business" under Section 9.04.010 and as that term is used in this Chapter.

C. For purposes of this Section and Section 9.04.305.A.2, "gross receipts" includes any monetary consideration for medical cannabis whatsoever, including but not limited to: membership dues; reimbursement pursuant to Health & Safety Code sections 11362.5 and 11365.7-11362.83; and any money received for wholesale or retail sales.

D. 1. The annual tax rate imposed by Section 9.04.240 on Non-Medical Cannabis Businesses shall apply to the sum of gross receipts as defined in Section 9.04.025 and this Section.

2. The City Council may impose the tax authorized by this Section at a lower rate, and may establish an exemption for Cannabis Businesses whose gross receipts are below a specified amount. The Council may adopt different rates and exemption levels for Medical and Non-Medical Cannabis Businesses. No action by the Council under this paragraph shall prevent it from subsequently increasing the tax rate for any type of Cannabis Business to the maximum specified in this Section and Section 9.04.240 or from modifying or eliminating any exemption.

E. In order to aid in the City's collection of taxes due under this Chapter and ensure that all Cannabis Businesses are taxed consistently to the best of the City's ability, beginning January 1, 2011, in any Cannabis Business, that obtains any product containing, Cannabis sativa L. or any of its derivatives for monetary consideration that constitutes gross receipts under subdivision (C) for the provider of that Cannabis sativa, shall either:

1. report quarterly to the City all such transactions, the monetary consideration involved, and the identity and contact information of the person or entity to whom or to which monetary consideration was provided; or

2. collect the tax that would be payable as a result of the transaction from the person or entity to whom monetary consideration was provided and remit it to the City.

F. The City Manager may promulgate regulations to implement and administer this Section, including allowing Medical Cannabis Businesses to remit taxes more frequently than annually.

Section 2. That Section 9.04.240 of the Berkeley Municipal Code is amended to read as follows:

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	1.0	1.20	9.04.190
Business personnel and repair services	Gross receipts	1.5	1.80	9.04.160
<u>Medical Cannabis Business</u>	<u>Gross receipts</u>	<u>20.83</u>	<u>25.00</u>	<u>9.04.136</u>
<u>Non-Medical Cannabis Business</u>	<u>Gross receipts</u>	<u>83.25</u>	<u>100.00</u>	<u>9.04.136</u>
Construction contractor	Gross receipts	1.5	1.80	9.04.180
Firearms and firearm ammunition	Gross receipts	125.0	150.00	9.04.177
Grocer (retail or wholesale)	Gross receipts	0.5	0.60	9.04.140
Manufacturing	Value added	1.0	1.20	9.04.185

Miscellaneous business	Gross receipts	2.0	2.40	9.04.220
Motor vehicle sales	Gross receipts	1.0	1.20	9.04.145
Nonprofit organizations	Gross receipts	0.5	0.60	9.04.305
Private rubbish haulers	Gross receipts	125.0	150.00	9.04.176
Private franchised/recycling rubbish haulers	Gross receipts	1.5	1.80	9.04.176
Professional-Semiprofessional	Gross receipts	3.0	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	Gross receipts	9.0	10.81	9.04.195
Retail trade	Gross receipts	1.0	1.20	9.04.135
Wholesale trade	Gross receipts	1.0	1.20	9.04.150

Section 3. That Section 9.04.305 of the Berkeley Municipal Code is amended to read as follows:

9.04.305 Business license charge on large Nonprofit Organizations and Cannabis Businesses.

A. 1. Notwithstanding section 9.04.300, there is imposed on every large nonprofit organization exempted under Article XIII, Section 26 of the California Constitution from local taxes or fees measured by income or gross receipts, a tax charge of fifty-one cents per square foot on all business improvements over the first one hundred twenty thousand square feet of business improvements occupied by that large nonprofit organization. For purposes of this section, all of the square feet of business improvements owned, rented, leased or otherwise occupied by a given nonprofit organization within the City shall be cumulated.

2. a. Notwithstanding section 9.04.300, there is imposed on every Cannabis Business that is a Nonprofit Organization and that generates gross receipts, including all of its ancillary locations, regardless of the number of square feet it occupies, a tax on each square foot on all business improvements occupied by that Cannabis Business as follows:

<u>Taxable Square Feet</u>	<u>Maximum Tax Rate</u>
<u>First 3000 square feet</u>	<u>\$25 per square foot</u>
<u>All square feet over 3000</u>	<u>\$10 per square foot</u>

b. If the "Regulate, Control and Tax Cannabis Act of 2010", on the November 2010 state ballot passes and takes effect, the foregoing tax rates shall be reduced as follows:

<u>Taxable Square Feet</u>	<u>Maximum Tax Rate</u>
<u>First 3000 square feet</u>	<u>\$12.50 per square foot</u>
<u>All square feet over 3000</u>	<u>\$5 per square foot</u>

c. For purposes of this Section, all of the square feet of business improvements owned, rented, leased or otherwise occupied or used by a Cannabis Business within the City shall be cumulated.

~~B. The charge imposed by this section shall be operative on January 1, 1999.~~

CB. 1. The charge imposed by this sSection ~~may~~ shall be increased or decreased annually for the following year in May, by the greater of the increase in the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics according to the cost of living in the immediate San Francisco Bay Area.

2. In addition to any other reductions permitted or required by this Section, the City Council may impose the tax authorized by this Section at a reduced rate in the event that one or more permitted Medical Cannabis Businesses taxable under this Section significantly expand in square footage. It is the intent of the voters in adopting this provision that the total tax burden on Medical Cannabis Businesses not be unreasonably increased solely by virtue of expansions in square footage that do not increase their receipts. The Council may adopt different rates for Medical and Non-Medical Cannabis Businesses.

DC. For purposes of this sSection, the following terms shall have the following meanings:

"Building" means any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "building" includes the word "structure."

"Business improvements" means square footage used, on a regular basis, for the operation of a nonprofit organization as defined in Article XIII Section 26 of the California Constitution, regardless of whether it is owned or leased.

"Improvements" means all buildings or structures erected or affixed to the land.

"Large nonprofit organization" means any nonprofit organization exempted under Article XIII, Section 26 of the California Constitution from local taxes or fees measured by gross receipts, which occupies over one hundred twenty thousand square feet of business improvements in the City, but excludes any Cannabis Business.

"Nonprofit Organization" means any association, corporation or other entity that is exempt from taxation measured by income or gross receipts under Article XIII, Section 26 of the California Constitution.

"Square foot" and "square footage" means the horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools and patios which are

landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display, storage, service or production areas.

"Structure" means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

~~ED.~~ Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this ordinance for each of the four fiscal years from ~~2011-2012~~ ~~1998-1999~~ through ~~2014-2015~~ ~~02-03~~.

~~FE.~~ The City Council may repeal the ordinance codified in this section, or amend it in a manner which does not result in an increase in the charge imposed herein, without further voter approval. If the City Council repeals said ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the charge imposed herein.

F. The City Manager may promulgate regulations to implement and administer this Section, including allowing Medical Cannabis Businesses to remit taxes more frequently than annually.