

ORDINANCE NO. 7,150–N.S.

ADOPTING UNIFORM DELINQUENCY DATES FOR THE TRANSIENT OCCUPANCY TAX (BMC CHAPTER 7.36), THE PARKING SPACE RENTAL TAX (BMC CHAPTER 7.48) AND THE BUSINESS LICENSE TAX (BMC CHAPTER 9.04)

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

Section 1. That a new Chapter 7.22 is added to the Berkeley Municipal Code to read as follows:

Chapter 7.22

Delinquency Dates for Taxes Payable Under Chapters 9.04, 7.36 and 7.48

Section 7.22.010	Purpose
Section 7.22.020	Definitions
Section 7.22.030	Delinquency dates for Self-Reported taxes
Section 7.22.040	Supplemental taxes, penalties and interest – delinquency dates
Section 7.22.050	Applicability
Section 7.22.060	Severability

7.22.010 Purpose

The purpose of this Chapter is to adopt a uniform rule for determining the delinquency date of the taxes imposed by Chapters 9.04, 7.36 and 7.48, but not to increase any such tax or associated penalty for any taxpayer or extend its application to new taxpayers. Accordingly, notwithstanding anything to the contrary in Chapters 9.04, 7.36 or 7.48, taxes under those Chapters shall be delinquent as set forth in this Chapter.

7.22.020 Definitions

A. “Self-Reported taxes” are those taxes that are reported as being sue and paid with the return or declaration on which they are reported, as set forth in Sections 9.04.070, 7.36.070 and 7.48.090.

B. “Supplemental taxes, penalties and interest” are all taxes, penalties and interest in addition to Self-Reported taxes that are assessed as a result of:

1. an Audit;
2. a determination or redetermination by the City pursuant to Section 7.36.090 or an appeal initiated pursuant to Sections 9.36.095;
3. a determination or redetermination by the City pursuant to Sections 7.48.100 through 7.48.170;
4. an appeal under Section 9.04.270.

C. "Audit" means an examination of records and accounts provided by a person or entity obligated to report, pay or remit taxes, that is sufficient for the City to determine the correct amount of tax due the City.

7.22.030 Delinquency dates for Self-Reported taxes

Delinquency dates for Self-Reported taxes shall continue to be as set forth in Sections 9.04.110, 7.36.070 and 7.48.090.

7.22.040 Supplemental taxes, penalties and interest – delinquency dates

A. The City may audit, determine, redetermine, and assess Supplemental taxes, penalties and interest, for as many prior years as it deems appropriate in its sole discretion, provided that it may not audit, determine, redetermine or assess Supplemental taxes, penalties or interest for any tax period more than once.

B. For purposes of assessing penalties and interest, delinquency dates shall continue to be as set forth in Chapters 7.36, 7.48 and 9.04. For purposes of Code of Civil Procedure section 338(a) as it may be amended or any successor provision, the delinquency date for Supplemental taxes, penalties and interest shall be 30 days after the date written notice of the amount of the tax due, as well as penalties, if any, and interest, or the City's best estimate thereof, is mailed to the taxpayer.

7.22.050 Applicability

This Chapter shall not apply to any taxes under Chapters 9.04, 7.36 or 7.48 that were the subject of any Audit, determination, redetermination or appeal as of the date of its adoption.

7.22.060 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. That a new subdivision (E) is added to Section 7.36.095 of the Berkeley Municipal Code to read as follows:

E. The City Manager's decision shall be final.

Section 3. That Section 7.36.100 of the Berkeley Municipal Code is repealed.

Section 4. That Section 9.04.085 of the Berkeley Municipal Code is amended to read as follows:

9.04.085 Declaration--Not conclusive.

A. No statement required in this chapter shall be conclusive upon the City or any department, officer or agent.

B. Whenever it appears to the satisfaction of the Finance Department or Auditor that any statement or declaration made pursuant to this chapter does not in any respect set forth the true facts of the business for which a license is required, or its gross receipts, the Finance Department or Auditor may withhold the issuance of the license until such time as the applicant furnishes to the department satisfactory evidence of the truth of such statement.

C. If such evidence is not furnished to the Finance Department or Auditor within a reasonable time specified by the department, or should it at any time appear to the department that, by reason of error, misrepresentation, fraud or any other cause whatsoever, the license fee has not been properly fixed for any license issued, the department shall give the licensee reasonable written notice to show cause, at a time and place fixed in the notice, why a license fee to be specified in the notice should not be fixed. Upon mailing of this notice, the licensee may not invoke an appeal under Section 9.04.270 of this chapter, and the process set forth in this section shall be the licensee's exclusive remedy.

D. The licensee may appear at the time and place fixed in the notice and contest the specified license fee. If the licensee fails to appear in compliance with the notice or to obtain a continuance, the licensee shall be deemed to have waived any and all objections that could have been asserted against the license fee fixed in the notice.

E. After such hearing, or, if the licensee fails to appear at such hearing, the Finance Department or Auditor shall promptly give written notice to the licensee of its determination and the amount of the license fee and any penalty and interest assessed. In determining the amount(s) due, the Finance Department or Auditor may rely on such reasonably reliable information as is available or provided by the licensee, and need not rely exclusively on reported gross receipts or other information provided by the licensee.

F. Determinations made pursuant to this section shall not be subject to appeal under Section 9.04.270.

Section 6. That Section 9.04.110 of the Berkeley Municipal Code is amended to read as follows:

9.04.110 Penalty for nonpayment or underpayment of annual license--Accrual of cause of action.

Every annual license renewal for which full payment is not received on or before February 28 of each year, or, for newly established businesses within thirty days after commencing business, is declared delinquent. The Finance Department shall thereupon assess and collect a penalty of ten percent of the license so delinquent. If such license renewal is not paid in full on or before April 1st of each year, or, for a newly established

business, within sixty days following the commencement of the business, a sum of fifty percent of the license shall be added thereto and collected as a penalty.

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.

At a regular meeting of the Council of the City of Berkeley held on July 6, 2010, 2010, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: Moore.