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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND



CITY ~~2010~~ JUL 15 PM 4:48 H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

COUNCIL MEMBER REBECCA KAPLAN
COUNCIL MEMBER LARRY REID

(510) 238-7008
(510) 238-7007

Date: July 22nd, 2010

To: Oakland City Council

From: Council Members Larry Reid and Rebecca Kaplan

RE: A resolution submitting, on the Council's own motion, to the voters at the November 2, 2010 statewide general election, a proposed ordinance amending the city's business tax, chapter 5.04 of the Oakland Municipal Code, to increase the business tax rate for cannabis businesses from \$18.00 per \$1,000 of gross receipts to _____ [eg., \$80.00 or, \$100.00 or \$112.00] per \$1,000 of gross receipts; consolidating the election with the statewide general election; requesting the services of the registrar of voters; and directing the city clerk to fix the date for submission of arguments and provide for notice and publication in accordance with the November 2, 2010 statewide general election.

Attached is a resolution proposing an amendment to the City's Business Tax Ordinance that Chapter 5.04 of the Oakland Municipal Code, to increase the business tax rate for cannabis related business to \$80, \$100, or \$120 per \$1,000 of gross receipts.

In February 2004, the City of Oakland adopted Ordinance No. 12585 to permit the distribution of medical cannabis. However, the City Council did not create a separate business tax classification specifically for Cannabis businesses. As such, medical cannabis dispensaries were classified under the Retail Business Tax classification with a tax rate of \$1.20 per \$1,000 of gross receipts. To tax the Cannabis industry, Council Members Kaplan, Nadel, and Quan introduced a resolution in April 2009 to modify the Business Tax, Chapter 5.04 of the Oakland Municipal Code, Section 5.04.480, to create a new "Cannabis" business classification with a Business Tax Rate of \$18 per \$1,000 of gross receipts, In June 2009 this resolution, also known as Measure F, passed in a special election by 80% with no formal opposition.

In the development of the Medical Cannabis Cultivation Ordinance, we have much deeper understanding of the industry and feel that an overall increase in the gross receipts tax is appropriate. While the city is considering up to 12% tax, as we understand it an 8% - 10 % tax would be in line with the rates that other municipalities are considering.

Cannabis operations are unique and differ significantly from a typical retail business. Cannabis operations require extraordinary oversight and regulation. Staff recommends a new business tax classification and tax rate that more appropriately reflects the nature of cannabis operations.

Staff is recommending that the proposed amendment be scheduled at the next available special election with the expectation that the new business classification and related tax rate will become effective January 1, 2010.

FISCAL IMPACT

The four medical cannabis dispensaries combined gross receipts in tax year 2010 were \$27,806,545 at the current gross receipts tax rate was projected to generate.

Dispensary Gross Tax Receipts	Rates	2010 Combined Sales	Projected Revenue
Current Tax Rate	1.8%	\$27,806,545	\$ 500,517.81
Rate Proposed by Cannabis Community	5 %	\$27,806,545	\$1,390,327.25
Reid /Kaplan Proposal	8 %	\$27,806,545	\$2,224,523.60
	10 %	\$27,806,545	\$2,780,654.50
	12 %	\$27,806,545	\$3,336,785.40

Currently before the council is a proposal to permit four Cultivation, Processing and Manufacturing facilities. The assumption of total sales for this type of facility is based on cultivation space as a direct reflection of growing capacity, as opposed to other processing and manufacturing activities which the proposed permit would also allow. It is unclear at this time what scale of cultivation will occur, but the attached spreadsheet demonstrates range of cultivation capacities and revenues that could be generated depending on size.

KEY ISSUES AND IMPACTS

An increased rate should be established for cannabis facilities to recognize their unique business nature and extraordinary regulation and oversight requirements and potential legal risk to the city. Additional General Purpose Fund revenue can be generated by the increasing the tax rate on these facilities that would help offset the severe financial challenges facing the City.

SUSTAINABLE OPPORTUNITIES

Economic: Establishing a modest increase in the tax rate will produce additional General Purpose Fund revenue to support essential municipal services such as Police, Fire and Public Works.

Environmental: There are no environmental opportunities resulting from the recommended changes to the Ordinance.

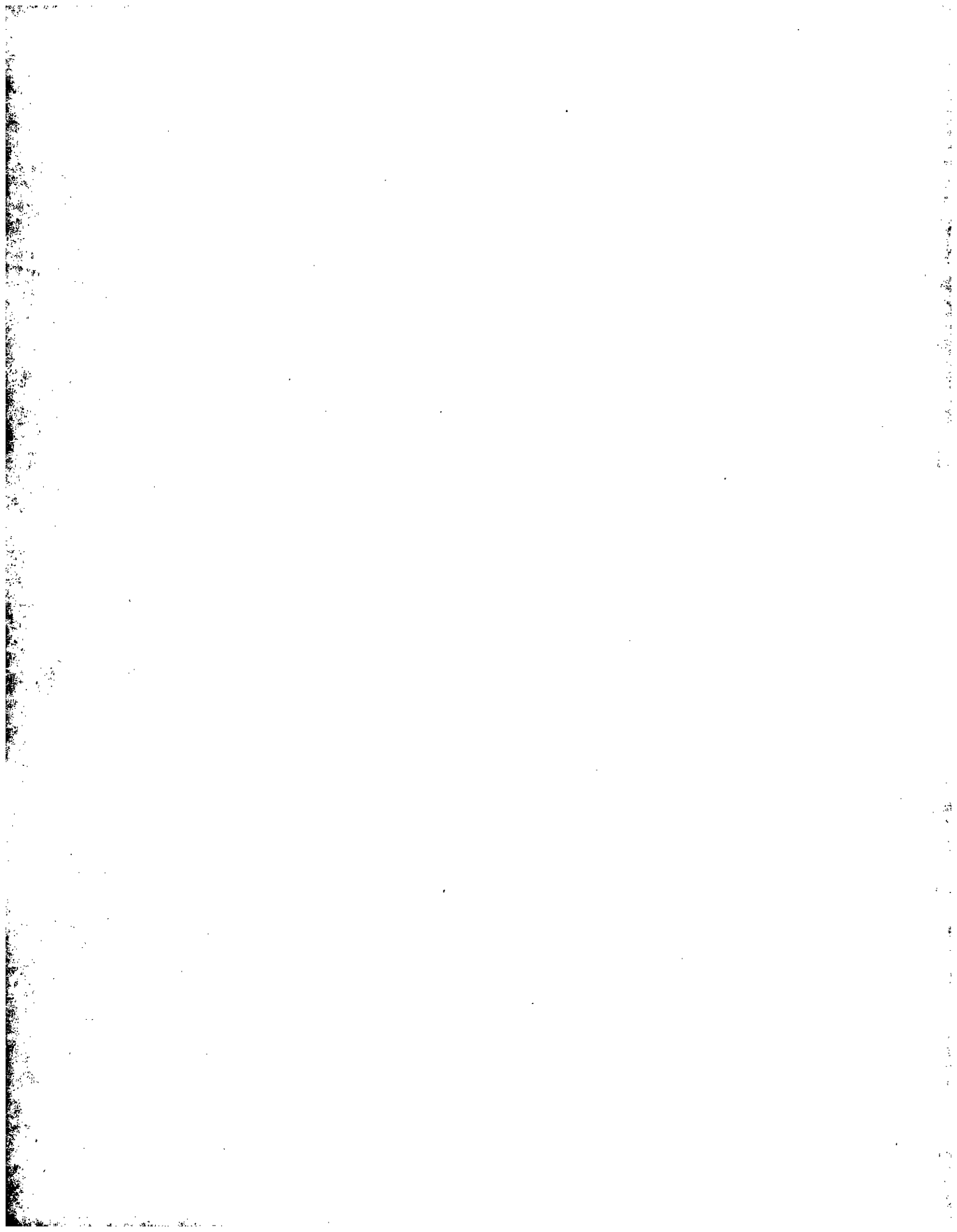
Social Equity: The Ordinance amendment will promote the fair and equitable treatment of all taxpayers by establishing a specific business classification for cannabis facilities that recognizes their unique nature and extraordinary requirements.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no impacts on disability and senior access from the recommended changes to the Ordinance.

ACTION REQUESTED OF THE CITY COUNCIL

We urge you to approve find attached a proposed amendment to the Business Tax Ordinance that will modify Section 5.04.480 of the Oakland Municipal Code that increases the “Cannabis” business tax rate from \$18.00 for each \$1,000.00 of gross receipts to \$80 for each \$1,000.00 of gross receipts.



Cannabis Business Tax Projections - Growers
(Proposed Tax Rates of \$50, \$80, \$100 or \$112 per \$1,000)

Growing Space (Square Footage)	Number of Working Stations (per 100 Sq. Ft.)	Pounds per Year	Price per Pound	Gross Revenues	Existing Tax Rate \$18/\$1000	Estimated Business Tax \$18/\$1000	Proposed Tax Rate \$50 / \$1,000	Estimated Business Tax \$50 / \$1,000	Estimated Business Tax \$75 / \$1,000	Proposed Tax Rate \$80 / \$1,000	Estimated Business Tax \$80 / \$1,000	Proposed Tax Rate \$100 / \$1,000	Estimated Business Tax \$100 / \$1,000	Proposed Tax Rate \$112 / \$1,000	Estimated Business Tax \$112 / \$1,000
Baseline	10	15	\$ 3,200	\$ 480,000	1.80%	\$ 8,640.00	5.00%	\$ 24,000	\$ 36,000	8.00%	\$ 38,400	10.00%	\$ 48,000	12.00%	\$ 57,600
1,000															
Growing Space - Up to 15,000 Square Feet	67.5	15	\$ 3,200	\$ 3,240,000	1.80%	\$ 58,320.00	5.00%	\$ 162,000	\$ 243,000	8.00%	\$ 259,200	10.00%	\$ 324,000	12.00%	\$ 388,800
6,750															
15,000															
Growing Space - Up to 25,000 Square Feet	160	15	\$ 3,200	\$ 7,680,000	1.80%	\$ 138,240.00	5.00%	\$ 384,000	\$ 576,000	8.00%	\$ 614,400	10.00%	\$ 768,000	12.00%	\$ 921,600
16,000															
25,000															
Growing Space - Up to 150,000 Square Feet	1000	15	\$ 3,200	\$ 48,000,000	1.80%	\$ 864,000.00	5.00%	\$ 2,400,000	\$ 3,600,000	8.00%	\$ 3,840,000	10.00%	\$ 4,800,000	12.00%	\$ 5,760,000
100,000															
150,000															

Cannabis Business Tax Projections - Growers
(Proposed Tax Rates of \$50, \$80, \$100 or \$112 per \$1,000)

Growing Space (Square Footage)	Number of Working Stations <small>(per 100 Sq. Ft.)</small>	Pounds per Year	Price per Pound	Gross Revenues	Existing Tax Rate \$18/\$1000	Estimated Business Tax \$18/\$1000	Proposed Tax Rate \$50 / \$1,000	Estimated Business Tax \$50 / \$1,000	Estimated Business Tax \$75 / \$1,000	Proposed Tax Rate \$80 / \$1,000	Estimated Business Tax \$80 / \$1,000	Proposed Tax Rate \$100 / \$1,000	Estimated Business Tax \$100 / \$1,000	Proposed Tax Rate \$112 / \$1,000	Estimated Business Tax \$112 / \$1,000
Baseline															
1,000	10	15	\$ 3,200	\$ 480,000	1.80%	\$ 8,640.00	5.00%	\$ 24,000	\$ 36,000	8.00%	\$ 38,400	10.00%	\$ 48,000	12.00%	\$ 57,600
Growing Space - Up to 15,000 Square Feet															
6,750	67.5	15	\$ 3,200	\$ 3,240,000	1.80%	\$ 58,320.00	5.00%	\$ 162,000	\$ 243,000	8.00%	\$ 259,200	10.00%	\$ 324,000	12.00%	\$ 388,800
15,000	150	15	\$ 3,200	\$ 7,200,000	1.80%	\$ 129,600.00	5.00%	\$ 360,000	\$ 540,000	8.00%	\$ 576,000	10.00%	\$ 720,000	12.00%	\$ 864,000
Growing Space - Up to 25,000 Square Feet															
16,000	160	15	\$ 3,200	\$ 7,680,000	1.80%	\$ 138,240.00	5.00%	\$ 384,000	\$ 576,000	8.00%	\$ 614,400	10.00%	\$ 768,000	12.00%	\$ 921,600
25,000	250	15	\$ 3,200	\$ 12,000,000	1.80%	\$ 216,000.00	5.00%	\$ 600,000	\$ 900,000	8.00%	\$ 960,000	10.00%	\$ 1,200,000	12.00%	\$ 1,440,000
Growing Space - Up to 150,000 Square Feet															
100,000	1000	15	\$ 3,200	\$ 48,000,000	1.80%	\$ 864,000.00	5.00%	\$ 2,400,000	\$ 3,600,000	8.00%	\$ 3,840,000	10.00%	\$ 4,800,000	12.00%	\$ 5,760,000
150,000	1500	15	\$ 3,200	\$ 72,000,000	1.80%	\$ 1,296,000.00	5.00%	\$ 3,600,000	\$ 5,400,000	8.00%	\$ 5,760,000	10.00%	\$ 7,200,000	12.00%	\$ 8,640,000

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL MEMBER _____
2010 JUL 13 10:11 AM

CITY ATTORNEY

DRAFT

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION SUBMITTING, ON THE COUNCIL'S OWN MOTION , TO THE VOTERS AT THE NOVEMBER 2, 2010 STATEWIDE GENERAL ELECTION, A PROPOSED ORDINANCE AMENDING THE CITY'S BUSINESS TAX, CHAPTER 5.04 OF THE OAKLAND MUNICIPAL CODE, TO INCREASE THE BUSINESS TAX RATE FOR CANNABIS BUSINESSES FROM \$18.00 PER \$1,000 OF GROSS RECEIPTS TO _____ [E.G., \$80.00 OR, \$100.00 OR \$112.00] PER \$1,000 OF GROSS RECEIPTS; CONSOLIDATING THE ELECTION WITH THE STATEWIDE GENERAL ELECTION; REQUESTING THE SERVICES OF THE REGISTRAR OF VOTERS; AND DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE NOVEMBER 2, 2010 STATEWIDE GENERAL ELECTION

WHEREAS, through the passage of Proposition 215, the voters of California authorized the use of cannabis for medical purposes in 1996; and

WHEREAS, by a 79% vote in favor of the proposition, the voters of Oakland overwhelmingly approved Proposition 215; and

WHEREAS, the City Council of the City of Oakland has adopted medical cannabis permitting regulations to prevent nuisance, provide for effective controls, enable medical cannabis patients to obtain cannabis from safe sources, and provide appropriate licensing and revenues for the City in a manner consistent with state law; and

WHEREAS, every person engaged in business activity in the City of Oakland is required to obtain a business tax certificate and to pay the City's business tax; and

WHEREAS, pursuant to Chapter 5.04 of the Oakland Municipal Code, Section 5.04.480 cannabis businesses are currently taxed under the "cannabis" at a business tax rate of \$18 per \$1,000 of gross receipts; and

WHEREAS, the City Council of the City of Oakland desires to amend Chapter 5.04, to increase the business tax rate for cannabis businesses to _____ [\$80, \$100 OR \$120] per \$1,000 of gross receipts; and

WHEREAS, all revenues received from the tax will be deposited in the City's general fund to be expended for any lawful public purpose; now, therefore, be it

RESOLVED: That the City Council of the City of Oakland does hereby submit to the voters at the November 2, 2010 statewide general election, not more than 88 days and not more than 150 days from the date of passage of this resolution, the text of the proposed ordinance, which shall read as follows;

Be it ordained by the People of the City of Oakland:

Section 1. The Municipal Code is 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 Amendment. Oakland Municipal Code Section 5.04.480 is hereby amended to read as follows:

5.04.480 Cannabis.

A. Every person engaged in a cannabis business not otherwise specifically taxed by other business tax provisions of this Chapter, shall pay a business tax of ~~\$18.00~~ [\$80.00 OR \$100.00 OR \$112.00] for each \$1,000.00 of gross receipts or fractional part thereof.

B. For the purpose of this Section, "cannabis business" means business activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and/or retail sales of marijuana, any part of the plant Cannabis sativa L. or its derivatives.

Section 3. Severability. If a court of competent jurisdiction determines that any provision of this Ordinance, or its application to any person or circumstance is 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. Majority Approval; Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and after the vote is declared by the City Council. The effective date of this Ordinance shall be January 1, 2010.

Section 6. Council Amendments. The City Council of the City of Oakland is hereby authorized to amend Sections 5.04.480 of the Oakland Municipal Code as adopted by this Ordinance in any manner that does not increase the tax rate, otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution; and be it

PROPOSED ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO INCREASE THE BUSINESS TAX RATE FOR "CANNABIS BUSINESSES" FROM \$18 PER \$1,000 OF GROSS RECEIPTS TO ____ [\$80, \$100, OR \$120] PER \$1,000 OF GROSS RECEIPTS

<p>Measure ____. Shall the Oakland Municipal Code be amended to increase the business tax rate for "Cannabis Businesses" from \$18 per \$1,000 of gross receipts to ____ [\$80, \$100, OR \$120] per \$1,000 of gross receipts, with all proceeds placed in the City's General Fund to be used for any lawful public purpose?</p>	<p>Yes</p>	
	<p>No</p>	

FURTHER RESOLVED: That the City Council hereby authorizes and directs the City Clerk of the City of Oakland (the "City Clerk") at least 88 days prior to November 2, 2010, to file with the Alameda County Clerk certified copies of this resolution; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for, and against said proposed Ordinance and rebuttals, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the election and the Council hereby appropriates all monies necessary for the City Administrator and City Clerk to prepare and conduct the election in a manner consistent with state and local laws.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2010

PASSED BY THE FOLLOWING VOTE:

BROOKS, PRESIDENT BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
QUAN, AND REID

AYES-

NOES-

ABSENT-

ABSTENTION-

Attest: _____

LaTonda Simmons
City Clerk and Clerk of the
Council of the City of Oakland, California