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# Agenda Memo

**CITY HALL - ONE FRANK H. OGAWA PLAZA, 2<sup>ND</sup> FLOOR - OAKLAND - CALIFORNIA - 94612**

**FROM:**

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**TO:** Members of the Finance Committee

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**SUBJECT:** Finance Committee Meeting on May 22, 2018, Item No. 8: Ballot Measure To Authorize The City Council To Amend The Business Tax On Non-medical Cannabis

**DATE:** May 10, 2018

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Councilmembers Kalb and Kaplan respectfully submit the following resolution for your review and approval:

**A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018, A PROPOSED ORDINANCE (1) AMENDING SECTIONS 5.04.480 AND 5.04.481 TO ALLOW CANNABIS MANUFACTURING AND/OR CANNABIS CULTIVATION BUSINESSES TO MAKE DEDUCTIONS FROM GROSS RECEIPTS IN THE MANNER APPLICABLE TO MANUFACTURING BUSINESSES SUBJECT TO SECTION 5.04.390; (2) AMENDING SECTIONS 5.04.480 AND 5.04.481, TO ALLOW CANNABIS BUSINESS TO ELECT TO REMIT BUSINESS TAXES ON A QUARTERLY BASIS; AND, (3) AUTHORIZING THE CITY COUNCIL TO AMEND THE BUSINESS TAX ON MEDICAL AND NON-MEDICAL CANNABIS CONTAINED IN OAKLAND MUNICIPAL CODE SECTIONS 5.04.480 AND 5.04.481 IN ANY MANNER THAT DOES NOT INCREASE THE TAX RATE; DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS, PROVIDE FOR NOTICE AND PUBLICATION, , AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION.**

When passed, the proposed resolution will submit to the voters an ordinance for the November general municipal election ballot that will:

- Provide City Council with the authority to lower medical and non-medical cannabis taxes as the Council sees fit.  
In the constantly changing economic environment, the City needs to have ability to act swiftly to provide competitive edge to local businesses. If the City council decides to act on its authority to lower the cannabis taxes, it will provide relief to regular and equity businesses. A public hearing would be required before any action by the Council can be taken.
- Allow cannabis businesses to pay taxes quarterly instead of annually.  
Cannabis businesses frequently carry a lot of cash due to banking restrictions. This change will allow businesses to pay taxes quarterly, limiting the amount of cash they would have to have on hand.
- Allow cannabis manufacturing and cultivation businesses to make deductions from their gross receipts for taxation purposes.  
This provision will allow cannabis manufacturing businesses to have the same local deductions to which other manufacturing businesses already have access.

This Resolution and the Ordinance were developed in coordination with the Revenue Division and the City Attorney's office.

Respectfully submitted,



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Councilmember Kalb



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Councilmember Kaplan

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

Finance committee 5/22/18 recommendations and Code reference and City Attorney corrections

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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

\_\_\_\_\_  
CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

**A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018, A PROPOSED ORDINANCE (1) AMENDING SECTIONS 5.04.480 AND 5.04.481 TO ALLOW CANNABIS MANUFACTURING AND/OR CANNABIS CULTIVATION BUSINESSES TO MAKE DEDUCTIONS FROM GROSS RECEIPTS IN THE MANNER APPLICABLE TO MANUFACTURING BUSINESSES SUBJECT TO SECTION 5.04.390; (2) AMENDING SECTIONS 5.04.480 AND 5.04.481, TO ALLOW CANNABIS BUSINESS TO ELECT TO REMIT BUSINESS TAXES ON A QUARTERLY BASIS; AND, (3) AUTHORIZING THE CITY COUNCIL TO AMEND THE BUSINESS TAX ON MEDICAL AND NON-MEDICAL CANNABIS CONTAINED IN OAKLAND MUNICIPAL CODE SECTIONS 5.04.480 AND 5.04.481 IN ANY MANNER THAT DOES NOT INCREASE THE TAX RATE; DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS, PROVIDE FOR NOTICE AND PUBLICATION, , AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION.**

**WHEREAS**, Chapter 5.04 of the Oakland Municipal Code contains the business tax ordinance, which applies to all persons engaged in business activities in Oakland; and

**WHEREAS**, the business tax applicable to medical cannabis businesses is contained in Section 5.04.480 of the Oakland Municipal Code; and

**WHEREAS**, the business tax applicable to non-medical cannabis businesses is contained in Section 5.04.484 of the Oakland Municipal Code; and

**WHEREAS**, remittance and collection of business taxes applicable under Sections 5.04.480 and 5.04.481 present unique challenges to taxpayers and the Director of Finance, who is charged with enforcement of the business tax ordinance; and

**WHEREAS**, accordingly, the Council wishes to allow medical and non-medical businesses to elect to remit business taxes on a quarterly basis based on rules and procedures adopted by the Director of Finance; and

**WHEREAS**, all Oakland manufacturing businesses, except manufacturers subject to Sections 5.04.480 and 5.04.481, calculate business taxes in the manner set forth in Section 5.04.390; and

**WHEREAS**, accordingly, the Council wishes to allow all cannabis manufacturing and/or cultivation businesses to make deductions from gross receipts in the manner applicable to manufacturing businesses subject to section 5.04.590; and

**WHEREAS**, Section 6 of Measure Z authorized the City Council to amend Oakland Municipal Code section 5.04.480 in any manner that does not increase the tax rates applicable to medical cannabis businesses but did not authorize Council amendment of section 5.04.481 applicable to cannabis businesses; and

**WHEREAS**, accordingly, the City Council of the City of Oakland desires to amend Chapter 5.04, adding sections 5.04.480(C), 5.04.480(D), 5.04.481(C), and 5.04.481(D), to the Oakland Municipal; and to amend Section 6 of the Ordinance; now, therefore, be it

**RESOLVED**, that the Oakland City Council finds and determines the forgoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

**FURTHER RESOLVED**, that the Oakland City Council does hereby call for a general municipal election and submit to the voters an Ordinance that reads as follows:

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

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.

; and be it

**FURTHER RESOLVED**, that each ballot used at said election shall have printed therein, in addition to any other matter required by law, the following:

MEASURE \_\_\_\_\_

Measure __. Shall the Measure authorizing medical and non-medical cannabis businesses to elect to remit business taxes quarterly, allowing cannabis manufacturing businesses to make deductions from gross receipts in the manner applicable to manufacturing and/or cultivation businesses subject to section 5.04.390, and authorizing the City Council to amend medical or non-medical cannabis businesses tax sections 5.04.480	Yes	
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and/or 5.04.481 in any manner that does not increase the tax?[FINAL QUESTION SUBJECT TO CITY ATTORNEY APPROVAL]		
	No	

; and be it

**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 6, 2018, to file with the Alameda County Clerk certified copies of this Resolution; and be it

**FURTHER RESOLVED**, that the City Council does hereby request that the Board of Supervisors of Alameda County include on the ballots and sample ballots the recitals and the measure language to be voted on by the voters of the qualified electors of the City of Oakland; and be it

**FURTHER RESOLVED**: That the City Council does hereby request that the Registrar of Voters of the County of Alameda perform necessary services in connection with said election; and be it

**FURTHER RESOLVED**, that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, Chapter 3 of the Oakland Municipal Code, the Government Code and the Elections Code of the State of California; and be it

**FURTHER RESOLVED**, that in accordance with applicable laws, the City Clerk shall fix and determine a date for submission of arguments for or 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 are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2018 general municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the November 6, 2018 general municipal election in a manner consistent with the laws of the City and the State of California; and be it

**FURTHER RESOLVED**, that certain sections of this Ordinance may be codified into the City of Oakland Municipal Code at the direction of the City Clerk upon approval by the voters; and be it

**FURTHER RESOLVED**, that this resolution shall be effective immediately upon approval by five members of the Council.

IN COUNCIL, OAKLAND, CALIFORNIA \_\_\_\_\_, 2018

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, CAMPBELL  
WASHINGTON, AND PRESIDENT REID

NOES

ABSENT

ABSTENTION

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
Of the City of Oakland, California