

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612
Office of the City Attorney (510) 238-3601
John A. Russo FAX: (510) 238-6500
City Attorney TDD: (510) 839-6451

APRIL 18, 2009

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Dear Clerk,

Attached is medical cannabis ordinance with changes and corrections authorized by the Finance Committee on April 7, 2009. The committee approved the ordinance subject to these changes which are reflected in red on pages 2 and 3 of the attached documents.

KATHLEEN SALEM-BOYD
Deputy City Attorney
Oakland, CA

FILED
OFFICE OF THE CITY CLERK
OAKLAND

09 APR -8 PM 4:17

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FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER AD APR -8 PM 4:17

CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION SUBMITTING TO THE VOTERS AT THE NEXT SPECIAL ELECTION, NOT LESS THAN 88 DAYS AND NOT MORE THAN 150 DAYS FROM PASSAGE OF THIS RESOLUTION, A PROPOSED ORDINANCE MODIFYING THE BUSINESS TAX, CHAPTER 5.04 OF THE OAKLAND MUNICIPAL CODE, ADDING SECTION 5.04.480 CREATING A NEW "CANNABIS" BUSINESS CLASSIFICATION WITH A BUSINESS TAX RATE OF \$[12, 24] PER \$1,000 OF GROSS RECEIPTS; REQUESTING THE SERVICES OF THE REGISTRAR OF VOTERS; AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE SPECIAL 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, the City of Oakland has a business tax system which applies to all businesses in the City, and which contains a list of categories of types of businesses, and provides for the collection of business taxes at specified rates based on the classifications of the businesses operating in the City; and

WHEREAS, because permitted medical cannabis dispensaries did not exist at the time the business tax system was created, Oakland's current business tax category list does not contain a specific tax category for cannabis businesses; and

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WHEREAS, cannabis businesses are currently taxed under the business classification of general retail at a business tax rate of \$1.20 per \$1,000 of gross receipts, rather than under a specific category; and

WHEREAS, under the newly created business classification cannabis businesses will be taxed at a rate of \$[12, 24] per \$1,000; and

WHEREAS, accordingly, the City Council of the City of Oakland desires to amend Chapter 5.04, adding section 5.04.480 to the Oakland Municipal; and

WHEREAS, all revenues received from the tax will be deposited in the general fund of the City to be expended for general fund purposes; now, therefore, be it

RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the Special Municipal election, consistent with the provisions of state law; and be it

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby submit to the voters at the special 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 be as follows; and be it

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

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO MODIFY THE BUSINESS TAX BY CREATING A NEW "CANNABIS" BUSINESS CLASSIFICATION

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. Chapter 5.04 of the Oakland Municipal Code is hereby amended adding Section 5.04.480 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 [twelve, twenty-four] dollars (\$12, 24) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

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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. 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. 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 Section 5.04.480 of the Oakland Municipal Code as adopted by this Ordinance in any manner that does not increase the tax rate of the real estate transfer tax, otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution or entirely dispense with the requirement for independent audits stated in Section 4.28.190.

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby find and determine that pursuant to Article XIII C, section 2(b) of the California Constitution the City Council of the City of Oakland has adopted a resolution declaring the existence of a fiscal emergency in the City of Oakland that necessitates asking the voters to approve the proposed medical cannabis tax before the next regular election of the Oakland City Council; 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

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submission of arguments for or against said proposed ordinance, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed ordinance in the manner provided for by law; 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 obtain printing, supplies and services as required; and be it

FURTHER RESOLVED: That the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Oakland; 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 special election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the Special Election in a manner consistent with state and local laws.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION

Attest: _____

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

09 APR -8 PM 4:17

Councilmember Nadel

Item 8 Medical Cannabis—Business Tax

The California Constitution requires that the Council declare an emergency by unanimous vote in order to put a general tax like the medical cannabis tax on the ballot. (California Constitution, Article XIII(C), section 2(b))

The City Attorney will add a paragraph to the proposed Medical Cannabis resolution that will reflect the requisite emergency findings under the constitution. The change will be submitted to the City Clerk by noon Wednesday to go forward to Council.

Motion on Item 8:

To ensure constitutional compliance and that the Medical Cannabis resolution does not materially change after being heard by committee, please move the Medical Cannabis item: "subject to the City Attorney's changes to the proposed resolution for Council to make findings required by the Constitution."

cc: Chairperson Quan

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APPROVED AS TO FORM AND LEGALITY

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CITY ATTORNEY

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PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION

Attest: _____

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