

**CITY OF OAKLAND**  
**AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

09 MAR 26 PM 4:34

TO: Finance and Management Committee  
FROM: Councilmembers Kaplan, Nadel, and Quan  
DATE: April 7, 2009

RE: **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.**

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**SUMMARY**

At the request of Councilmembers Kaplan, Nadel, and Quan, staff has prepared a proposed amendment to the Business Tax Ordinance that will modify 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 either \$12 or \$24 per \$1,000 of gross receipts.

At the time the City Council adopted regulations to permit the operation of medical cannabis facilities within the City of Oakland there was not a specific business tax classification for this type of operation, so these facilities were classified under the Retail business tax classification with a tax rate of \$1.20 per \$1,000 of gross receipts. 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 new business tax classification and related tax rate for cannabis facilities would generate about \$200,000 to \$400,000 in additional annual revenue to the General Purpose Fund, depending on which tax rate is established, either \$12 or \$24 per \$1,000 of gross receipts. These figures are based on 2007 gross revenues for medical cannabis dispensaries and 2008 figures are

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not yet available. It is possible that more revenue may be generated by this new business classification and tax rate than is estimated here.

## **BACKGROUND**

With the passage of Proposition 215 in 1996, the voters authorized the use of cannabis for medical purposes. The voters of Oakland overwhelmingly approved Proposition by a favorable vote of 79%.

The City Council has adopted medical cannabis regulations to prevent nuisance, provide for effective controls, enable medical cannabis patients to obtain cannabis from safe sources, and provide appropriate licensing and revenues consistent with state law. The City established permitting requirements and authorized four medical cannabis dispensaries or facilities to operate within the City.

Because medical cannabis dispensaries did not exist at the time the City's business tax ordinance was created, the cannabis dispensaries were placed in the retail business classification for purposes of licensing these businesses for business taxation. These facilities are clearly distinct from other retail business operations and require extraordinary oversight and regulation. Staff recommends a new business tax classification and tax rate that more appropriately reflects the nature of cannabis operations.

The recommended new business tax classification and rate is meant to cover a broad range of activities under the umbrellas of "cannabis business" to align with the City's goal of taxing all business activities operating within the City. Under Proposition 218, any change to a tax ordinance that could result in a tax increase for any taxpayer within the taxing jurisdiction must be approved by the voters. Asking voters for the authority to create and/or change business tax classification through the ballot process is costly for the City. Therefore, staff recommends establishing a new cannabis business tax classification that is broad enough to cover cannabis business activities that could be regulated by the City in the future.

Staff is recommending a tax rate of either \$12 or \$24 per \$1,000 of gross receipts for cannabis facilities. Staff estimates that additional annual General Purpose Fund revenue could be generated in the range of \$200,000 to \$400,000 depending on the tax rate established for this business classification.

## **Voter Approval**

Under Proposition 218, any change to a tax ordinance that could result in a tax increase for any taxpayer within the taxing jurisdiction must be approved by the voters. "The election required by this subdivision shall be consolidated with a regularly scheduled special election for members

of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.” The next scheduled Oakland special election is being planned for July 21, 2009. Accordingly, the proposed modification to Chapter 5.04 seeking voter approval for taxation of cannabis facilities may be placed on the ballot by resolution of the Council.

### **KEY ISSUES AND IMPACTS**

A separated business tax classification should be established for cannabis facilities to recognize their unique business nature and extraordinary regulation and oversight requirements. These facilities are currently classified as retail operations and are taxed at one of the lowest tax rates. 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 specific business tax classification for cannabis facilities 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.

### **RECOMMENDATION AND RATIONALE**

Staff recommends the City Council approve the proposed resolution placing the proposed ordinance modifying Chapter 5.04 of the Oakland Municipal Code before the voters at the next special election. This action is necessary to establish an appropriate business tax classification and tax rate for cannabis facilities, and generate additional General Purpose Fund revenue to address the pending financial challenge faced by the City.

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**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends the City Council approve the proposed resolution placing the proposed ordinance modifying 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, before the voters at the next special election, not less than 88 days and not more than 150 days from passage of this resolution.

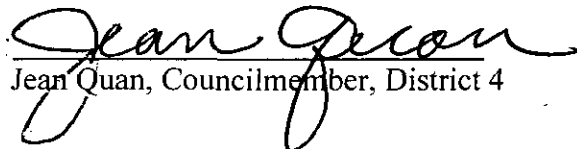
Respectfully submitted,



Rebecca Kaplan, Councilmember, At-Large



Nancy Nadel, Councilmember, District 3



Jean Quan, Councilmember, District 4

APPROVED AND FORWARDED TO THE  
FINANCE & MANAGEMENT COMMITTEE:

\_\_\_\_\_  
Office of the City Administrator

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FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM AND LEGALITY

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

2009 MAR 26 PM 5:11

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CITY ATTORNEY

## OAKLAND CITY COUNCIL

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

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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 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 (\$12.00, 24.00) 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 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.

; 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 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

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**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



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Attest: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the  
Council of the City of Oakland, California