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CITY OF OAKLAND



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Date: July 15th, 2010

To: Oakland City Council

From: Council Member Rebecca Kaplan

Re: A resolution submitting on the council's own motion to the voters at the November 2, 2010 statewide general 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 5.04.481 creating a new "cultivation, processing and other cannabis related activities" business classification with a business tax rate of \$__ [for example, \$80, \$100, \$120] per \$1,000 of gross receipts and amending chapter 5.04 of the Oakland Municipal Code, Section 5.04.480 deleting provisions relating to cannabis cultivation and other related activities; 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

I am writing to request an alternative for council discussion to the proposed cannabis tax ballot initiative.

The alternative ballot initiative would separate the retail sales from the ballot initiative and apply the additional tax only to other cannabis cultivation, processing and manufacturing related activities.

Thank you in advance for your consideration in this matter.

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, 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 5.04.481 CREATING A NEW "CULTIVATION, PROCESSING AND OTHER CANNABIS RELATED ACTIVITIES" BUSINESS CLASSIFICATION WITH A BUSINESS TAX RATE OF \$__ [FOR EXAMPLE, \$80, \$100, \$120] PER \$1,000 OF GROSS RECEIPTS AND AMENDING CHAPTER 5.04 OF THE OAKLAND MUNICIPAL CODE, SECTION 5.04.480 DELETING PROVISIONS RELATING TO CANNABIS CULTIVATION AND OTHER RELATED ACTIVITIES; 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" category at a business tax rate of \$18 per \$1,000 of gross receipts; and

WHEREAS, accordingly, the City Council of the City of Oakland desires to amend Chapter 5.04, adding section 5.04.481 to the Oakland Municipal Code to apply to "cannabis cultivation" at a business tax rate of \$_[for example, \$80, \$100, \$120] per \$1,000 of gross receipts, and deleting provisions from Municipal Code section 5.04.480 relating to cannabis cultivation, processing and other related businesses; 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 submit to the voters at the 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; and be it

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 eighteen dollars \$18 for each one thousand dollars (\$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. Code Amendment. Chapter 5.04 of the Oakland Municipal Code is hereby amended adding Section 5.04.481 to read as follows:

5.04.481 Cultivation, Processing And Other Cannabis Related Activities.

A. Every person engaged in a cannabis cultivation business not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of [_____ dollars] \$ _____ [for example, \$80, \$100, \$120] for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

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

Section 4. 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 5. 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 6. 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 7. Council Amendments. The City Council of the City of Oakland is hereby authorized to amend Sections 5.04.480 and 5.04.481 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

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 CULTIVATION, PROCEESING AND OTHER CANNBIS RELATED ACTIVITIES" BUSINESS CLASSIFICATION

<p>Measure ____. Shall the Oakland Business Tax be amended adding "Cultivation, Processing And Other Cannabis Related Activities" as a category of businesses to be taxed at a rate of \$__ [for example, \$80, \$100, \$120] per \$1,000 of gross receipts?</p>	<p>Yes</p>	
	<p>No</p>	

; 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

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 General Election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the General Election in a manner consistent with state and local laws.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2010

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