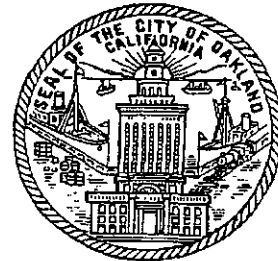


FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

**CITY OF OAKLAND**  
**BILL ANALYSIS**



~~2014 APR 10 PM 2:05~~  
Date: April 24, 2014

**Bill Number: Assembly Bill 1661 (Healthy Options for Everyone (HOPE) Act of 2014: Elimination of Food Deserts)**

**Bill Author: Bonta**

**DEPARTMENT INFORMATION: City Council**

**Contact: Ray Leon**  
**Department: City Council**  
**Telephone: 238- 7071**  
**email: rleon@oaklandnet.com**

**FAX #**

**RECOMMENDED POSITION: Support**

**Summary of the Bill**

AB 1661, as amended, Bonta The Healthy Options for Everyone (HOPE) Act of 2014. The Urban Agriculture Incentive Zones Act authorizes a city, county, or city and county to establish by ordinance an Urban Agriculture Incentive Zone within its boundaries for the purpose of entering into enforceable contracts with landowners, on a voluntary basis, for the use of vacant, unimproved, or blighted lands for small-scale agricultural use.

This bill would enact the Healthy Options for Everyone (HOPE) Act of 2014, and authorize a city, county, or city and county, after a public hearing, to establish by ordinance a HOPE Incentive Zone within its boundaries for the purpose of increasing the availability of fresh fruits and vegetables, and other grown foods within the zone. This bill would require a city, county, or city and county to analyze specific factors, including, but not limited to, population density and transportation, when considering whether to establish a HOPE Incentive Zone within an area.

This bill would allow, under both laws, a qualified business, which is any trade or business that has primarily done business within a HOPE Incentive Zone, for taxable years beginning on or after January 1, 2015, to carryover a net operating loss to each of the 25 taxable years following the taxable year of the loss.

**Positive Factors for Oakland**

Limited access to healthy and fresh food has a negative impact on the health outcomes of local communities. Areas with this lack of access are known as food deserts and are typically found in

Item: \_\_\_\_\_  
Rules & Legislation Comte.

low-income communities, where the major food options include fast food chains and corner stores stocked with processed foods that are high in sugar and fat. Even when residents in food deserts do manage to access supermarkets and similar venues, many of those venues do not accept Electronic Benefit Transfer (EBT) and Women, Infants, and Children (WIC) vouchers. There is currently no standard definition of food deserts in state or federal code; however these areas are typically measured by (1) income-level of the community, (2) accessibility to sources of healthy food in terms of distance to a store or number of stores in an area, and (3) availability to public transportation or a personal vehicle. The lack of a standard definition of "food desert" makes it difficult to approach the challenges associated with limited access to healthy and fresh food options. Existing law provides no incentive for healthy and fresh food vendors to move into food deserts. Without a change, residents of these neighborhoods will continue to be isolated from nutritious food resources and suffer negative health outcomes.

AB 1661 would define the term "food desert" in statute to create a standard definition in which to approach the problems related to limited healthy and fresh food access.

AB 1661 would also increase healthy and fresh food options in communities containing food deserts through the creation of HOPE Zones under the authorization of a city and/or a county. Healthy and fresh food vendors would be able to take advantage of appropriate business incentives if they chose to move into the HOPE Zones and met certain requirements, such as participating in EBT and WIC programs.

By increasing access to healthy and fresh food resources, AB 1661 will improve the lifestyles and health outcomes of low-income communities.

### Negative Factors for Oakland

None

### PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

Critical (top priority for City lobbyist, city position required ASAP)

**XX** Very Important (priority for City lobbyist, city position necessary)

Somewhat Important (City position desirable if time and resources are available)

Minimal or  None (do not review with City Council, position not required)

Known support:

Item: \_\_\_\_\_  
Rules & Legislation Comte.  
Date: April 24, 2014

**Known Opposition:**

**Attach bill text and state/federal legislative committee analysis, if available.**

Respectfully Submitted,

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Vice Mayor Larry Reid

Approved for Forwarding to  
Rules Committee

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Office of City Administrator

Item: \_\_\_\_\_  
Rules & Legislation Comte.  
Date: April 24, 2014



AMENDED IN ASSEMBLY APRIL 01, 2014

CALIFORNIA LEGISLATURE— 2013-2014 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1661**

**Introduced by Assembly Member Bonta**

**February 12, 2014**

An act to add Chapter 6.4 (commencing with Section 51043) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 17276.20 and 24416.20 of the Revenue and Taxation Code, relating to local government

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1661, as amended, Bonta. The Healthy Options for Everyone (HOPE) Act of 2014.

The Urban Agriculture Incentive Zones Act authorizes a city, county, or city and county to establish by ordinance an Urban Agriculture Incentive Zone within its boundaries for the purpose of entering into enforceable contracts with landowners, on a voluntary basis, for the use of vacant, unimproved, or blighted lands for small-scale agricultural use.

This bill would enact the Healthy Options for Everyone (HOPE) Act of 2014, and authorize a city, county, or city and county, after a public hearing, to establish by ordinance a HOPE Incentive Zone within its boundaries for the purpose of increasing the availability of fresh fruits and vegetables, and other grown foods within the zone. This bill would require a city, county, or city and county to analyze specific factors, including, but not limited to, population density and transportation, when considering whether to establish a HOPE Incentive Zone within an area.

The Personal Income Tax Law and Corporation Tax Law, in modified conformity with federal law, allow taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their tax liabilities. Existing law allows net operating losses for taxable years beginning on or after January 1, 2008, to be carried over to each of the 20 taxable years following the taxable year of the loss.

This bill would allow, under both laws, a qualified business, which is any trade or business that has primarily done business within a HOPE Incentive Zone, for taxable years beginning on or after January 1, 2015, to carryover a net operating loss to each of the 25 taxable years following the taxable year of the loss.

Vote majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** *The Legislature finds and declares all of the following*

(a) *The Healthy Options for Everyone (HOPE) Act of 2014 provides cities, counties, and cities and counties with the ability to provide incentives for businesses and individuals working within HOPE Incentive Zones that can be tailored by local governments to fit their area's unique needs.*

(b) *These incentives are intended to reduce the tax burden and costs of doing business within a HOPE Incentive Zone which, in turn, will spur the creation of new businesses, or the expansion of existing businesses, within the zone.*

(c) *Incentives that will be available for individuals and businesses working or doing business within a HOPE Incentive Zone will include, but are not limited to, a hiring tax credit, an expansion of the period for which a net operating loss may be carried over, a tax credit for low-income individuals employed within a zone, reductions in electricity rates, assistance for developing sites within a zone, and low-interest loans for the installation and maintenance of electricity and water services.*

**SECTION 1. SEC. 2.** Chapter 6.4 (commencing with Section 51043) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read.

**CHAPTER 6.4 Healthy Options for Everyone (HOPE) Act of 2014**

**51043.** This chapter shall be known, and may be cited, as the Healthy Options for Everyone (HOPE) Act of 2014.

**51043.1.** (a) A city, county, or city and county may, after a public hearing, establish by ordinance a HOPE Incentive Zone within its boundaries for the purpose of increasing the availability of fresh fruits and vegetables, and other grown foods.

(b) A city, county, or city and county shall analyze the following factors within a geographic area when considering whether to establish a HOPE Incentive Zone within that area pursuant to subdivision (a):

- (1) Transportation.
- (2) Population density
- (3) Income of population.
- (4) Whether the area qualifies as a "food desert" by the United States Department of Agriculture
- (5) Percentage of population that participates in food assistance programs, including, but not limited to, a free school lunch program.
- (6) Percentage of population with dietary-related illnesses.
- (7) Neglected real property.

**51043.2.** A city, county, or city and county may, after establishing a HOPE Incentive Zone pursuant to Section 51043.1, enact an ordinance to create incentives for small businesses, farmers' markets, grocers, and other businesses that provide fresh fruits and vegetables, and other grown foods to conduct business within the zone.

**SEC. 3.** Section 17276.20 of the Revenue and Taxation Code is amended to read:

**17276.20.** Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided by Section 172 of the Internal Revenue Code, relating to net operating loss deduction, shall be modified as follows:

- (a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.
- (2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987
- (b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to amount of carrybacks and carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be
  - (A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d)

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (d)

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss

(6) For purposes of this section, the term "net loss" means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code

(c) Section 172(b)(1) of the Internal Revenue Code, relating to years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2013.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2013, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, and before January 1, 2014, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2014, and before January 1, 2015, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2015, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Section 172(b)(1)(E) of the Internal Revenue Code, relating to excess interest loss; and Section 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest losses, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2011

(d) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute "five taxable years" in lieu of "20 taxable years" except as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute "10 taxable years" in lieu of "20 taxable years."

(2) For any taxable year beginning before January 1, 2000, in the case of a "new business," the "five taxable years" in paragraph (1) shall be modified to read as follows:

(A) "Eight taxable years" for a net operating loss attributable to the first taxable year of that new business.

(B) "Seven taxable years" for a net operating loss attributable to the second taxable year of that new business.

(C) "Six taxable years" for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(5) (A) For a net operating loss for any taxable year beginning on or after January 1, 2015, in the case of a "qualified business," Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute "25 taxable years" in lieu of "20 taxable years."

(B) For purposes of this paragraph, "qualified business" means any trade or business that has primarily done business within a HOPE Incentive Zone, as established by Section 51043.1 of the Government Code, during the taxable year.

(e) For purposes of this section:

(1) "Eligible small business" means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), "new business" means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) "Title 11 or similar case" shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or "S" corporation paragraphs (1) and (2) shall be applied to the partnership or "S" corporation

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply.

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply.

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1).

(5) "Related person" shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) "Acquire" shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration

(7) (A) For taxable years beginning on or after January 1, 1997, the term "new business" shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the Food and Drug Administration.

(B) For purposes of this paragraph:

(i) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.



(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section to the contrary, a deduction shall be allowed to a "qualified taxpayer" as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

**SEC. 4. Section 24416.20 of the Revenue and Taxation Code is amended to read:**

**24416.20** Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to amount of carrybacks and carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply.

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (e)

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (e)

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B)

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, "net loss" means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water's-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred

(d) Section 172(b)(1) of the Internal Revenue Code, relating to years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2013.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2013, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, and before January 1, 2014, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2014, and before January 1, 2015, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2015, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Section 172(b)(1)(E) of the Internal Revenue Code, relating to excess interest loss, and Section 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest losses, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2011

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute "five taxable years" in lieu of "20 years" except as otherwise provided in paragraphs (2), (3), and (4).

(B) For a net operating loss for any income year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute "10 taxable years" in lieu of "20 taxable years."

(2) For any income year beginning before January 1, 2000, in the case of a "new business," the "five taxable years" referred to in paragraph (1) shall be modified to read as follows:

(A) "Eight taxable years" for a net operating loss attributable to the first taxable year of that new business.

(B) "Seven taxable years" for a net operating loss attributable to the second taxable year of that new business.

(C) "Six taxable years" for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(5) (A) For a net operating loss for any taxable year beginning on or after January 1, 2015, in the case of a "qualified business," Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute "25 taxable years" in lieu of "20 taxable years."

(B) For purposes of this paragraph, "qualified business" means any trade or business that has primarily done business within a HOPE Incentive Zone, as established by Section 51043.1 of the Government Code, during the taxable year.

(f) For purposes of this section.

(1) "Eligible small business" means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the income year.

(2) Except as provided in subdivision (g), "new business" means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) "Title 11 or similar case" shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an "S" corporation, paragraphs (1) and (2) shall be applied to the partnership or "S" corporation.

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business.

being conducted by the taxpayer (or any related person) For purposes of this paragraph only, the following rules shall apply.

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1).

(5) "Related person" shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) "Acquire" shall include any transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term "new business" shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the Food and Drug Administration.

(B) For purposes of this paragraph.

(i) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following

(1) The amount of net operating loss incurred in any taxable year that may be carried forward to another taxable year

(2) The amount of any loss carry forward that may be deducted in any taxable year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(l) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2014 APR 10 PM 1:05

Approved as to Form and Legality

**DRAFT**

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.  
INTRODUCED BY VICE MAYOR LARRY E REID

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**A Resolution Supporting Assembly Bill 1661 The Healthy Options for Everyone (HOPE)  
Act of 2014: Elimination of Food Deserts (Bonta)**

**WHEREAS**, When there is limited access to healthy and fresh food, it has a negative impact on the health outcomes of local communities and, areas with this lack of access are known as food deserts and are typically found in low-income communities, where the major food options generally include fast food chains and corner stores, stocked with processed foods that are high in sugar and fat, and;

**WHEREAS**, There is currently no standard definition of food deserts in state or federal code, however these areas are typically measured by (1) income-level of the community, (2) accessibility to sources of healthy food in terms of distance to a store or number of stores in an area, and (3) availability to public transportation or a personal vehicle, and the lack of a standard definition of "food desert" makes it difficult to approach the challenges associated with limited access to healthy and fresh food options, and;

Existing law provides no incentive for healthy and fresh food vendors to move into food deserts. Without a change, residents of these neighborhoods will continue to be isolated from nutritious food resources and suffer negative health outcomes, and,

**WHEREAS**, Existing law provides no incentive for healthy and fresh food vendors to move into food deserts, and without a change, residents of these neighborhoods will continue to be isolated from nutritious food resources and suffer negative health outcomes, and;

**WHEREAS**, Assembly Bill 1661, as authored by Assembly Member Bonta, would define the term "food desert" in statute to create a standard definition in which to approach the problems related to limited healthy and fresh food access, and would also increase healthy and fresh food options in communities containing food deserts through the creation of HOPE Zones under the authorization of a city and/or a county, and healthy and fresh food vendors would be able to take advantage of appropriate business incentives if they chose to move into the HOPE Zones and met certain requirements, such as participating in EBT and WIC programs, and by increasing access to healthy and fresh food resources, AB 1661 will improve the lifestyles and health outcomes of low-income communities, so therefore be it:

**RESOLVED:** That the Council of the City of Oakland proclaims its support for Assembly Bill 1661, The Healthy Options for Everyone (HOPE) Act of 2014: Elimination of Food Deserts, and authorizes the City Administrator to instruct the Legislative Lobbyist for the City to support the passage of Assembly Bill 1661

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2014

PASSED BY THE FOLLOWING VOTE.

AYES - BROOKS, SCHAAF, KALB, KAPLAN, REID, GALLO, MCELHANEY, AND PRESIDENT KERNIGHAN