

18 AUG -7 PM 5:48

REVISED

Approved as to Form and Legality


City Attorney's Office

Revised to include technical edits by the City Attorney
pursuant to Oakland Municipal Code section 2.20.080.G

OAKLAND CITY COUNCIL

RESOLUTION NO. 87247 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 5.04.481 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 5.04.390; and

WHEREAS, Section 6 of Measure V 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 Code; 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:

<p>Measure __. Shall the Measure: (1) allowing cannabis businesses to pay business taxes quarterly; (2) allowing cannabis manufacturing and/or cultivation businesses to deduct the value of raw materials from gross receipts in calculating business taxes in the manner applicable to manufacturing businesses; and (3) authorizing the City Council, without returning to the voters, to amend medical or non-medical cannabis businesses taxes in any manner that does not increase the tax rate, be adopted?</p>	<p>Yes</p>	
	<p>No</p>	

; 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 Alameda County 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 accordance with legal requirements; 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,

JUN 19 2018

PASSED BY THE FOLLOWING VOTE:

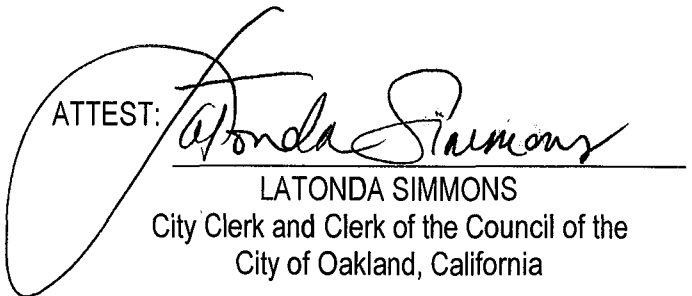
AYES - ~~XXXXXXXXXX~~ CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, ~~XXXXXXXXXXXXXXXXXXXX~~ - 6

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - 2 Reid, Brooks

ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California


18 AUG -7 PM 5:49

CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: LaTonda Simmons, City Clerk

FROM: Doryanna Moreno, Chief Assistant City Attorney 

DATE: August 7, 2018

RE: **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**

The final version of the above referenced resolution is attached, with several typographical clerical errors corrected. The corrections are technical only and do not change the proposed measure in any substantive manner.

This memorandum outlines the typographical clerical errors we have corrected. Pursuant to Oakland Municipal Code section 2.20.080.G of Oakland's open meeting law,¹ the City Attorney is allowed to conform a document, including legislation, to

¹ Oakland Municipal Code Chapter 2.20 ("Sunshine Ordinance).

comply with technical requirements as to form and legality. For ballot measures, Oakland's Elections Code, requires the City Attorney to prepare the text in proposed measures that amend ordinances to "[contain] the provisions of the proposed measure and the existing provisions of the . . . ordinance repealed or amended by the measure; and, further, to set forth "provisions of the . . . ordinance affected . . . distinguished in print, so as to facilitate comparison." (Oakland Municipal Code sec. 3.08.250²)

In accordance with the foregoing, the resolution placing the cannabis tax amendments measure on the ballot has been revised as follows:

- We corrected references to the Oakland Municipal Code: 1) in the third whereas paragraph, the reference to "5.04.484" has been corrected to "5.04.481", and 2) in the seventh whereas paragraph, the reference to "5.04.590" is corrected to "5.04.390".
- We corrected the reference to "Measure Z" in the eighth whereas paragraph to reference "Measure V", which was the November 2010 measure that amended the Business Tax Ordinance for cannabis businesses.
- We added the word "Code" after "Oakland Municipal" in the ninth whereas section.
- We removed a portion of the underlining in Section 6 of the proposed Ordinance that underlined existing text in Measure V (City Council Resolution No. 82949 C.M.S.) approved by the voters in 2010, to accurately reflect the proposed amendments.

Existing language in the 2010 measure states –

"Section 6. Council Amendments. The City Council of the City of Oakland is hereby authorized to amend Sections 5.04.480 of the Oakland Municipal Code as adopted by this Ordinance in any

² Oakland's Municipal Code Provides:

3.08.250 - Presentation of text of city measure.

Upon the qualification for the ballot of a measure which repeals or amends the City Charter or a city ordinance, the City Attorney shall prepare the text so that it contains the provisions of the proposed measure and the existing provisions of the Charter or ordinance repealed or amended by the measure. The provisions of the proposed measure differing from the existing provisions of the Charter or ordinance affected shall be distinguished in print, so as to facilitate comparison. The text shall be prepared within fifteen (15) days of receipt of the measure from the City Clerk, and it shall be part of the official election materials available to voters.

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”

The resolution placing the measure on the ballot approved by Council on June 19th purportedly underlines new text amending existing text as follows –

“Section 6. Council Amendments. Following a public hearing, the City Council of the City of Oakland is hereby authorized to amend Sections 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.” (Highlighting added.)

The highlighted text is existing text and should not be underlined. Accordingly, we have prepared the final resolution placing the measure on the ballot to correctly underline new text as follows -

“Section 6. Council Amendments. Following a public hearing, ~~the~~ City Council of the City of Oakland is hereby authorized to amend Sections 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.”

Please let us know if you have any questions or concerns regarding the above.

Very truly yours,

DORYANNA MORENO
Chief Assistant City Attorney

Attorneys assigned:
Amber Macaulay