

RESOLUTION NO. 98-10

**RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND SUBMITTING TO
THE QUALIFIED ELECTORS OF THE CITY AT THE NOVEMBER 2, 2010
GENERAL MUNICIPAL ELECTION A MEASURE TO AMEND THE RICHMOND
MUNICIPAL CODE TO ESTABLISH A BUSINESS LICENSE TAX RATE FOR
CANNABIS BUSINESSES**

WHEREAS, the Compassionate Use Act of 1996 (Health & Safety Code Section 11362.5), adopted by the electorate as Proposition 215, authorizes the use of marijuana (cannabis) for medical purposes; and

WHEREAS, the State's Medical Marijuana Program, governed by Health & Safety Code Section 11362.7 *et seq.*, exempts from certain criminal penalties certain activities related to the transportation, processing, administration, delivery, or giving away of medical marijuana (cannabis); and

WHEREAS, the Richmond City Council has adopted medical cannabis permitting regulations to prevent nuisances, 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, the Regulate, Control and Tax Cannabis Act of 2010, which will appear on the November 2, 2010 statewide election ballot as Proposition 19, will, if adopted, limit the application and enforcement of certain state laws prohibiting the possession, transportation, cultivation, consumption and sale of cannabis for non-medical purposes and specifically empower the City to regulate commercial activities related to the transportation, cultivation, consumption and sale of cannabis; and

WHEREAS, pursuant to Chapter 7.04 of the Richmond Municipal Code, every person conducting any business in the City is required to pay a license tax; and

WHEREAS, because cannabis-related commercial activities were prohibited by state law when the City's license fee system was created, Chapter 7.04 does not include a specific tax rate for cannabis businesses; and

WHEREAS, the Municipal Code treats cannabis businesses as "the manufacturing, wholesaling or retailing business or providing any service to the public or engaging in or conducting any other business not elsewhere in this chapter specifically mentioned" and are subject to an annual tax of \$234.10 plus \$46.80 per employee for the first twenty-five employees and \$40.10 per employee in excess of twenty-five employees, as indexed for inflation in proportion to changes in the Consumer Price Index; and

WHEREAS, the novelty of cannabis businesses as taxpayers and the relatively high demand of such businesses for fire protection, law enforcement and other municipal services to protect those business, their customers and neighbors and to prevent them from causing or attracting nuisances, and the anticipated high profitability of such businesses, justify taxing them at a relatively higher rate than other business which have lower profits and a lesser demand for municipal services and on the basis of gross receipts, rather than employment, as employment rates in this new industry are not predictable.

WHEREAS, for general revenue purposes, and in recognition of the burdens upon the City associated with the regulation of cannabis businesses and the use of cannabis, the City Council proposes to tax cannabis businesses at a rate of \$50 per \$1,000 of gross receipts; and

WHEREAS, by its Resolution No. 73-10, the City Council on June 15, 2010 called the general municipal election for November 2, 2010 and requested consolidation of that election with the state general election of that same date; 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; and

WHEREAS, pursuant to Article XIII C of the California Constitution, the City Council desires to submit the Ordinance to the qualified electors of the City at a regularly scheduled general election for members of the City Council, namely the Municipal Election to be consolidated with the November 2, 2010 Statewide Election.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RICHMOND, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, THAT:

SECTION 1. The City Council finds and determines that each of the recitals set forth above is true and correct.

SECTION 2. The City Council proposes to impose a business license tax upon cannabis businesses as set forth in the ordinance attached hereto as Exhibit A (the "Ordinance"). The proposed type of tax, the rate of tax, and the method of tax collection are as set forth in the Ordinance. As set forth in Section 3 of this Resolution, the proposal will be presented to the voters at the November 2, 2010 General Municipal Election ("Election").

SECTION 3. Pursuant to Elections Code Section 9222, the City Council hereby submits the Ordinance and orders the following question to be submitted to the voters at the Election:

Shall an ordinance be adopted to amend the Richmond Business License Tax to provide that every person engaged in a marijuana business pay a general business license tax of five percent (5%) of its gross receipts?

SECTION 4. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within ten days of the adoption of this Resolution.

SECTION 5. The City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the County Election Department of the County of Contra Costa.

The foregoing resolution was passed and adopted by the Council of the City of Richmond at a special joint meeting thereof held on July 27, 2010, by the following vote:

AYES: Councilmembers Bates, Butt, Lopez, Rogers, Viramontes, Vice Mayor Ritterman, and Mayor Mclaughlin.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution 98-10**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 27, 2010.

Ordinance Number

Exhibit A

AN ORDINANCE OF THE CITY OF RICHMOND IMPOSING A GENERAL BUSINESS LICENSE TAX ON CANNABIS BUSINESSES AND AMENDING THE RICHMOND MUNICIPAL CODE

Be it ordained by the People of the City of Richmond:

Section 1. Code Amendment. Chapter 7.04 of the Richmond Municipal Code is hereby amended to add new definitions to Section 7.04.020, to be codified in their appropriate placement in the alphabetical order of that section, and to read as follows:

"Cannabis business" means any commercial activity that involves planting, cultivating, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, selling at wholesale, and/or retail marijuana, any part of the plant Cannabis sativa L. or its derivatives. For purposes of this definition, "commercial activity" includes, but is not limited to, any activity in which a person receives money or any other thing of value in exchange for providing a good or performing an act or service, even if such good, act or service is provided in the context of a "club," "cooperative" or similar organization, and regardless of whether such organization is operated for profit.

"Gross receipts" means the total amount received (whether in cash, in credit, or in property of any nature) by a person for the sale of goods or the performance of any act or service in connection with a cannabis business.

(1) Gross receipts shall be calculated and reported on either a cash or an accrual basis as those terms are used in the context of federal taxation. Where gross receipts are reported on an accrual basis, they shall constitute the total amount charged, rather than the total amount received, and a deduction may be made amounts that have been written off as a "bad debt" in compliance with Internal Revenue Service guidelines. Such "bad debts" that are later collected shall be included in the Gross Receipts for the year in which they are collected.

(2) Except as otherwise provided in this section, no deduction shall be made from Gross Receipts on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever.

(3) The following shall be excluded from gross receipts:

(A) Cash discounts allowed on sales (such as, but not limited to, volume discounts, promotional discounts, inventory clearance discounts and the like);

(B) Amounts refunded by a seller to a purchaser for the return for resale of a previously purchased item (whether such amounts are refunded in cash or in the form of a store credit or the like);

(C) The amount of any federal excise tax, and of any of any sales, transactions or use tax collected by the seller from a purchaser, so long as such excise tax or other tax is required by law to be included in or added to the purchase price and collected from the consumer or purchaser and regardless of whether or not the amount the tax is stated to customers as a separate charge.

Section 2. Code Amendment. Chapter 7.04 of the Richmond Municipal Code is hereby amended to add a new Section 7.04.139 to read as follows:

7.04.139 Cannabis businesses.

(a) Every person engaged in a cannabis business shall, in lieu of any license fee otherwise provided by this chapter for that business, pay an annual license tax of one hundred

dollars (\$50.00) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

(b) The tax shall be payable in advance and the tax for each year shall be based on gross receipts for the prior year. For the initial year of operation of a cannabis business, the tax shall be based on the Tax Collector's reasonable estimate, based on such information as is provided by an applicant for a license, of the likely gross receipts of the business, which tax shall be adjusted upon payment of the tax for the second year of operation in light of the actual gross receipts of the business.

(c) The exemption contained in Section 7.04.140 for charitable organizations shall not apply to persons engaged in a cannabis business.

Section 3. Amendment of Ordinance; Rule-Making. This Ordinance may be repealed or amended by the City Council without a vote of the People except as follows: as required by Article XIII C of the California Constitution, any amendment that increases the amount or rate of tax beyond the levels authorized by this Ordinance may not take effect unless approved by a vote of the People. The City Council may impose the tax in any amount or rate which does not exceed the rate approved by the voters of the City. The voters are aware of the rule-making authority conferred on the Tax Collector by Section 7.04.320 of the Richmond Municipal Code and, without limitation, intend that authority to extend to the tax imposed by this Ordinance.

Section 4. Revenue Measure. The tax adopted by this Ordinance is enacted solely to raise revenue for municipal purposes and is not intended for the purpose of regulation. The People of the City determine the tax to be an appropriate general tax for the purpose of raising revenue. Proceeds of the tax will be deposited in the general fund of the City and will be available for any lawful municipal purpose. This Ordinance does not, in itself, authorize the conduct of any business or activity in the City, but merely provides for the taxation of such businesses or activities. As set forth in Section 7.04.370 of the Municipal Code, no license issued pursuant to Chapter 7.04 of the Municipal Code as a consequence of payment of the tax adopted by this Ordinance shall be construed as authorizing the conduct or continuance of any illegal or unlawful business.

Section 5. Severability. If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The people of the City of Richmond hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 6. Majority Approval; Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

Section 7. 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 8. Execution. Upon certification of the vote by which the people of the City of Richmond adopt this Ordinance, the Mayor and City Clerk are authorized to execute it where indicated below to give evidence of that adoption.

I hereby certify that this ordinance was adopted by a vote of the People of the City of Richmond on November 2, 2010.

Mayor

ATTEST:

City Clerk