



REPORT TO COUNCIL

City of Sacramento

34

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Staff Report
July 13, 2010

**Honorable Mayor and
Members of the City Council**

Title: Ordinance: Business Operations Tax Update and Modernization Measure

Location/Council District: Citywide

Recommendation: 1) Approve attached ordinance effective upon voter approval; 2) Adopt resolution approving ballot measure text for placement on November 2, 2010 ballot.

Contact: Patti Bisharat, Assistant City Manager, (916) 808-8197

Presenter: Patti Bisharat, Assistant City Manager, (916) 808-8197

Department: City Manager's Office

Division: Not applicable

Organization No: 02001011

Description/Analysis

Issue: The deep national recession has significantly reduced the City's available revenue to fund essential local services. The City's recently adopted Fiscal Year (FY) 2010/11 budget required the closure of a \$43 million gap. Substantial challenges remain in returning to a long-term structurally balanced General Fund budget as the City anticipates a \$25 million gap next year. On June 22, 2010, the Council reviewed a proposed ballot measure to modernize the City's business operations tax (BOT), including the taxing of marijuana businesses. Council directed staff to outreach to stakeholders and return with a proposal for Council consideration. A revised proposal has been crafted based on feedback and comments received.

The proposed ordinance:

- Phases in adjustments to tax rates that have not been adjusted since 1991
- Phases in raising the maximum tax on the BOT over three years from \$5,000 to \$30,000 so more larger businesses will pay the same rate as smaller businesses resulting in a less regressive tax
- Applies adjustments equally to flat rate/traditional business categories
- Raises the tax rate on gross receipts/permit value businesses by \$0.08/\$1,000 per year for three years (from \$0.40/\$1,000 to \$0.64/\$1,000)
- Requires marijuana businesses to pay a higher tax rate
- Creates an incentive for new clean-tech companies to locate in Sacramento through temporary waiver of the BOT

- Applies a CPI adjustment to fixed tax amounts in 2014 to ensure rates keep pace with inflation
- Includes a grace period that waives penalties on past due taxes if delinquent businesses begin paying during the grace period

Policy Considerations: The City's BOT has not been updated since 1991. Updating the BOT requires majority voter approval. Staff estimates updating the BOT and phasing in a tax on marijuana will generate approximately \$3.0 million in year one and approximately \$7.1 million per year by the end of a three-year phase in period. The General Fund revenues derived from an updated BOT will be used to fund essential City services like police, fire protection, park maintenance and recreation programs.

Environmental Considerations: The recommendation does not constitute a "project" and therefore is exempt from the California Environmental Quality Act (CEQA) according to Section 15061(b)(1) and 15378(b)(3) of the CEQA guidelines.

Commission/Committee Action: None

Sustainability Considerations: Not applicable

Rationale for Recommendation: The proposed BOT modernization measure will result in a tax that is less regressive and generates needed revenue for the City's General Fund (see Financial Considerations below). After implementation, larger businesses will pay a more proportionate share of the City's BOT revenue (see Attachment 7). The measure's incentive for new clean-tech companies and grace period for delinquent accounts will serve as added economic development strategies.

Financial Considerations: The City's recently adopted FY2010/11 budget required closure of a \$43 million budget gap. Substantial challenges remain in returning to a long-term structurally balanced General Fund budget. The FY2011/12 projected deficit is \$25 million and assumes \$15 million in new revenue to balance the budget. Staff estimates updating the BOT and phasing in a tax on marijuana businesses will generate an additional \$3.0 million in year one and approximately \$7.1 million per year by the end of a three-year phase in period. The revised proposal reduces estimated revenue in year three by approximately \$1.7 million from the June 22nd proposal presented to the City Council.

Emerging Small Business Development (ESBD): Not applicable

Respectfully Submitted by: M. B. Bisharat for
Patti Bisharat, Assistant City Manager

Recommendation Approved:

Cassandra H. B. Jung
for Gus Vina, City Manager

Table of Contents

Report	Pg. 1
Attachments	
1 Background	Pg. 4
2 Proposed BOT Measure	Pg. 8
3 Proposal Summary	Pg. 9
4 Example of Proposed BOT on Different Businesses	Pg. 10
5 BOT Revenue by Category	Pg. 11
6 Business Operations Tax Structures in Other Cities	Pg. 12
7 BOT Becomes Less Regressive After Implementation	Pg. 13
8 Proposed Ordinance	Pg. 14
9 Proposed Ordinance - Redlined	Pg. 25
10 Proposed Resolution	Pg. 38

Background

The deep national recession has significantly reduced the City's available revenue to fund essential local services. The City's recently adopted Fiscal Year (FY) 2010/11 budget required the closure of a \$43 million budget gap. Substantial challenges remain in returning to a long-term structurally balanced General Fund budget. The FY2011/12 projected deficit is \$25 million and assumes \$15 million in new revenue to balance the budget. The State of California's estimated \$20 billion budget deficit threatens to result in added state funding cuts to the City's budget.

In February, the Council directed staff to pursue several budget development strategies in preparing the FY2010/11 budget including alternative service delivery, streamlining the organization, planned use of one-time reserves, and consideration of revenue improvements. One component of the City's efforts to develop a structurally balanced and sustainable budget over the next three years includes identification of new revenues.

Staff evaluated a number of revenue enhancement opportunities and, on June 22, 2010, recommended the City Council update the City's business operations tax (BOT) and apply a tax to marijuana businesses. At the June 22, 2010 meeting, Council directed staff to conduct outreach with stakeholders and return with a proposal for Council consideration.

Business Operations Tax (BOT)

A BOT is paid to the City of Sacramento in order to legally conduct business within the City limits. The tax provides general revenue that helps pay for essential City services like fire protection, police, park maintenance and recreation programs. Most cities in California levy a BOT. One of the main benefits to the City of a BOT is that, unlike other taxes (e.g., property taxes, sales taxes), BOTs accrue entirely to the City without any dilution for a state or county share. The City's General Fund and the critical services it supports receive 100 percent of BOT revenues.

The City's BOT was enacted by Ordinance No. 3508 on May 1, 1975 and its structure has remained largely unchanged since its inception. Tax rates are determined by each city collecting the taxes and vary between cities (see Attachment 6). For the City of Sacramento, the BOT separates businesses into the following four rate structures:

- Professional Business Owners (Accountants, Architects, Attorneys, Doctors, Engineers, etc.). Tax is based on number of years a professional license is held plus an additional amount for each employee.
- Professional – Brokers (Real Estate Broker, Insurance Broker, or Stockbroker). Tax is based on a flat rate per broker plus an additional amount for each licensed employee.
- Housing & Shelter (Rental of Real Property, Houses, Apartments, Hotels & Motels). Tax is based on number of rental units.
- All other business. Tax is based on a rate of 0.04 percent or \$0.40 for every \$1,000 in gross receipts or permit value.

Last updated almost twenty years ago in 1991, Sacramento's per capita BOT revenue today ranks lowest among the State's ten largest cities (see table below). A 1984 Tax Force recommended the "[Business Operations Tax] base and revenue yield should be reviewed periodically."

City	Population ¹	BOT Revenue ²	Per Capita BOT Rev	Per Capita Rank
San Francisco ³	836,360	332,168,000	\$ 397.16	1
Oakland	419,189	53,119,065	\$ 126.72	2
Los Angeles	4,016,085	466,996,623	\$ 116.28	3
San Jose	985,047	41,323,025	\$ 41.95	4
Fresno	484,804	16,654,781	\$ 34.35	5
Long Beach	489,090	16,366,297	\$ 33.46	6
Santa Ana	351,161	10,444,074	\$ 29.74	7
San Diego	1,337,926	26,142,556	\$ 19.54	8
Anaheim	345,002	5,831,911	\$ 16.90	9
Sacramento	474,925	7,319,000	\$ 15.41	10

¹1/1/2008 – Source: California State Department of Finance

² FY08 State Controller's Office "Cities Annual Report"

³ San Francisco's BOT revenue is derived from a payroll tax and reflects the FY 06/07 budget estimate

While some cities do not cap their BOT, Sacramento's BOT includes a maximum cap of \$5,000 annually. Today, a business reaches this maximum tax when generating gross receipts of \$12.5 million or more. Therefore, a business generating \$100 million pays \$5,000 in BOT just as a business generating \$12.5 million in gross receipts. As a result, businesses generating less than \$12.5 million pay a higher proportionate share of tax than businesses generating more than \$12.5 million.

The City exempts charitable and nonprofit organizations that are exempt under state or federal law from payment of the business operations tax. To account for inflation, other cities tie their BOT to a Consumer Price Index (CPI).

Marijuana

Marijuana is currently taxed in two other California cities although several cities are considering adding marijuana to their BOT this fall. In Oakland, Measure F was passed by 79.9 percent of voters in November 2009 to tax medical cannabis dispensaries at a rate of 1.8 percent or \$18 for every \$1,000 in gross receipts. Berkeley also taxes marijuana businesses and is proposing a two year phased increase from 1.8 percent to 2.5 percent for medical marijuana and up to 10 percent for non-medical marijuana if Proposition 19, the state ballot initiative to legalize marijuana, is adopted by California voters in November 2010.

If passed, Proposition 19 will result in the establishment of marijuana businesses for non-medical purposes. The measure proposes to allow people, 21 years old or older, to possess, cultivate or transport marijuana for personal use. The City of Long Beach is proposing a 5 percent tax on medical marijuana and a 10 percent tax on non-medical marijuana. The City of San Jose is also considering a tax on marijuana.

Estimating the revenue associated with a marijuana tax measure is difficult. The difficulty is due in part to the uncertainty related to the number of dispensaries that may be permitted in the City in the future, the sales associated with such dispensaries, and the potential market variability of the products.

Outreach

Staff initiated conversations with representatives of the business community in May 2010 during preparation of the FY2010/11 budget. At the May 11, 2010 City Council meeting, the City Manager announced staff was evaluating the possibility of updating the City's BOT as well as applying a tax to marijuana businesses. In the weeks after this meeting, the City Manager met with various business leaders to further discuss ideas related to updating the City's BOT.

On June 22, 2010, staff presented a report to the City Council outlining a proposal to update and modernize the City's BOT and include a new category for the taxation of marijuana businesses. The City Council encouraged staff to conduct additional outreach with the business community before July 13, 2010 to seek feedback on the June 22nd proposal.

Staff developed materials summarizing the June 22nd proposal and an alternative approach to modernizing the City's BOT. These materials were distributed to representatives of business organizations impacted by the BOT encouraging them to attend an outreach meeting or submit written comments for the public record. Staff solicited names of business representatives from the Mayor and Council Members whom staff should include in outreach activities.

Staff organized four outreach meetings for a broad spectrum of the business community. At these meetings, staff outlined the City's future fiscal challenges as well as the June 22nd proposal and the alternative approach, and solicited the meeting participants for feedback.

General themes presented by attendees included the following:

- Businesses may leave Sacramento or be forced out of business if the BOT is increased
- No tax increase is reasonable in this economic climate
- Any BOT ballot question should be asked separately because of the public's interest in applying a tax to marijuana businesses
- High grossing businesses do not necessarily have high profit margins and will be adversely impacted by the June 22nd \$50,000 maximum tax proposal
- Some businesses in Business Improvement Districts (BIDs) may not continue to voluntarily assess themselves for enhanced City services if the BOT is increased
- Other business categories should be increased too – not just retail/other businesses
- The proposed rates for medical marijuana are too high – rates should be same as other businesses
- Businesses are already paying a variety of fees/taxes at other levels of government

On July 9th, staff sent this staff report to an extensive list of business, labor and neighborhood association leaders to ensure they had as much information as possible

prior to the Council's July 13th meeting. Additional comments and letters were received by staff and have been incorporated into the public record for review.

Proposed Ordinance

The proposed ordinance has been revised from the June 22nd proposal and reflects input and feedback provided by members of the business community. The revised proposal reduces estimated revenue in year three by approximately \$1.7 million from the June 22nd proposal presented to the City Council. The resulting proposal continues to reduce the regressive nature of the existing tax structure, while also reducing the impact on the City's smallest businesses.

A chart contrasting the current BOT with the proposed ordinance is provided in Attachment 3. The chart includes the incremental phased rate adjustment in italics as well as the resulting tax amount in each year of phasing. If approved by voters in November 2010, a grace period of three months from April 1 to June 30, 2011 will precede rate adjustments that become effective July 2011.

Notable modifications from the June 22nd proposal include:

- Reduction of the maximum tax rate proposal by 40 percent (from \$50,000 to \$30,000) and implementation of a phased increase of the maximum tax over a three year period (e.g. \$10,000, \$20,000 and \$30,000)
- Reduction of the rate adjustment for gross receipts/permit value from \$0.70/\$1,000 to \$0.64/\$1,000
- Bifurcation of the marijuana tax (up to a 4 percent rate for medical marijuana businesses and up to a 10 percent rate for non-medical marijuana businesses) with a recommended starting rate of 2 percent for medical marijuana pending adoption of city regulations
- Updates all flat fee categories of the BOT (including the minimum tax by \$6/year for three years) to rates that would be in effect today if CPI has been applied to the rates since 1991
- More than doubles the number of businesses paying the City's minimum tax by adjusting the minimum threshold from \$10,000 to \$100,000
- Reduced revenue projection of approximately \$1.7 million.

City of Sacramento Business Operations Tax Proposal

ONLY MINIMUM TAX APPLIES IF GROSS RECEIPTS/PERMIT VALUE IS LESS THAN:

MINIMUM TAX

BOT RATE STRUCTURES	Licensed Professionals	3 or less years
		3-7 years
		7+ years
	Brokers	
	Rental of Residential Property	
	Hotels	
Retail, Contractors & Other Business		

CPI	No
MAXIMUM TAX	\$5,000
MARIJUANA	Registered dispensaries pay 0.04%
EXEMPTIONS	Non-profits and charitable organizations
GRACE PERIOD	No
ESTIMATED REVENUE	\$7.3 million

CURRENT
\$10,000
\$30
\$75 + \$30 / employee
\$150 + \$30 / employee
\$300 + \$30 / employee
\$100 + \$30 / employee
\$25 + \$1.75 for each unit in excess of 4
\$50 + \$0.75 for each unit in excess of 4
\$30 + \$0.40 / \$1,000 above \$10,000
No
\$5,000
Registered dispensaries pay 0.04%
Non-profits and charitable organizations
No
\$7.3 million

PROPOSED		
YEAR 1 - July 2011	YEAR 2 - July 2012	YEAR 3 - July 2013
\$100,000		
(Add \$6) \$36	(Add \$6) \$42	(Add \$6) \$48
(Add \$15 + \$6 / employee) \$90 + \$36 / employee	(Add \$15 + \$6 / employee) \$105 + \$42 / employee	(Add \$15 + \$6 / employee) \$120 + \$48 / employee
(Add \$30 + \$6 / employee) \$180 + \$36 / employee	(Add \$30 + \$6 / employee) \$210 + \$42 / employee	(Add \$30 + \$6 / employee) \$240 + \$48 / employee
(Add \$60 + \$6 / employee) \$360 + \$36 / employee	(Add \$60 + \$6 / employee) \$420 + \$42 / employee	(Add \$60 + \$6 / employee) \$480 + \$48 / employee
(Add \$20 + \$6 / employee) \$120 + \$36 / employee	(Add \$20 + \$6 / employee) \$140 + \$42 / employee	(Add \$20 + \$6 / employee) \$160 + \$48 / employee
(Add \$5 + \$0.35 / unit in excess of 4) \$30 + \$2.10/unit in excess of 4	(Add \$5 + \$0.35 / unit in excess of 4) \$35 + \$2.45/unit in excess of 4	(Add \$5 + \$0.35 / unit in excess of 4) \$40 + \$2.80/unit in excess of 4
(Add \$10 + \$0.15 / unit in excess of 4) \$60 + \$0.90/unit in excess of 4	(Add \$10 + \$0.15 / unit in excess of 4) \$70 + \$1.05/unit in excess of 4	(Add \$10 + \$0.15 / unit in excess of 4) \$80 + \$1.20/unit in excess of 4
If <\$100,000: Minimum tax OR (Add \$0.08 / \$1,000) If >\$100,000: \$0.48 / \$1,000	If <\$100,000: Minimum tax OR (Add \$0.08 / \$1,000) If >\$100,000: \$0.56 / \$1,000	If <\$100,000: Minimum tax OR (Add \$0.08 / \$1,000) If >\$100,000: \$0.64 / \$1,000
No	No	Yes in 2014 (Min/Max tax + flat fees)
\$10,000	\$20,000	\$30,000
Medical Marijuana: (Up to 4%) Non-Medical Marijuana: (Up to 10%)		
Add new "clean tech" businesses for 3 years		
Yes - Penalties only (April - June 2011)	No	No
+ \$3.0 million	+ \$5.1 million	+ \$7.1 million

**Example of Proposed BOT on Different Businesses
(For Illustration Purposes Only)**

Business Size	# Businesses	Gross Receipts	Max Tax \$5K	Max Tax \$10K	Max Tax \$20K	Max Tax \$30K
			Current \$30 Min Tax 0.00040	\$36 Min Tax 0.00048	\$42 Min Tax 0.00056	\$48 Min Tax 0.00064
Small Business (<\$100K)	12,582	\$ 10,000	\$ 30	\$ 36	\$ 42	\$ 48
Small Business (\$100K-\$1M)		\$ 100,001	\$ 66	\$ 48	\$ 56	\$ 64
		\$ 250,000	\$ 126	\$ 120	\$ 140	\$ 160
	5,295	\$ 500,000	\$ 226	\$ 240	\$ 280	\$ 320
Medium Business (\$1M - \$10M)		\$ 1,000,001	\$ 426	\$ 480	\$ 560	\$ 640
		\$ 5,000,000	\$ 2,026	\$ 2,400	\$ 2,800	\$ 3,200
	2,147	\$ 10,000,000	\$ 4,026	\$ 4,800	\$ 5,600	\$ 6,400
Large Business (>\$10M)		\$ 12,500,000	<u>\$ 5,000</u>	\$ 6,000	\$ 7,000	\$ 8,000
		\$ 25,000,000	<u>\$ 5,000</u>	<u>\$ 10,000</u>	\$ 14,000	\$ 16,000
	321	\$ 50,000,000	<u>\$ 5,000</u>	<u>\$ 10,000</u>	<u>\$ 20,000</u>	<u>\$ 30,000</u>
		\$ 75,000,000	<u>\$ 5,000</u>	<u>\$ 10,000</u>	<u>\$ 20,000</u>	<u>\$ 30,000</u>
Total:	20,345					
Number of business paying maximum tax:			243	144	76	57

Indicates the approximate dollar amount (rounded to closest \$5,000) where the Maximum Tax would be reached.

BOT Revenue by Category

	Number	Current BOT FY08/09 Cap at \$5,000 Min Tax \$30 up to \$10,000 Current BOT at 0.00040	Est. Revenue FY11/12 Cap at \$10,000 Min Tax \$36 Up to \$100,000 Proposed BOT at 0.00048	Est. Revenue FY12/13 Cap at \$20,000 Min Tax \$42 Up to \$100,000 Proposed BOT at 0.00056	Est. Revenue FY13/14 Cap at \$30,000 Min Tax \$48 Up to \$100,000 Proposed BOT at 0.00064
Licensed Professionals	2,853	\$ 820,590	\$ 984,708	\$ 1,148,826	\$ 1,312,944
Brokers	635	\$ 77,510	\$ 93,012	\$ 108,514	\$ 124,016
Contractors	N/A	\$ 193,684	\$ 232,421	\$ 271,158	\$ 309,894
Hotels	80	\$ 10,836	\$ 13,004	\$ 15,171	\$ 17,338
Rental Properties	4,116	\$ 18,952	\$ 22,742	\$ 26,533	\$ 30,323
All Other Business	20,345	\$ 6,259,486	\$ 8,454,710	\$ 10,415,605	\$ 12,174,978
Medical Marijuana @ 2% (\$20/\$1,000)	20	\$ -	\$ 567,550	\$ 567,550	\$ 567,550
Estimated Revenues		\$ 7,381,058	\$ 10,368,147	\$ 12,553,357	\$ 14,537,043
Increase from Current			\$ 2,987,089	\$ 5,172,299	\$ 7,155,985

Business Operations Tax Structures in Other Cities

Local governments across California calculate business operation/license tax differently. Some cities base it on a percentage of gross receipts or number of employees while others charge flat rates. In addition, some cities have subcategories of businesses that are charged based on professional licenses, number of rental units or per vehicle owned/operated. For purposes of comparison, the method for calculating business operations/license tax for the majority of revenues for several cities is illustrated in the table below.

The table below also provides information related to utility user tax and sales tax rates in each of the jurisdictions. It is important to note, however, that the chart does not contrast the varying municipal services and services levels that are provided by and vary among agencies. For example, it is common for urban agencies to provide significantly higher public safety staffing levels than suburban locales.

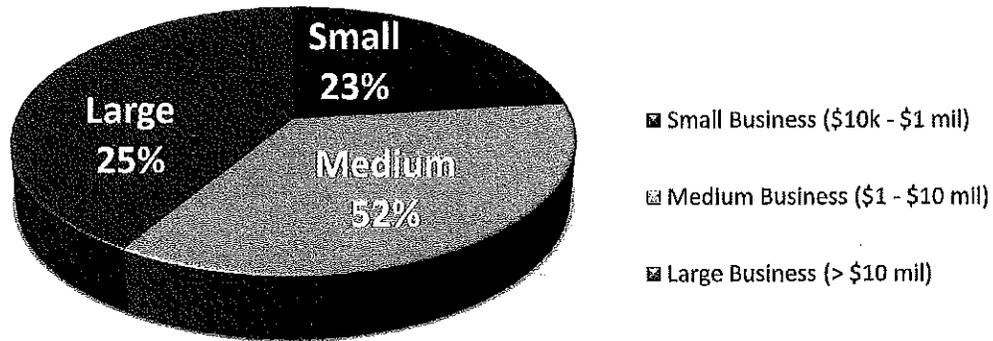
City	Method	Rate	Maximum Tax (Cap)	Approx # Businesses	UUT Rate	Sales Tax Rate
Elk Grove	Flat Fee	\$110.00	Indirect Cap = Flat Rate	4,620	2.5%	8.75%
Folsom	Flat Fee on Gross Receipts	\$40.00 up to \$1,000 for gross receipts up to \$25 million. Over \$25 million = \$100 + \$0.05/\$1,000 in gross receipts	No Cap	4035	None	8.75%
Fresno	Gross Receipts	Specific to each business type, no standard percentage or flat fee	No Cap	38,912	None	8.975%
Long Beach	Flat Fee + Average # Employees	\$320.70 + range of \$8.33 to \$24.98 per employee	No Cap	Not available	5.0%	9.75%
Los Angeles	Gross Receipts	Ranges from \$1.01/\$1,000 to \$5.07/\$1,000	No Cap	368,000	9-10%	9.75%
Oakland	Gross Receipts	\$1.20/\$1,000	No Cap	55,366	7.5%	9.75%
Roseville	Flat Fee on Gross Receipts or Flat Fee on # Employees	\$15 to \$250 depending on type or size of business	Indirect Cap = Flat Rate	10,047	None	8.25%
Sacramento	Gross Receipts	\$0.40/\$ 1,000	\$ 5,000	25,882	7-7.5%	8.75%
San Jose	Flat Fee + # Employees	\$150 + \$18.00/employee (over 8)	No Cap	60,918	4.5-5%	9.25%
Stockton	Gross Receipts	Ranges from \$0.50/\$1,000 to \$2.00/\$1,000	No Cap	16,222	6%	9.00%
West Sacramento	Flat Fee	\$40	Indirect Cap = Flat Rate	600	None	8.75%

NOTE: San Francisco is the only city in California utilizing a payroll tax in lieu of a traditional business operations tax methodology.

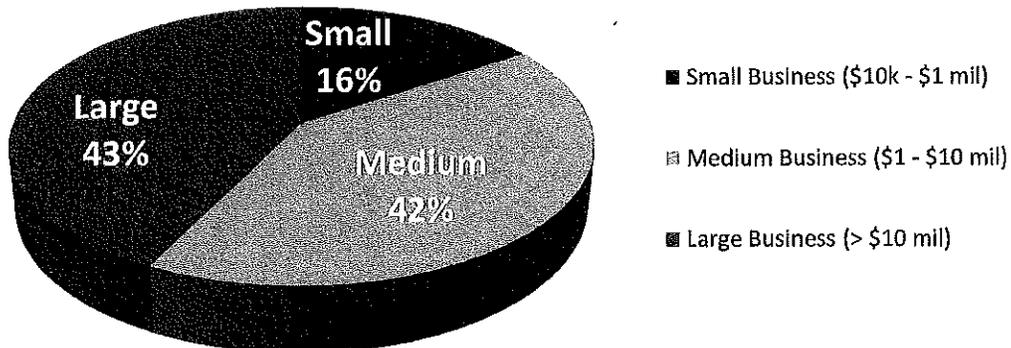
BOT Becomes Less Regressive After Implementation

Attachment 7

Max Tax = \$5,000
Tax Rate = 0.040%
(or \$0.40)/\$1,000 Gross Receipts)
Current Revenues FY08/09



Max Tax = \$30,000
Tax Rate = 0.064%
(or \$0.64/\$1,000 Gross Receipts)
FY13/14 Projected Revenue



ORDINANCE NO. _____

ADOPTED BY THE SACRAMENTO CITY COUNCIL
ON _____

AN ORDINANCE AMENDING SECTION 3.08.120, SECTION 3.08.170, SECTION 3.08.180, SECTION 3.08.190, SECTION 3.08.200, SECTION 3.08.220, AND SECTION 3.08.240 OF, AND ADDING SECTION 3.08.035 AND SECTION 3.08.205 TO, CHAPTER 3.08 TITLE 3 OF THE SACRAMENTO CITY CODE, INCREASING BUSINESS OPERATIONS TAX RATES, PROVIDING A TAX EXEMPTION FOR CLEAN-TECHNOLOGY BUSINESSES, AND APPLYING THE TAX TO MARIJUANA BUSINESSES AT A HIGHER TAX RATE.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

This ordinance amends section 3.08.120, section 3.08.170, section 3.08.180, section 3.08.190, section 3.08.200, section 3.08.220, and section 3.08.240 of, and adds section 3.08.035 and section 3.08.205 to, Chapter 3.08 Title 3 of the Sacramento City Code, and is made effective by voter approval of a business operations tax ballot measure.

SECTION 2

BACKGROUND

- A. The City of Sacramento established a business operations tax in 1975 and its structure has remained largely unchanged since its inception. The business operations tax rates have not been modified since 1991 and today Sacramento's per capita business operations tax revenue ranks lowest among the State's ten largest cities.
- B. While some cities do not place a cap on their business operations tax, Sacramento's business operations tax includes a maximum cap of \$5,000 annually, which over time has resulted in a regressive tax that places a disproportionate share of the tax burden on smaller and medium sized businesses.
- C. New business trends present an opportunity to modernize Sacramento's business operations tax by providing tax incentives for clean-tech businesses and by applying the business operations tax to marijuana businesses.
- D. In applying the business operations tax to marijuana businesses, the City Council is mindful of the fact that the economic burden of taxes imposed on businesses may be directly or indirectly passed on to their customers, in whole or in part. The City Council is also mindful of the fact that, unlike recreational users of marijuana, those who use marijuana for medicinal purposes cannot avoid the tax burden simply by not purchasing their medicine. Accordingly, to help mitigate the economic burden that this tax may have on to users of medical marijuana, it is the intent of the City Council to tax medical marijuana businesses more leniently than businesses that engage in the commercial sale of marijuana for nonmedical use.
- E. The City desires to raise the cap on the business operations tax over a three year period to a maximum of \$30,000 in order to apply the tax in a more equitable manner so that small and medium sized businesses do not bear a disproportionate tax burden.

- F. The City also desires to update the business operations tax rates so that its per capita business operations tax revenues are more in line with that of other larger cities throughout the State.
- G. The City also wants to provide a tax incentive for clean-technology businesses to encourage those businesses to locate in Sacramento.
- H. The City also wants to provide a brief amnesty period to waive past penalties on delinquent business operations taxes of businesses that pay their delinquent taxes during the amnesty period.
- I. The ordinance will require annual financial audits of tax expenditures and will require voter approval of increases to the business operations tax.
- J. A measure is proposed for placement on the November 2, 2010 ballot that would give effect to this ordinance increasing the business operations tax and applying it more fairly, and applying the business operations tax at a higher tax rate for marijuana businesses.
- K. The City depends upon the revenue generated by the business operations tax to continue providing essential City services such as police, fire protection and emergency response.

SECTION 3

Section 3.08.035 is added to Chapter 3.08 of City Code to read as follows:

3.08.035 Clean technology business temporary exemption.

A. Clean technology businesses may be exempt from the business operations tax payment required by this chapter for up to three consecutive years.

1. In order to be eligible for this exemption, a person must file an application with the administrator as provided in this section.

2. This exemption only applies to the business operations tax, and does not apply to any business improvement assessments (BIA) or other payments that may be owed by the business entity.

3. Having this exemption does not obviate the need to post a valid BOT certificate at the business' premises as otherwise required by this code.

B. For purposes of this section, the following terms mean:

"Clean energy" means energy produced by wind, solar power, landfill gas, geothermal resources, ocean thermal energy conversion, quantifiable energy conservation measures, tidal energy, wave energy, biomass, biofuels, or hydrogen fuels derived from renewable sources. Clean energy does not include any fossil fuel-based energy production, including, but not limited to, clean coal, clean diesel, natural gas and hydrogen from natural gas, any nuclear-based energy production, waste-to-energy production via combustion or incineration, or other energy technologies derived from nonrenewable resources.

"Clean technology business" or "CTB" means a business in which at least seventy-five percent of all business activities carried on during the tax year are directly related to one or more of the following activities:

1. Research and development and/or associated manufacturing applying scientific advances to the production, distribution or storage of clean energy.

2. Research and development and/or associated manufacturing applying scientific advances to prototype or commercially viable materials and products powered by clean energy, including but not limited to single-passenger vehicles and fueling infrastructure.

3. Research and development, and/or manufacture of solar panels.

4. Research and development and/or associated manufacturing applying scientific advances to

prototype or commercially viable techniques, materials and products that materially improve energy efficiency, water conservation or air quality.

5. Research and development and/or associated manufacturing applying scientific advances to chemistry-based products and processes that use sustainable chemistry techniques to reduce or eliminate the use and generation of substances that are toxic to humans and the environment.

"Clean technology business review team" or "CTB review team" refers to a team comprised of the administrator plus a designee of the city manager who is knowledgeable about economic development and a designee of the city manager who is knowledgeable of land use planning. The purpose of the CTB review team is to review and make decisions regarding applications for the CTB exemption.

C. In order to be eligible for the CTB exemption, a business must:

1. Complete and submit an initial application to the administrator for review and evaluation.
2. After approval of a CTB exemption, file an annual sworn statement with the administrator affirming that the business continues to meet the eligibility criteria. The sworn statement must be filed with the administrator no later than 30 days before the start of the business' next tax year.
3. File an annual business operations tax renewal with the administrator showing the amount of tax and BIA owed, even though no tax may be owed after claiming the CTB tax exemption.

D. The administrator shall do the following:

1. No later than the effective date of the ordinance codified in this section, adopt regulations and forms regarding eligibility and the application process for the CTB exemption, which may be amended from time to time as the administrator deems necessary.
2. Review all applications for completeness and notify the applicant of any deficiency.
3. When the application is complete, convene a meeting of the CTB review team to consider and make a decision on eligibility for the CTB exemption.
4. If an application is approved by the CTB review team, the administrator shall issue a CTB exemption certificate to the applicant.

E. If an application is not approved by the CTB review team, the applicant may appeal the decision on the application to the city manager by filing a written notice of appeal with the administrator no later than ten days after notice of the decision. The city manager's decision on the application shall be final and conclusive.

F. The CTB exemption under this section shall be available and may be taken for each tax year that the business holds a valid CTB exemption for a maximum of three consecutive tax years. The opportunity to apply for an exemption shall expire December 31, 2022.

G. This section shall remain in effect only until December 31, 2025, and as of that date is repealed, unless a later enacted ordinance deletes or extends that date.

SECTION 4

Section 3.08.120 of the Sacramento City Code is amended to read as follows:

3.08.120 Application for first certificate.

A person making application for the first certificate to be issued hereunder, or for a newly established business or for a new ownership of a previously established business shall furnish to the administrator a sworn statement, on a form provided by the administrator, setting forth the following information:

- A. The exact nature or kind of business for which a certificate is requested;
- B. The place where such business is to be carried on, and if the same is not to be carried on at any permanent place of business, the places of residence of the owners of same;
- C. The fictitious name or names under which the business will be operated, if any, and the name of the person to whom the certificate is issued;
- D. Such further information as the administrator may deem necessary to enable him or her to issue the certificate applied for, including but not limited to gross receipts information for the current and prior years.

The administrator may also collect demographic information from each applicant. This data shall be provided on a voluntary basis.

SECTION 5

Section 3.08.170 of the Sacramento City Code is amended to read as follows:

3.08.170 Gross receipts.

Every person not falling within the categories described in Sections 3.08.180, 3.08.190, and 3.08.200 and 3.08.205 of this chapter shall pay an annual business operations tax as follows:

A. Every person which has gross receipts of one hundred thousand dollars (\$100,000) or less shall pay a minimum each year as described below:

1. From July 1, 2011 through June 30, 2012, the minimum tax is thirty-six dollars (\$36.00);
2. From July 1, 2012 through June 30, 2013, the minimum tax is forty-two dollars (\$42.00);
3. From July 1, 2013 through June 30, 2014, the minimum tax is forty-eight dollars (\$48.00);
4. On and after July 1, 2014, the minimum tax is forty-eight dollars (\$48.00) plus the annual inflation adjustment made pursuant to subsection D.

B. Every person who has gross receipts in excess of one hundred thousand dollars (\$100,000) shall pay a tax as follows:

1. From July 1, 2011 through June 30, 2012, \$.00048 for each dollar of gross receipts for the reporting period;
2. From July 1, 2012 through June 30, 2013, \$.00056 for each dollar of gross receipts for the reporting period;
3. On and after July 1, 2013, \$.00064 for each dollar of gross receipts for the reporting period.

C. The maximum annual tax liability for any person under this section shall be as follows:

1. From July 1, 2011 through June 30, 2012, the maximum tax is ten thousand dollars (\$10,000.00);

2. From July 1, 2012 through June 30, 2013, the maximum tax is twenty thousand dollars (\$20,000.00);
3. From July 1, 2013 through June 30, 2014, the maximum tax is thirty thousand dollars (\$30,000.00);
4. On and after July 1, 2014, the maximum tax is thirty thousand dollars (\$30,000.00) plus the annual inflation adjustment made pursuant to subsection D.

D. Commencing on July 1, 2014, the minimum tax amount described in subsection A.4, and the maximum tax amount described in subsection C.4, shall be automatically increased for inflation by the amount of increase in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, San Francisco area, all items (or any successor consumer price index), most recently available prior to the date of increase, provided, however, the amounts of the tax which result from the application of the automatic increases hereunder shall be rounded to the nearest whole dollar.

SECTION 6

Section 3.08.180 of the Sacramento City Code is amended to read as follows:

3.08.180 Professionals.

A. Professionals—General. Every person engaged in the profession of: accountant, architect, attorney, audiologist, bacteriologist, certified public accountant, engineer, dentist, mortician, optometrist, osteopath, physician, podiatrist, psychologist, surgeon, or veterinarian shall pay an annual business operations tax determined by the number of years the individual has been licensed by the state of California to practice such profession. The tax paid shall be in the following amounts:

1. From July 1, 2011 through June 30, 2012, the tax is:

Three years or less:	\$90.00
More than three years but less than seven years:	\$180.00
Seven years or more:	\$360.00

2. From July 1, 2012 through June 30, 2013, the tax is:

Three years or less:	\$105.00
More than three years but less than seven years:	\$210.00
Seven years or more:	\$420.00

3. From July 1, 2013 through June 30, 2014, the tax is:

Three years or less:	\$120.00
More than three years but less than seven years:	\$240.00
Seven years or more:	\$480.00

4. On and after July 1, 2014, the tax is the amounts described above in subsection A.3 plus the annual inflation adjustment made pursuant to subsection E.

5. Nothing in this subsection shall be construed or deemed to apply to any person engaged in any of the professions enumerated in this subsection solely as the employee of any other person conducting, carrying on or managing such business, occupations or professions in the city, except, however, that each such employee who has a contractual right to participate in the income or profits of the business, or is a shareholder of a professional corporation organized pursuant to Section 13400 et seq. of the California Corporations Code must pay the tax.

- B. Every person who employs an individual who would be subject to a business operations tax under

subsection A if the individual was not exempted from the payment of said tax by subsection A.5 shall pay an annual business operations tax of the following amounts for each such exempt individual in their employ:

1. From July 1, 2011 through June 30, 2012, the tax is thirty-six dollars (\$36.00) for each exempt employee;
2. From July 1, 2012 through June 30, 2013, the tax is forty-two dollars (\$42.00) for each exempt employee;
3. From July 1, 2013 through June 30, 2014, the tax is forty-eight dollars (\$48.00) for each exempt employee;
4. On and after July 1, 2014, the tax is forty-eight dollars (\$48.00) plus the annual inflation adjustment made pursuant to subsection E, for each exempt employee.

C. Professionals—Brokers. Every person engaged in the business of real estate broker, insurance broker, or stockbroker, whether full or part-time, shall pay an annual business operations tax for the principal broker or broker of record plus a business operations tax for each employee, agent, representative or independent contractor subject to supervision by a principal broker or broker of record who devotes time to handling of rents, listing property, collecting or selling property, soliciting or writing insurance policies or working as a salesperson or

D. Maximum Tax. The maximum annual tax payable by any firm under provisions of this section is the same as described in subsection C of section 3.08.170.

“Firm” is defined as any professional corporation, partnership or other business entity whose individual members share in the profits of the business entity.

E. Commencing on July 1, 2014, the tax amounts described for professionals in subsection A.4 and for their employees in subsection B.4, and for the principal broker and their employees, respectively, in subsection C.4, shall be automatically increased for inflation by the amount of increase in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, San Francisco area, all items (or any successor consumer price index), most recently available prior to the date of increase, provided, however, the amounts of the tax which result from the application of the automatic increases hereunder shall be rounded to the nearest whole dollar.

F. Revenue Measure. Nothing contained in this chapter shall be construed as giving the city council, or any of the officers of the city in charge of administration of this chapter, any regulatory powers over any licensee who is engaged in the practice of a profession, trade, or calling and is one whose privilege to so engage in such profession, trade or calling is granted by the state or any of its agencies. As to such persons, and as indicated in Section 3.08.020 of this chapter, this chapter shall be construed as existing for revenue purposes only.

SECTION 7

Section 3.08.190 of the Sacramento City Code is amended to read as follows:

3.08.190 Contractors.

A. Every person engaged in any type of business activity as a contractor which requires a city building permit in order to be performed shall pay a business operations tax at the time the building permit is issued at the rate specified below.

1. From July 1, 2011 through June 30, 2012, \$.48 for each one thousand dollars (\$1,000.00) or fraction thereof of the value used to determine the charge for the building permit;
2. From July 1, 2012 through June 30, 2013, \$.56 for each one thousand dollars (\$1,000.00) or fraction thereof of the value used to determine the charge for the building permit;
3. On and after July 1, 2013, \$.64 for each one thousand dollars (\$1,000.00) or fraction thereof of the value used to determine the charge for the building permit.

B. The maximum annual tax payable by any person under this section shall be the same as described in subsection C of section 3.08.170. It shall be the responsibility of the contractor who has paid the maximum tax to establish at the time a building permit is issued that the maximum has been reached and that no additional tax is due.

SECTION 8

Section 3.08.200 of the Sacramento City Code is amended to read as follows:

3.08.200 Housing and shelter.

A. Rental of Residential Real Property. Every person engaging in the business of offering residential real property for rental shall pay a base annual business operations tax for the business plus a unit tax for each rental unit in excess of four units as follows:

1. From July 1, 2011 through June 30, 2012, the business operations tax is the base tax of thirty dollars (\$30.00) plus the per unit tax of two dollars and ten cents (\$2.10) for each rental unit in excess of four units;
2. From July 1, 2012 through June 30, 2013, the business operations tax is the base tax of thirty-five dollars (\$35.00) plus the per unit tax of two dollars and forty-five cents (\$2.45) for each rental unit in excess of four units;
3. From July 1, 2013 through June 30, 2014, the business operations tax is the base tax of forty dollars (\$40.00) plus the per unit tax of two dollars and eighty cents (\$2.80) for each rental unit in excess of four units;
4. On and after July 1, 2014, the business operations tax is the base tax of forty dollars (\$40.00), adjusted for annual inflation pursuant to subsection D, plus the per unit tax of two dollars and eighty cents (\$2.80), adjusted for annual inflation pursuant to subsection D, for each rental unit in excess of four units.
5. Any person with four or less units is exempt from payment of the business operations tax.
6. The maximum annual tax payable by any person is the same as described in subsection C of section 3.08.170.

B. Hotels, Motels. Every person engaging in the business of renting out accommodations substantially on a transient occupancy basis shall pay a base annual business operations tax for the business plus a unit tax for each rental unit in excess of four units as follows:

1. From July 1, 2011 through June 30, 2012, the business operations tax is the base tax of sixty dollars (\$60.00) plus the per unit tax of ninety cents (\$0.90) for each rental unit in excess of four units per situs;

2. From July 1, 2012 through June 30, 2013, the business operations tax is the base tax of seventy dollars (\$70.00) plus the per unit tax of one dollar and five cents (\$1.05) for each rental unit in excess of four units per situs;

3. From July 1, 2013 through June 30, 2014, the business operations tax is the base tax of eighty dollars (\$80.00) plus the per unit tax of one dollar and twenty cents (\$1.20) for each rental unit in excess of four units per situs;

4. On and after July 1, 2014, the business operations tax is the base tax of eighty dollars (\$80.00), adjusted for annual inflation pursuant to subsection D, plus the per unit tax of one dollar and twenty cents (\$1.20), adjusted for annual inflation pursuant to subsection D, for each rental unit in excess of four units per situs.

5. The maximum annual tax payable for any situs is the same as described in subsection C of section 3.08.170.

C. Rental of Nonresidential Real Property. Persons engaging in the business of offering nonresidential real property for lease or rental shall be taxed pursuant to Section 3.08.170 of this chapter.

D. Commencing on July 1, 2014, the tax amounts described for the base tax and the per unit tax, respectively, in subsections A.4 and B.4, shall be automatically increased for inflation by the amount of increase in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, San Francisco area, all items (or any successor consumer price index), most recently available prior to the date of increase, provided, however, the resulting adjustments shall be rounded as follows:

1. The amounts of the base tax which result from the application of the automatic increases hereunder shall be rounded to the nearest whole dollar;

2. The amounts of the per unit tax which result from the application of the automatic increases hereunder shall be rounded to the nearest whole cent.

SECTION 9

Section 3.08.205 is added to Chapter 3.08 of the City Code to read as follows:

3.08.205 Marijuana businesses.

A. Every person engaged in a marijuana business in accordance with Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code § 11362.7 et seq.), shall pay an annual business operations tax as follows:

1. On and after July 1, 2011, a maximum of four percent (4%) of each dollar of gross receipts for the reporting period.

2. Notwithstanding the tax rate imposed in subsection A.1, the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may increase such tax rate from time to time not to exceed the maximum tax rate imposed by subsection A.1.

B. For purposes of this section, the following terms have the following meanings:

"Gross receipts" has the meaning as defined in section 3.08.020, as it pertains to the marijuana business' reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products or goods sold by the marijuana business.

"Marijuana" or "Cannabis" has the meaning as defined in California Health and Safety Code section 11018.

"Marijuana 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. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in accordance with Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code § 11362.7 et seq.) A marijuana business includes medical marijuana "cooperatives" and "collectives" that are established as not for profit businesses.

"Reporting period" means a year, quarter or calendar month, as determined by the administrator.

C. The provisions of section 3.08.210 do not apply to any marijuana business.

SECTION 10

Section 3.08.205 is added to Chapter 3.08 of the City Code to read as follows:

3.08.205 Marijuana businesses.

A. Every person engaged in a marijuana business in accordance with Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code § 11362.7 et seq.), shall pay an annual business operations tax as follows:

1. On and after July 1, 2011, a maximum of four percent (4%) of each dollar of gross receipts for the reporting period.

2. Notwithstanding the tax rate imposed in subsection A.1, the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may increase such tax rate from time to time not to exceed the maximum tax rate imposed by subsection A.1.

B. Every person engaged in a marijuana business pursuant to the Regulate, Control, and Tax Cannabis Act of 2010, Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300), shall pay an annual business operations tax as follows:

1. On and after July 1, 2011, a maximum of ten percent (10%) of each dollar of gross receipts for the reporting period.

2. Notwithstanding the tax rate imposed in subsection B.1, the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may increase such tax rate from time to time not to exceed the maximum tax rate imposed by subsection B.1.

C. For purposes of this section, the following terms have the following meanings:

"Gross receipts" has the meaning as defined in section 3.08.020, as it pertains to the marijuana business' reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products or goods sold by the marijuana business.

"Marijuana" or "Cannabis" has the meaning as defined in California Health and Safety Code section 11018.

"Marijuana 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. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent or temporary, where marijuana is made available,

sold, given, distributed, or otherwise provided in accordance with Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code § 11362.7 et seq.), or Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300). A marijuana business includes medical marijuana "cooperatives" and "collectives" that are established as not for profit businesses.

"Reporting period" means a year, quarter or calendar month, as determined by the Administrator.

D. The provisions of section 3.08.210 do not apply to any marijuana business.

SECTION 11

Section 3.08.220 of the Sacramento City Code is amended to read as follows:

3.08.220 When and how payable.

A. Quarterly Payment Periods Established—Payment Due. For purposes of this chapter, the annual calendar shall be divided into four quarters consisting of three-month periods commencing January 1st, April 1st, July 1st, and October 1st, of each year. All annual taxes shall be due and payable in advance on the first day of the quarter immediately following expiration of any existing certificate.

B. New Businesses—No Proration. If a person establishes a business on or after July 1, 1984 for which a tax is payable, his or her first tax period shall commence on the day when he or she first engages in said business and shall terminate on the last day of the third quarter following the quarter during which the person first engaged in said business, and the tax payment for that period shall not be reduced by the administrator even if the tax period is less than twelve (12) full calendar months. Thereafter, the annual tax period shall be for twelve (12) full months and the full annual tax shall be due and payable on the first day of the new annual period. The administrator may assign a shorter tax period, in such case the annual tax shall be reduced on a proportionate basis by the administrator.

C. Contractor Payment. A contractor's business operations tax shall be due and payable at the time the city building permit is issued.

D. Notwithstanding subsections A and B, if the administrator requires monthly reporting, the business operations tax of a business shall be payable monthly based on the gross receipts of the business for the subject month. The amount of tax that is owed in one month shall be remitted to the administrator on or before the last day of the following month. Failure to pay the tax when due may result in suspension or revocation of the taxpayer's business operations tax certificate.

SECTION 12

Section 3.08.240 of the Sacramento City Code is amended to read as follows:

3.08.240 Penalties.

A. If a business operations tax is not paid on or before the due date, a penalty of fifteen dollars (\$15.00) shall be added to the unpaid amount. After thirty (30) additional days, if the tax is still delinquent, an additional penalty of one hundred dollars (\$100.00) shall be added to the unpaid amount to cover the costs of enforcement.

B. Subsection A of this section does not apply to business operations taxes which are one or more years delinquent and are paid to the administrator between April 1, 2011 and June 30, 2011. This brief amnesty period is a one-time opportunity for delinquent taxpayers who owe business operations tax to come forward and pay their delinquent taxes prior to the tax rate increase that will take effect on July 1, 2011, without being penalized for doing so.

SECTION 13

Alternative provisions. This ordinance incorporates the addition of alternative versions of section 3.08.205 of the Sacramento City Code by both Section 9 and Section 10 of the ordinance. Section 10 shall only become operative if the Regulate, Control, and Tax Cannabis Act of 2010, Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300) is approved by the voters and becomes effective on or before July 1, 2011, in which case Section 9 of this ordinance shall not become operative.

SECTION 14

Amendment or Repeal. The business operations tax imposed by this ordinance may be decreased, repealed or amended by the City Council, but may not be increased without a vote of the people as required in California Constitution Article XIII C and California Government Code Section 53750(h).

SECTION 15

Audit of business operations tax. The City shall annually audit the business operations taxes imposed by this Section to verify that tax revenues have been properly expended in accordance with the law. The annual audit shall be performed under the direction of the Director of Finance by a qualified independent third party employing reasonable, cost-effective procedures.

SECTION 16

Severability. If any portion of this ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this ordinance shall remain in effect. The people of the City of Sacramento hereby declare that they would have adopted each portion of this ordinance, notwithstanding the fact that any one or more portions of this ordinance is declared invalid or unenforceable and, to that end, the provisions of this ordinance are severable. If this ordinance is declared to be invalid, then the provisions of sections 3.08.170, 3.08.180, 3.08.190, 3.08.200, 3.08.210, and 3.08.240, as those sections read on November 1, 2010, will become effective.

SECTION 17

Majority Approval; Effective Date. This ordinance shall be effective only if approved by a majority of the voters voting on this ordinance and shall go into effect ten days after the vote is declared by City Council.

ORDINANCE NO. _____

ADOPTED BY THE SACRAMENTO CITY COUNCIL
ON _____

AN ORDINANCE AMENDING SECTION 3.08.120, SECTION 3.08.170, SECTION 3.08.180, SECTION 3.08.190, SECTION 3.08.200, SECTION 3.08.220, AND SECTION 3.08.240 OF, AND ADDING SECTION 3.08.035 AND SECTION 3.08.205 TO, CHAPTER 3.08 TITLE 3 OF THE SACRAMENTO CITY CODE, INCREASING BUSINESS OPERATIONS TAX RATES, PROVIDING A TAX EXEMPTION FOR CLEAN-TECHNOLOGY BUSINESSES, AND APPLYING THE TAX TO MARIJUANA BUSINESSES AT A HIGHER TAX RATE.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

This ordinance amends section 3.08.120, section 3.08.170, section 3.08.180, section 3.08.190, section 3.08.200, section 3.08.220, and section 3.08.240 of, and adds section 3.08.035 and section 3.08.205 to, Chapter 3.08 Title 3 of the Sacramento City Code, and is made effective by voter approval of a business operations tax ballot measure.

SECTION 2

BACKGROUND

- A. The City of Sacramento established a business operations tax in 1975 and its structure has remained largely unchanged since its inception. The business operations tax rates have not been modified since 1991 and today Sacramento's per capita business operations tax revenue ranks lowest among the State's ten largest cities.
- B. While some cities do not place a cap on their business operations tax, Sacramento's business operations tax includes a maximum cap of \$5,000 annually, which over time has resulted in a regressive tax that places a disproportionate share of the tax burden on smaller and medium sized businesses.
- C. New business trends present an opportunity to modernize Sacramento's business operations tax by providing tax incentives for clean-tech businesses and by applying the business operations tax to marijuana businesses.
- D. In applying the business operations tax to marijuana businesses, the City Council is mindful of the fact that the economic burden of taxes imposed on businesses may be directly or indirectly passed on to their customers, in whole or in part. The City Council is also mindful of the fact that, unlike recreational users of marijuana, those who use marijuana for medicinal purposes cannot avoid the tax burden simply by not purchasing their medicine. Accordingly, to help mitigate the economic burden that this tax may have on to users of medical marijuana, it is the intent of the City Council to tax medical marijuana businesses more leniently than businesses that engage in the commercial sale of marijuana for nonmedical use.
- E. The City desires to raise the cap on the business operations tax over a three year period to a maximum of \$30,000 in order to apply the tax in a more equitable manner so that small and medium sized businesses do not bear a disproportionate tax burden.
- F. The City also desires to update the business operations tax rates so that its per capita business

- operations tax revenues are more in line with that of other larger cities throughout the State.
- G. The City also wants to provide a tax incentive for clean-technology businesses to encourage those businesses to locate in Sacramento.
 - H. The City also wants to provide a brief amnesty period to waive past penalties on delinquent business operations taxes of businesses that pay their delinquent taxes during the amnesty period.
 - I. The ordinance will require annual financial audits of tax expenditures and will require voter approval of increases to the business operations tax.
 - J. A measure is proposed for placement on the November 2, 2010 ballot that would give effect to this ordinance increasing the business operations tax and applying it more fairly, and applying the business operations tax at a higher tax rate for marijuana businesses.
 - K. The City depends upon the revenue generated by the business operations tax to continue providing essential City services such as police, fire protection and emergency response.

SECTION 3

Section 3.08.035 is added to Chapter 3.08 of City Code to read as follows:

3.08.035 Clean technology business temporary exemption.

A. Clean technology businesses may be exempt from the business operations tax payment required by this chapter for up to three consecutive years.

1. In order to be eligible for this exemption, a person must file an application with the administrator as provided in this section.

2. This exemption only applies to the business operations tax, and does not apply to any business improvement assessments (BIA) or other payments that may be owed by the business entity.

3. Having this exemption does not obviate the need to post a valid BOT certificate at the business' premises as otherwise required by this code.

B. For purposes of this section, the following terms mean:

"Clean energy" means energy produced by wind, solar power, landfill gas, geothermal resources, ocean thermal energy conversion, quantifiable energy conservation measures, tidal energy, wave energy, biomass, biofuels, or hydrogen fuels derived from renewable sources. Clean energy does not include any fossil fuel-based energy production, including, but not limited to, clean coal, clean diesel, natural gas and hydrogen from natural gas, any nuclear-based energy production, waste-to-energy production via combustion or incineration, or other energy technologies derived from nonrenewable resources.

"Clean technology business" or "CTB" means a business in which at least seventy-five percent of all business activities carried on during the tax year are directly related to one or more of the following activities:

1. Research and development and/or associated manufacturing applying scientific advances to the production, distribution or storage of clean energy.

2. Research and development and/or associated manufacturing applying scientific advances to prototype or commercially viable materials and products powered by clean energy, including but not limited to single-passenger vehicles and fueling infrastructure.

3. Research and development, and/or manufacture of solar panels.

4. Research and development and/or associated manufacturing applying scientific advances to prototype or commercially viable techniques, materials and products that materially improve energy

efficiency, water conservation or air quality.

5. Research and development and/or associated manufacturing applying scientific advances to chemistry-based products and processes that use sustainable chemistry techniques to reduce or eliminate the use and generation of substances that are toxic to humans and the environment.

"Clean technology business review team" or "CTB review team" refers to a team comprised of the administrator plus a designee of the city manager who is knowledgeable about economic development and a designee of the city manager who is knowledgeable of land use planning. The purpose of the CTB review team is to review and make decisions regarding applications for the CTB exemption.

C. In order to be eligible for the CTB exemption, a business must:

1. Complete and submit an initial application to the administrator for review and evaluation.

2. After approval of a CTB exemption, file an annual sworn statement with the administrator affirming that the business continues to meet the eligibility criteria. The sworn statement must be filed with the administrator no later than 30 days before the start of the business' next tax year.

3. File an annual business operations tax renewal with the administrator showing the amount of tax and BIA owed, even though no tax may be owed after claiming the CTB tax exemption.

D. The administrator shall do the following:

1. No later than the effective date of the ordinance codified in this section, adopt regulations and forms regarding eligibility and the application process for the CTB exemption, which may be amended from time to time as the administrator deems necessary.

2. Review all applications for completeness and notify the applicant of any deficiency.

3. When the application is complete, convene a meeting of the CTB review team to consider and make a decision on eligibility for the CTB exemption.

4. If an application is approved by the CTB review team, the administrator shall issue a CTB exemption certificate to the applicant.

E. If an application is not approved by the CTB review team, the applicant may appeal the decision on the application to the city manager by filing a written notice of appeal with the administrator no later than ten days after notice of the decision. The city manager's decision on the application shall be final and conclusive.

F. The CTB exemption under this section shall be available and may be taken for each tax year that the business holds a valid CTB exemption for a maximum of three consecutive tax years. The opportunity to apply for an exemption shall expire December 31, 2022.

G. This section shall remain in effect only until December 31, 2025, and as of that date is repealed, unless a later enacted ordinance deletes or extends that date.

SECTION 4

Section 3.08.120 of the Sacramento City Code is amended to read as follows:

3.08.120 Application for first certificate.

A person making application for the first certificate to be issued hereunder, or for a newly established business or for a new ownership of a previously established business shall furnish to the administrator a sworn statement, on a form provided by the administrator, setting forth the following information:

- A. The exact nature or kind of business for which a certificate is requested;
- B. The place where such business is to be carried on, and if the same is not to be carried on at any permanent place of business, the places of residence of the owners of same;
- C. The fictitious name or names under which the business will be operated, if any, and the name of the person to whom the certificate is issued;
- D. Such further information as the administrator may deem necessary to enable him or her to issue the certificate applied for, including but not limited to gross receipts information for the current and prior years.

The administrator may also collect demographic information from each applicant. This data shall be obtained-provided on a voluntary basis. ~~The nature of the demographic information to be requested from applicants.~~

SECTION 5

Section 3.08.170 of the Sacramento City Code is amended to read as follows:

3.08.170 Gross receipts.

Every person not falling within the categories described in Sections 3.08.180, 3.08.190, and 3.08.200 and 3.08.205 of this chapter shall pay an annual business operations tax as follows:

A. Every person which has gross receipts of ~~ten-one hundred thousand dollars (\$10,000.00)~~ (\$100,000) or less shall pay a minimum tax of thirty dollars (\$30.00) for each year, as described below:

1. From July 1, 2011 through June 30, 2012, the minimum tax is thirty-six dollars (\$36.00);
2. From July 1, 2012 through June 30, 2013, the minimum tax is forty-two dollars (\$42.00);
3. From July 1, 2013 through June 30, 2014, the minimum tax is forty-eight dollars (\$48.00);
4. On and after July 1, 2014, the minimum tax is forty-eight dollars (\$48.00) plus the annual inflation adjustment made pursuant to subsection D.

B. Every person ~~which-who~~ has gross receipts in excess of ~~ten-one hundred thousand dollars (\$10,000.00)~~ (\$100,000) shall pay a tax as follows:

1. From July 1, 2011 through June 30, 2012, of thirty dollars (\$30.00) plus \$.0004-\$0.00048 for each dollar of gross receipts in excess of ten thousand dollars (\$10,000.00) for the reporting period;
2. From July 1, 2012 through June 30, 2013, \$.00056 for each dollar of gross receipts for the reporting period;
3. On and after July 1, 2013, \$.00064 for each dollar of gross receipts for the reporting period.

C. ~~provided, however, that the~~ The maximum annual tax liability for any person under this section shall be ~~five thousand dollars (\$5,000.00)~~ as follows:

1. From July 1, 2011 through June 30, 2012, the maximum tax is ten thousand dollars (\$10,000.00);
2. From July 1, 2012 through June 30, 2013, the maximum tax is twenty thousand dollars (\$20,000.00);
3. From July 1, 2013 through June 30, 2014, the maximum tax is thirty thousand dollars (\$30,000.00);
4. On and after July 1, 2014, the maximum tax is thirty thousand dollars (\$30,000.00) plus the annual inflation adjustment made pursuant to subsection D.

D. Commencing on July 1, 2014, the minimum tax amount described in subsection A.4, and the maximum tax amount described in subsection C.4, shall be automatically increased for inflation by the amount of increase in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, San Francisco area, all items (or any successor consumer price index), most recently available prior to the date of increase, provided, however, the amounts of the tax which result from the application of the automatic increases hereunder shall be rounded to the nearest whole dollar.

SECTION 6

Section 3.08.180 of the Sacramento City Code is amended to read as follows:

3.08.180 Professionals.

A. Professionals—General. Every person engaged in the profession of: accountant, architect, attorney, audiologist, bacteriologist, certified public accountant, engineer, dentist, mortician, optometrist, osteopath, physician, podiatrist, psychologist, surgeon, or veterinarian shall pay an annual business operations tax determined by the number of years the individual has been licensed by the state of California to practice such profession. The tax paid shall be in the following amounts:

1. From July 1, 2011 through June 30, 2012, the tax is:

Three years or less:	\$75.00 <u>\$90.00</u>
More than three years but less than seven years:	\$150.00 <u>\$180.00</u>
Seven years or more:	\$300.00 <u>\$360.00</u>

2. From July 1, 2012 through June 30, 2013, the tax is:

Three years or less:	<u>\$105.00</u>
More than three years but less than seven years:	<u>\$210.00</u>
Seven years or more:	<u>\$420.00</u>

3. From July 1, 2013 through June 30, 2014, the tax is:

Three years or less:	<u>\$120.00</u>
More than three years but less than seven years:	<u>\$240.00</u>
Seven years or more:	<u>\$480.00</u>

4. On and after July 1, 2014, the tax is the amounts described above in subsection A.3 plus the annual inflation adjustment made pursuant to subsection E.

5. Nothing in this subsection shall be construed or deemed to apply to any person engaged in any of the professions enumerated in this subsection solely as the employee of any other person conducting, carrying on or managing such business, occupations or professions in the city, except, however, that each such employee who has a contractual right to participate in the income or profits of the business, or is a shareholder of a professional corporation organized pursuant to Section 13400 et seq. of the California Corporations Code must pay the tax.

B. Every person who employs an individual who would be subject to a business operations tax under this section-subsection A if the individual was not exempted from the payment of said tax by the preceding paragraph-subsection A.5 shall pay an annual business operations tax of ~~thirty dollars (\$30.00)~~ the following amounts for each such exempt individual in their employ-:

1. From July 1, 2011 through June 30, 2012, the tax is ~~thirty-six dollars (\$36.00)~~ for each exempt employee;

2. From July 1, 2012 through June 30, 2013, the tax is ~~forty-two dollars (\$42.00)~~ for each exempt employee;

3. From July 1, 2013 through June 30, 2014, the tax is ~~forty-eight dollars (\$48.00)~~ for each exempt employee;

4. On and after July 1, 2014, the tax is ~~forty-eight dollars (\$48.00)~~ plus the annual inflation adjustment made pursuant to subsection E, for each exempt employee.

C-B. Professionals—Brokers. Every person engaged in the business of real estate broker, insurance broker, or stockbroker, whether full or part-time, shall pay an annual business operations tax of ~~one hundred dollars (\$100.00)~~ for the principal broker or broker of record plus ~~thirty dollars (\$30.00)~~ a business operations tax for each employee, agent, representative or independent contractor subject to supervision by a principal broker or broker of record who devotes time to handling of rents, listing property, collecting or selling property, soliciting or writing insurance policies or working as a salesperson or floorperson— (collectively "employee"), as follows:

1. From July 1, 2011 through June 30, 2012, the tax is \$120 for the principal broker or broker of record plus thirty-six dollars (\$36.00) for each employee;

2. From July 1, 2012 through June 30, 2013, the tax is \$140 for the principal broker or broker of record plus forty-two dollars (\$42.00) for each employee;

3. From July 1, 2013 through June 30, 2014, the tax is \$160 for the principal broker or broker of record plus forty-eight dollars (\$48.00) for each employee;

4. On and after July 1, 2014, the tax is \$160, adjusted for annual inflation pursuant to subsection E, for the principal broker or broker of record plus forty-eight dollars (\$48.00), adjusted for annual inflation pursuant to subsection E, for each employee.

D-C. Maximum Tax. The maximum annual tax payable by any firm under provisions of this section is ~~five thousand dollars (\$5,000.00)~~ the same as described in subsection C of section 3.08.170.

"Firm" is defined as any professional corporation, partnership or other business entity whose individual members share in the profits of the business entity.

E. Commencing on July 1, 2014, the tax amounts described for professionals in subsection A.4 and for their employees in subsection B.4, and for the principal broker and their employees, respectively, in subsection C.4, shall be automatically increased for inflation by the amount of increase in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, San Francisco area, all items (or any successor consumer price index), most recently available prior to the date of increase, provided, however, the amounts of the tax which result from the application of the automatic increases hereunder shall be rounded to the nearest whole dollar.

FD. Revenue Measure. Nothing contained in this chapter shall be construed as giving the city council, or any of the officers of the city in charge of administration of this chapter, any regulatory powers over any licensee who is engaged in the practice of a profession, trade, or calling and is one whose privilege to so engage in such profession, trade or calling is granted by the state or any of its agencies. As to such persons, and as ~~indicted~~ indicated in Section 3.08.020 of this chapter, this chapter shall be construed as existing for revenue purposes only.

SECTION 7

Section 3.08.190 of the Sacramento City Code is amended to read as follows:

3.08.190 Contractors.

A. Every person engaged in any type of business activity as a contractor which requires a city building permit in order to be performed shall pay a business operations tax at the time the building permit is issued at the rate ~~specified below of forty cents per one thousand dollars (\$1,000.00)~~ for each one thousand dollars (\$1,000.00) or fraction thereof of the value used to determine the charge for the building permit.

1. From July 1, 2011 through June 30, 2012, \$48 for each one thousand dollars (\$1,000.00) or fraction thereof of the value used to determine the charge for the building permit;

2. From July 1, 2012 through June 30, 2013, \$56 for each one thousand dollars (\$1,000.00) or fraction thereof of the value used to determine the charge for the building permit;

3. On and after July 1, 2013, \$.64 for each one thousand dollars (\$1,000.00) or fraction thereof of the value used to determine the charge for the building permit.

B. The maximum annual tax payable by any person under this section shall be ~~five fifty thousand dollars (\$5,000.00)~~ the same as described in subsection C of section 3.08.170. It shall be the responsibility of the contractor who has paid the maximum tax to establish at the time a building permit is issued that the maximum has been reached and that no additional tax is due.

SECTION 8

Section 3.08.200 of the Sacramento City Code is amended to read as follows:

3.08.200 Housing and shelter.

A. Rental of Residential Real Property. Every person engaging in the business of offering residential real property for rental shall pay ~~an a base~~ annual business operations tax of ~~twenty-five dollars (\$25.00) plus one dollar and seventy-five cents (\$1.75)~~ for the business plus a unit tax for each rental unit in excess of four units, ~~as follows:~~

1. From July 1, 2011 through June 30, 2012, the business operations tax is the base tax of thirty dollars (\$30.00) plus the per unit tax of two dollars and ten cents (\$2.10) for each rental unit in excess of four units;

2. From July 1, 2012 through June 30, 2013, the business operations tax is the base tax of thirty-five dollars (\$35.00) plus the per unit tax of two dollars and forty-five cents (\$2.45) for each rental unit in excess of four units;

3. From July 1, 2013 through June 30, 2014, the business operations tax is the base tax of forty dollars (\$40.00) plus the per unit tax of two dollars and eighty cents (\$2.80) for each rental unit in excess of four units;

4. On and after July 1, 2014, the business operations tax is the base tax of forty dollars (\$40.00), adjusted for annual inflation pursuant to subsection D, plus the per unit tax of two dollars and eighty cents (\$2.80), adjusted for annual inflation pursuant to subsection D, for each rental unit in excess of four units.

5. Any person with fewer than four or less units is exempt from payment of the business operations tax.

6. The maximum annual tax payable by any person is five thousand dollars (\$5,000.00) the same as described in subsection C of section 3.08.170.

B. Hotels, Motels. Every person engaging in the business of renting out accommodations substantially on a transient occupancy basis shall pay ~~an a base~~ annual business operations tax of ~~fifty dollars (\$50.00) plus seventy-five cents~~ for the business plus a unit tax for each rental unit in excess of four units per situs, ~~as follows:~~

1. From July 1, 2011 through June 30, 2012, the business operations tax is the base tax of sixty dollars (\$60.00) plus the per unit tax of ninety cents (\$0.90) for each rental unit in excess of four units per situs;

2. From July 1, 2012 through June 30, 2013, the business operations tax is the base tax of seventy dollars (\$70.00) plus the per unit tax of one dollar and five cents (\$1.05) for each rental unit in excess of four units per situs;

3. From July 1, 2013 through June 30, 2014, the business operations tax is the base tax of eighty dollars (\$80.00) plus the per unit tax of one dollar and twenty cents (\$1.20) for each rental unit in excess of four units per situs;

4. On and after July 1, 2014, the business operations tax is the base tax of eighty dollars (\$80.00), adjusted for annual inflation pursuant to subsection D, plus the per unit tax of one dollar and twenty cents (\$1.20), adjusted for annual inflation pursuant to subsection D, for each rental unit in excess of four units per situs.

5. The maximum annual tax payable for any situs is five thousand dollars (\$5,000.00) the same as described in subsection C of section 3.08.170.

C. Rental of Nonresidential Real Property. Persons engaging in the business of offering nonresidential

real property for lease or rental shall be taxed pursuant to Section 3.08.170 of this chapter.

D. Commencing on July 1, 2014, the tax amounts described for the base tax and the per unit tax, respectively, in subsections A.4 and B.4, shall be automatically increased for inflation by the amount of increase in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, San Francisco area, all items (or any successor consumer price index), most recently available prior to the date of increase, provided, however, the resulting adjustments shall be rounded as follows:

1. The amounts of the base tax which result from the application of the automatic increases hereunder shall be rounded to the nearest whole dollar;

2. The amounts of the per unit tax which result from the application of the automatic increases hereunder shall be rounded to the nearest whole cent.

SECTION 9

Section 3.08.205 is added to Chapter 3.08 of the City Code to read as follows:

3.08.205 Marijuana businesses.

A. Every person engaged in a marijuana business in accordance with Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code § 11362.7 et seq.), shall pay an annual business operations tax as follows:

1. On and after July 1, 2011, a maximum of four percent (4%) of each dollar of gross receipts for the reporting period.

2. Notwithstanding the tax rate imposed in subsection A.1, the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may increase such tax rate from time to time not to exceed the maximum tax rate imposed by subsection A.1.

B. For purposes of this section, the following terms have the following meanings:

"Gross receipts" has the meaning as defined in section 3.08.020, as it pertains to the marijuana business' reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products or goods sold by the marijuana business.

"Marijuana" or "Cannabis" has the meaning as defined in California Health and Safety Code section 11018.

"Marijuana 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. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in accordance with Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code § 11362.7 et seq.) A marijuana business includes medical marijuana "cooperatives" and "collectives" that are established as not for profit businesses.

"Reporting period" means a year, quarter or calendar month, as determined by the administrator.

C. The provisions of section 3.08.210 do not apply to any marijuana business.

SECTION 10

Section 3.08.205 is added to Chapter 3.08 of the City Code to read as follows:

3.08.205 Marijuana businesses.

A. Every person engaged in a marijuana business in accordance with Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code § 11362.7 et seq.), shall pay an annual business operations tax as follows:

1. On and after July 1, 2011, a maximum of four percent (4%) of each dollar of gross receipts for the reporting period.

2. Notwithstanding the tax rate imposed in subsection A.1, the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may increase such tax rate from time to time not to exceed the maximum tax rate imposed by subsection A.1.

B. Every person engaged in a marijuana business pursuant to the Regulate, Control, and Tax Cannabis Act of 2010, Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300), shall pay an annual business operations tax as follows:

1. On and after July 1, 2011, a maximum of ten percent (10%) of each dollar of gross receipts for the reporting period.

2. Notwithstanding the tax rate imposed in subsection B.1, the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may increase such tax rate from time to time not to exceed the maximum tax rate imposed by subsection B.1.

C. For purposes of this section, the following terms have the following meanings:

"Gross receipts" has the meaning as defined in section 3.08.020, as it pertains to the marijuana business' reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products or goods sold by the marijuana business.

"Marijuana" or "Cannabis" has the meaning as defined in California Health and Safety Code section 11018.

"Marijuana 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. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in accordance with Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code § 11362.7 et seq.), or Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300). A marijuana business includes medical marijuana "cooperatives" and "collectives" that are established as not for profit businesses.

"Reporting period" means a year, quarter or calendar month, as determined by the Administrator.

D. The provisions of section 3.08.210 do not apply to any marijuana business.

SECTION 11

Section 3.08.220 of the Sacramento City Code is amended to read as follows:

3.08.220 When and how payable.

A. Quarterly Payment Periods Established—Payment Due. For purposes of this chapter, the annual calendar shall be divided into four quarters consisting of three-month periods commencing January 1st, April 1st, July 1st, and October 1st, of each year. All annual taxes shall be due and payable in advance on the first day of the quarter immediately following expiration of any existing certificate.

B. New Businesses—No Proration. If a person establishes a business on or after July 1, 1984 for which

a tax is payable, his or her first tax period shall commence on the day when he or she first engages in said business and shall terminate on the last day of the third quarter following the quarter during which the person first engaged in said business, and the tax payment for that period shall not be reduced by the administrator even if the tax period is less than twelve (12) full calendar months. Thereafter, the annual tax period shall be for twelve (12) full months and the full annual tax shall be due and payable on the first day of the new annual period. The administrator may assign a shorter tax period, in such case the annual tax shall be reduced on a proportionate basis by the administrator.

C. Contractor Payment. A contractor's business operations tax shall be due and payable at the time the city building permit is issued.

D. Notwithstanding subsections A and B, if the administrator requires monthly reporting, the business operations tax of a business shall be payable monthly based on the gross receipts of the business for the subject month. The amount of tax that is owed in one month shall be remitted to the administrator on or before the last day of the following month. Failure to pay the tax when due may result in suspension or revocation of the taxpayer's business operations tax certificate.

SECTION 12

Section 3.08.240 of the Sacramento City Code is amended to read as follows:

3.08.240 Penalties.

A. Thirty (30) days after an annual business operations tax is due and payable, if a business operations tax is not paid on or before the due date, a penalty of fifteen dollars (\$15.00) shall be added to the unpaid amount. After thirty (30) additional days, if the tax is still delinquent, an additional penalty of one hundred dollars (\$100.00) shall be added to the unpaid amount to cover the costs of enforcement.

B. Subsection A of this section does not apply to business operations taxes which are one or more years delinquent and are paid to the administrator between April 1, 2011 and June 30, 2011. This brief amnesty period is a one-time opportunity for delinquent taxpayers who owe business operations tax to come forward and pay their delinquent taxes prior to the tax rate increase that will take effect on July 1, 2011, without being penalized for doing so.

SECTION 13

Alternative provisions. This ordinance incorporates the addition of alternative versions of section 3.08.205 of the Sacramento City Code by both Section 9 and Section 10 of the ordinance. Section 10 shall only become operative if the Regulate, Control, and Tax Cannabis Act of 2010, Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300) is approved by the voters and becomes effective on or before July 1, 2011, in which case Section 9 of this ordinance shall not become operative.

SECTION 14

Amendment or Repeal. The business operations tax imposed by this ordinance may be decreased, repealed or amended by the City Council, but may not be increased without a vote of the people as required in California Constitution Article XIII C and California Government Code Section 53750(h).

SECTION 15

Audit of business operations tax. The City shall annually audit the business operations taxes imposed by this Section to verify that tax revenues have been properly expended in accordance with the law. The annual audit shall be performed under the direction of the Director of Finance by a qualified independent third party employing reasonable, cost-effective procedures.

SECTION 16

Severability. If any portion of this ordinance is for any reason held to be invalid or unenforceable by

a court of competent jurisdiction, the remaining portions of this ordinance shall remain in effect. The people of the City of Sacramento hereby declare that they would have adopted each portion of this ordinance, notwithstanding the fact that any one or more portions of this ordinance is declared invalid or unenforceable and, to that end, the provisions of this ordinance are severable. If this ordinance is declared to be invalid, then the provisions of sections 3.08.170, 3.08.180, 3.08.190, 3.08.200, 3.08.210, and 3.08.240, as those sections read on November 1, 2010, will become effective.

SECTION 17

Majority Approval; Effective Date. This ordinance shall be effective only if approved by a majority of the voters voting on this ordinance and shall go into effect ten days after the vote is declared by City Council.

RESOLUTION NO. _____

ADOPTED BY THE SACRAMENTO CITY COUNCIL
ON DATE OF _____

APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS IN A QUESTION RELATING TO UPDATING AND MODERNIZING THE BUSINESS OPERATIONS TAX AND INCREASING THE TAX RATES THEREOF, TO BE INCLUDED WITH THE CONSOLIDATED GENERAL MUNICIPAL ELECTION OF NOVEMBER 2, 2010.

BACKGROUND

- A. The City of Sacramento established a business operations tax in 1975 and its structure has remained largely unchanged since its inception. The business operations tax rates have not been modified since 1991 and today Sacramento's per capita business operations tax revenue ranks lowest among the State's ten largest cities.
- B. While some cities do not place a cap on their business operations tax, Sacramento's business operations tax includes a maximum cap of \$5,000 annually, which over time has resulted in a regressive tax that places a disproportionate share of the tax burden on smaller and medium sized businesses.
- C. The City desires to raise the cap on the business operations tax over a three year period to a maximum of \$30,000 in order to apply the tax in a more equitable manner so that small and medium sized businesses do not bear a disproportionate tax burden.
- D. New business trends present an opportunity to modernize Sacramento's business operations tax by providing tax incentives for clean-tech businesses and by applying the business operations tax to marijuana businesses.
- E. The City also desires to update the business operations tax rates so that its per capita business operations tax revenues are more in line with that of other larger cities throughout the State.
- F. The City also wants to provide a brief amnesty period to waive past penalties on delinquent business operations taxes of businesses that pay their delinquent taxes during the amnesty period.
- G. The ordinance will require annual financial audits of tax expenditures and will require voter approval of increases to the tax rates.
- H. Updating and modernizing the business operations tax and increasing the tax rates to reflect the realities of the current economic times require voter approval under the California Constitution.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1: That the City Council approves for submittal to the voters at the November 2, 2010 General Municipal Election the following question:

To help preserve essential local services like fire, police, and 9-1-1 emergency response, shall City of Sacramento's 19-year old business operations tax be updated by taxing marijuana businesses, phasing in tax rate adjustments for other businesses over three years, creating a three-year tax exemption for clean-tech businesses, increasing the maximum tax paid by multi-million dollar businesses, providing inflationary adjustments

beginning July 2014, and requiring independent audits?

YES _____ NO _____

Adopted by the City of Sacramento City Council on July 13, 2010, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Mayor Kevin Johnson

ATTEST:

Shirley Concolino, City Clerk