

## **RESOLUTION NO. 2010-432**

Adopted by the Sacramento City Council

July 20, 2010

### **CALLING AND GIVING NOTICE OF THE SUBMITTAL TO THE VOTERS OF VARIOUS QUESTIONS TO BE INCLUDED IN THE CONSOLIDATED GENERAL MUNICIPAL ELECTION OF NOVEMBER 2, 2010**

#### **BACKGROUND**

- A. On January 26, 2010, the City Council adopted a resolution calling for, and giving notice of, a General Municipal Election to be held on November 2, 2010. The same day, the City Council also adopted a resolution requesting consolidation of the General Municipal Election with the Statewide General Municipal Election of November 2, 2010.
- B. On June 22, 2010, the City Council accepted the County Registrar of Voters "certificate of petition" certifying the initiative petition as sufficient, and approved the placement of the Utilities Rate Hike Rollback Act of 2010 initiative ordinance on the November 2, 2010, ballot.
- C. On July 13, 2010, the City Council approved for placement on the November 2, 2010, ballot a measure to increase the business operations tax rates for marijuana businesses (the "Marijuana Business Tax").
- D. The City Council desires to submit the various measures to the voters at the November 2, 2010, General Municipal Election.

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

- Section 1: The City Council hereby orders that the following questions be submitted to the voters in the City of Sacramento, California on Tuesday, November 2, 2010:

**Measure – Utilities Rate Hike Rollback Act of 2010**

<p>“Shall the ordinance repealing increases in monthly water, sewer, and garbage collection/solid waste disposal service rates approved by the Sacramento City Council in June 2009, setting these monthly utility service rates at the amounts in effect on February 10, 2010, and allowing the City Council to increase these rates without voter approval beginning July 2012 only if the rates are not increased above the annual increase in a specified consumer price index, be adopted?”</p>	YES
	NO

**Measure – Marijuana Business Tax**

<p>“Marijuana Business Tax. To help preserve essential services like fire, police, and 911 emergency response, shall City of Sacramento's business operations tax be updated by taxing businesses engaged in medical marijuana transactions, and in commercial production and sale of marijuana if legalized by California voters, at maximum rates of 4% and 10%, respectively, of gross receipts, with City Council discretion to lower tax rates or raise tax rates to the maximums, and requiring independent audits?”</p>	YES
	NO

- Section 2: The text of the proposed measures to be submitted to the voters are attached as Exhibits A-1 and A-2.
- Section 3: The ballots to be used at the election shall be in the form and content as required by law.
- Section 4: The polls for the election shall open at 7:00 a.m. on the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, except as provided in section 14401 of the Elections Code.
- Section 5: In all particulars not recited in this resolution, the election shall be held and conducted as provided by the law for holding municipal elections.
- Section 6: Notice of the time and place of holding the election is hereby given and the City Clerk is hereby authorized, instructed and directed to give further or additional notice of the election, in the time, form, and manner required by law.
- Section 7: The City Clerk shall certify the passage and adoption of this resolution and enter it into the book of original resolutions.

**Table of Contents:**

- Exhibit A-1 – Measure Text (Utilities)
- Exhibit A-2 – Measure Text (Marijuana)

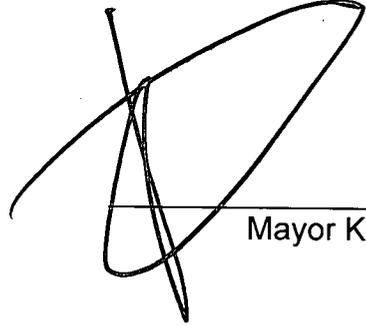
Adopted by the City of Sacramento City Council on July 20, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

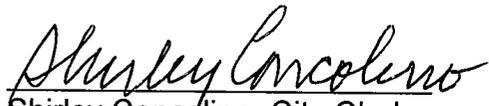
Abstain: None.

Absent: None.

A handwritten signature in black ink, consisting of several overlapping loops and a vertical stroke, positioned above a horizontal line.

Mayor Kevin Johnson

Attest:

  
Shirley Concolino, City Clerk

**Exhibit A-1**

**UTILITIES RATE HIKE ROLL BACK ACT OF 2010**

**BE IT ENACTED BY THE PEOPLE OF THE CITY OF SACRAMENTO:**

SECTION 1: Findings and Purpose.

The people of the City of Sacramento hereby make the following findings and declare that their purpose in enacting this Utilities Rate Hike Rollback Act of 2010 (or "Act") is as follows:

(a) Findings. The residents, including seniors, renters, homeowners and low and middle income families, and businesses of Sacramento cannot afford to pay the escalating monthly service rates for city utilities approved by the Sacramento City Council. Further, these escalating rates present a clear and present threat to the business climate of Sacramento and the economic health and well being of its citizens.

(b) Purpose. The purpose of the Act is to: (1) reduce monthly utilities rates in the City of Sacramento by repealing and canceling increases in monthly service rates approved by the Sacramento City Council on June 23, 2009 and placed into effect as of July 1, 2010; (2) return monthly service rates to those in effect on February 10, 2010; and (3) make provision for the City of Sacramento to increase monthly service rates without a vote of the people subject to specified conditions.

SECTION II: Repeal of July 1, 2010 Monthly Service Rate Increases.

Sections 13.04.720 (concerning water rates, charges and fees), 13.08.400 (concerning sewer rates, charges and fees) and 13.10.130 (concerning garbage collection/solid waste disposal rates, charges and fees) of the Sacramento City Code are hereby amended to add the following provision at the end of each of said sections:

"Notwithstanding the foregoing, the increases in monthly service rates for residential, commercial, industrial and other ratepayers (collectively, "monthly service rates") set forth in Resolution No. 2009-445, passed and adopted by the Sacramento City Council on June 23, 2009 (hereinafter, the "Resolution"), that are scheduled under the Resolution to become effective on July 1, 2010 are hereby repealed and cancelled as of July 1, 2011. On and after July 1, 2011, monthly service rates shall be the same as the monthly service rates which were in effect on February 10, 2010. The repeal and cancellation of the scheduled July 1, 2010 increases in monthly service rates hereunder shall have no retroactive effect and shall not give rise to any claim for refunds."

SECTION III: Provision Under Elections Code Section 9217 for Future Rate Increases Without Voter Approval.

Sections 13.04.720, 13.08.400 and 13.10.130 of the Sacramento City Code are hereby further amended to add the following new paragraph "B" at the end of each of said sections, with the existing language of each of such section (as amended by Section II above) hereinafter designated paragraph "A" thereof:

"B. Notwithstanding the limitations imposed on the City of Sacramento by Article II, Section 10 of the California Constitution and Elections Code Section 9217 as a consequence of the voters' passage of this Act, the City Council shall have the authority to establish, from time to time, on and after July 1, 2012, without a vote of the people, higher or lower monthly service rates than those mandated under Section II above provided that the City Council, in the exercise of such authority, does not increase any of the monthly service rates by a percentage amount which exceeds total increases in the cost of living in the one-year period preceding the effective date of such increase. This Subsection B shall be deemed a "provision" within the meaning of the final sentence of Elections Code Section 9217 and adjustments by the City Council in monthly service rates permitted under this Subsection B shall be construed as permitted "amendments" of the Act within the meaning of Article II, Section 10(c) of the California Constitution.

For the purposes of this section, the following terms shall have the following meanings: (1) an "increase" of a "monthly service rate" shall be construed to include all increases (including the proposed increase) in a monthly service rate occurring in the same fiscal year; (2) the phrase "one-year period preceding the effective date of such increase" shall mean a period of time beginning on the first day of the fourteenth (14th) calendar month prior to the effective date of any increase and ending twelve (12) calendar months thereafter; and (3) the phrase "increases in the cost of living" shall mean increases in the All Items Consumer Price Index for All Urban Consumers for the U.S. City Average, with an index base period of 1982-1984=100, published by the Bureau of Labor Statistics, United States Department of Labor (hereinafter, the "CPI-U"). If the CPI-U, as now constituted, compiled and published shall cease to be compiled and published, or is calculated on a significantly different basis following the effective date of this measure, the most comprehensive official index published that most closely approximates the rate of inflation shall be used in its place and stead for purposes of this section."

#### SECTION IV: Severability.

If any provision of this measure or the application thereof to any person, entity or circumstance is held invalid, that invalidity shall not affect other provisions or applications, and to this end the provisions of this measure are severable.

**ORDINANCE NO. 2010-020**

Adopted by the Sacramento City Council

July 20, 2010

**AN ORDINANCE AMENDING SECTION 3.08.120, SECTION 3.08.170  
AND ADDING SECTION 3.08.205 TO CHAPTER 3.08 TITLE 3 OF THE  
SACRAMENTO CITY CODE APPLYING THE BUSINESS OPERATIONS  
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 and 3.08.170 of, and adds 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. Through the passage of Proposition 215 in 1996, the voters of California authorized the use of marijuana for medical purposes.
- B. Every person engaged in business activity in the City of Sacramento is required to obtain a business operations tax certificate and pay the City's business operations tax.
- C. The City's business operations tax is based, in part, on the type of business subject to the tax. Currently, medical marijuana businesses are taxed like most other businesses, based on gross receipts.
- D. Proposition 19, if approved by the voters at the November 2, 2010, General Election, will legalize the commercial sale, use, and possession of marijuana for other than medical use.
- E. 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. To help mitigate the economic burden that this tax may have on users of medical marijuana, it is the intent of the City Council to tax medical marijuana businesses at a lower rate than businesses that engage in the commercial sale of marijuana for nonmedical use.

- F. The City now desires to tax marijuana businesses as a specific category subject to a higher tax rate, and to give the City Council authority to implement lower rates as it deems appropriate.
- G. The ordinance will require annual financial audits of tax expenditures and will require voter approval of increases to the tax rates above the authorized maximum rates.
- H. Increasing the business operations tax requires voter approval.
- I. A measure that would give effect to this ordinance is proposed for placement on the November 2, 2010, ballot.
- J. The City depends upon the revenue generated by the business operations tax to continue providing essential City services supported by the City's general fund, such as police, fire protection, and emergency response.

### SECTION 3

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, 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 business is not to be carried on at any permanent place of business, the places of residence of the owners of the business;
- 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 4

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, 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 thousand dollars (\$10,000.00) or less shall pay a tax of thirty dollars (\$30.00) for each year.
- B. Every person which has gross receipts in excess of ten thousand dollars (\$10,000.00), shall pay a tax of thirty dollars (\$30.00) plus \$.0004 for each dollar of gross receipts in excess of ten thousand dollars (\$10,000.00) for the reporting period; provided, however, that the maximum annual tax liability for any person under this section shall be five thousand dollars (\$5,000.00).

## SECTION 5

A. This Section 5 shall become operative only if the "Regulate, Control, and Tax Cannabis Act of 2010," adding Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300), is not approved by the voters in the General Election on November 2, 2010.

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

### **3.08.205 Marijuana businesses.**

- A. Every person engaged in a marijuana business shall pay an annual business operations tax as follows:
  - 1. On and after July 1, 2011, four percent (40/0) 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 by resolution increase such tax rate from time to time, not to exceed the maximum rate established under 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, goods, or services sold or provided by the marijuana business.

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

"Marijuana 'business'" means a business activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, providing, or selling 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 section 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 6

A. This Section 6 shall become operative only if the "Regulate, Control, and Tax Cannabis Act of 2010," adding 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.

B. Section 3.08.205 is added to Chapter 3.08 of the Sacramento, City Code to read as follows:

### **3.08.205 Marijuana businesses.**

A. Every person engaged in a marijuana business under 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 section 11362.7 et seq.) shall pay an annual business operations tax as follows:

1. On and after July 1, 2011, 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 by resolution increase such tax rate from time to time, not to exceed the maximum tax rate established under subsection A.1.

B. Every person engaged in a marijuana business pursuant to the "Regulate, Control, and Tax Cannabis Act of 2010," adding 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, ten percent (10%) of each dollar of gross receipts for the reporting period.

2. Notwithstanding the tax rate imposed in subsection 8.1, the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may by resolution increase such tax rate from time to time, not to exceed the maximum tax rate established under subsection 8.1.

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, goods, or services sold or provided by the marijuana business. "Marijuana" or "Cannabis" has the meaning as defined in California Health and Safety Code section 11018. "Marijuana business" means a business activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, providing, or selling 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 section 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 7

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

#### SECTION 8

Audit of business operations tax. The City shall annually audit the business operations taxes imposed by this ordinance 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 9

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 anyone or more portions of this ordinance is declared invalid or unenforceable and, to that end, the provisions of this ordinance are severable.

#### SECTION 10

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 on July 1, 2011.