

Resolution 2010-24
Exhibit D-2 revised after agenda prepared.

**BE IT ORDAINED BY THE PEOPLE OF THE CITY OF ALBANY AS
FOLLOWS:**

Section 1. That Section 5-2.3 of the Albany Municipal Code be amended to read as follows:

Section 5-2.3 Business License Tax Rates ~~Amount of License Tax Based on Number of Employees.~~

a. Except as otherwise provided in this Chapter 5 of the Albany Municipal Code and subsection, every person commencing, transacting and carrying on in a fixed place of business in the City any business other than those enumerated in subsections 5-2.2 and 5-2.4 shall pay an annual license tax based upon the average number of employees employed in such business as set forth in the resolution duly adopted by the City Council, or as set forth by ordinance. Persons taking out business license for less than one (1) full year shall pay, in addition to the prorata share of the above license tax, an administrative charge as set forth in the Master Fee Schedule for each license period in excess of one (1) in any calendar year. A business located within Albany may not take out more than two (2) licenses each year.

b. Every person commencing, transacting and carrying on at other than a fixed place of business in the City any business other than those enumerated in subsection 5-2.2 shall pay an annual license tax based upon the average number of employees and upon the annual rates provided for in the preceding paragraphs.

Section 2. That Section 5-2.13 of the Albany Municipal Code be amended to read as follows:

Section 5-2.13 Exemptions, Generally.

Unless otherwise provided in this Chapter 5 of the Albany Municipal Code,
pPersons in the following categories shall be exempt from the payment of a license tax:

a. *Charitable Organizations.* Any charitable institution, organization or association organized for charitable purposes and conducted for charitable purposes only.

b. *Charitable Entertainments.* Any person conducting or staging any concert, exhibition, lecture, dance, amusement or entertainment where the receipts, if any, derived therefrom are to be used solely for charitable or benevolent purposes and not for private gain.

c. *Religious, Educational, Etc., Organizations.*

1. Any religious, fraternal, educational, military, State, County or Municipal organization or association for the conducting of any business which is open to the members thereof only and not open to the public.

2. Any religious, fraternal, educational, military, State, County or Municipal organization or association for the conducting or staging of any amusement or entertainment, concert, exhibition, lecture, dance or athletic event, when the receipts derived are to be used wholly for the benefit of such organization and not for private gain of any person.

3. Any student organization or association sanctioned by the educational institution from which the membership is drawn, for the conducting or staging of any amusement or entertainment, concert, exhibition, lecture, dance or athletic event, when the receipts derived are to be used wholly for the benefit of such organization and not for private gain of any person.

d. *Political Party, Etc.* Any party, group, association, individual, proponent or opponent of any political or elective proposition or candidate for office, whether national, local or State; provided, that the party, association, group, individual, proponent or opponent shall not advocate the overthrow of national, State or local government.

e. *Rubbish and Garbage Collectors.* Any person collecting rubbish or garbage under contract with the City for the portion of such business done under such contract.

f. *Solicitors in Interstate Commerce.* Solicitors engaged in interstate commerce, when a license tax casts a burden upon such interstate commerce. Any person claiming exemption upon this ground shall, at the time of making the application for exemption, pay an administrative fee to cover the cost of investigation and registration of the claim as set forth in the Master Fee Schedule.

g. *Minors.* Every natural person of the age of sixteen (16) years or under whose annual gross receipts from any and all business are five hundred (\$500.00) dollars, or less shall be subject to license fees as set forth by resolution.

Section 3. That a new Section 5-10 of the Albany Municipal Code is enacted and adopted to read as follows:

Section 5-10. Cannabis Businesses.

Section 5-10.1 Cannabis Businesses-Defined.

A. Every Cannabis Business whether it is a Nonprofit Organization as defined in Section 5-10.3 or a for profit business shall pay an annual business license tax as is set forth in Chapter V and the sections hereunder.

B. For purposes of this Section, "Cannabis Business" means any activity regulated or permitted by Section 20.20.110 Medical Marijuana Dispensaries that involves planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing, any part of the plant Cannabis sativa L. or any of its derivatives, except for cultivation or harvesting that is solely incidental to residential use. "Cannabis Business" shall also include any of the foregoing activities that is not regulated or permitted by Chapter 20.20.110 but is authorized by state law. A Cannabis Business shall be deemed a "Business" requiring a business license under Sections 5-2.1 and 5-2.3 of the Albany Municipal Code as that term is used in this Chapter.

Section 5-10.2 License Tax Rates for Cannabis Businesses.

A. Every for profit cannabis business shall pay \$25.00 per thousand dollars of gross receipts as and for its business license tax.

B. Notwithstanding Section 5-2.13, there is imposed on every cannabis business or organization that is a Nonprofit Organization, including all of its ancillary locations, regardless of the number of square feet it occupies, a tax of \$25.00 per square foot on all business improvements occupied by that Cannabis Business. For purposes of this Section, all of the square feet of business improvements owned, rented, leased or otherwise occupied or used by a Cannabis Business within the City shall be cumulated.

C. The tax imposed by this Section 5-10.2 may be increased annually in accordance with Section 5-2.2 of the Albany Municipal Code.

Section 5-10.3. Definitions.

For purposes of this Section, the following terms shall have the following meanings:

"Building" means any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "building" includes the word structure."

"Business improvements" means square footage used, on a regular basis, for the operation of a nonprofit organization as defined in Article XIII Section 26 of the California Constitution, regardless of whether it is owned or leased.

"Cannabis Business" means a location where any activity that is taxable under Chapter V of the Albany Municipal Code takes place.

"Improvements" means all buildings or structures erected or affixed to the land.

"Nonprofit Organization" means any association, corporation or other entity that is exempt from taxation measured by income or gross receipts under Article XIII, Section 26 of the California Constitution.

"Square foot" and "square footage" means the horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display, storage, service or production areas.

"Structure" means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

Section 5-10.4. Modification, Repeal, or Amendment.

The City Council may repeal the ordinance codified in this section, or amend it in a manner which does not result in an increase in the charge imposed herein, without further voter approval. If the City Council repeals said ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the charge imposed herein.

Section 5-10.5. Administration of Section 5.

The City's Administrator or Manager, or designee, may promulgate regulations to implement and administer this Section 5-10.

Section 4. Appropriation Limit

Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this ordinance for each of the four fiscal years from 2011-2012 through 2014-2015.

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

Section 6. Effective Date. The provisions of this ordinance shall become effective upon passage by the voters and shall apply to all businesses covered by this ordinance upon its effective date.