

OPTION 2

EXHIBIT "A"

AN ORDINANCE AMENDING SECTION 3-1.124, "ANNUAL BUSINESS TAX BASED ON GROSS RECEIPTS", AND ADDING SECTION 3-1.129, "CANNABIS BUSINESSES", TO CHAPTER 1, "BUSINESS TAXES", OF TITLE 3, "FINANCE", OF THE CITY OF EMERYVILLE MUNICIPAL CODE

WHEREAS, in 1996 the California voters approved Proposition 215, "The Compassionate Use Act," which provides that qualified patients may obtain and use marijuana for medical purposes with a physician's recommendation and will not be subject to certain criminal penalties under state law; and

WHEREAS, in 2003, the state Legislature enacted Senate Bill 420, the "Medical Marijuana Program Act," as a supplement to The Compassionate Use Act, which allows cities to adopt and enforce rules consistent with the Medical Marijuana Program Act; and

WHEREAS, on October 9, 2015, Governor Brown approved a series of bills commonly referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"), effective January 1, 2016, which established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis; and

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64, known as the "Control, Regulate and Tax Adult Use of Marijuana Act" ("AUMA"), which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of recreational cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis; and

WHEREAS, effective September 1, 2017, the City Council of the City of Emeryville enacted Ordinance No. 17-003 to establish a comprehensive regulatory system governing the manufacture, distribution, processing, storing, testing, labeling, transportation, research and development, delivery and sale of cannabis or cannabis products for commercial purposes within its jurisdiction; and

WHEREAS, the City Council of the City of Emeryville desires to impose a tax on all cannabis businesses that may operate within the City of Emeryville; and

WHEREAS, California Constitution Article XIII C, Section 2(b), provides that no

local government may impose a general tax unless and until that tax is submitted to the electorate and approved by a majority vote; now, therefore,

THE PEOPLE OF THE CITY OF EMERYVILLE ORDAIN AS FOLLOWS:

SECTION ONE. AMENDING SECTION 3-1.124, “ANNUAL BUSINESS TAX BASED ON GROSS RECEIPTS”, OF CHAPTER 1, “BUSINESS TAXES”, OF TITLE 3, “FINANCE”, OF THE CITY OF EMERYVILLE MUNICIPAL CODE. Section 3-1.124, “Annual Business Tax Based On Gross Receipts”, of Chapter 1, “Business Taxes”, of Title 3, “Finance”, of the City Of Emeryville Municipal Code is hereby amended to read as follows:

Section 3-1.124. Annual Business Tax Based on Gross Receipts.

Every person transacting and carrying on any business within the City of Emeryville, other than those enumerated in Sections 3-1.125, 3-1.126, 3-1.127, 3-1.128 and 3-1.129, shall pay an annual business tax equal to the greater of twenty-five dollars (\$25.00) or one-tenth of one percent (0.10%) of the annual gross receipts of such business.

SECTION TWO. ADDING SECTION 3-1.129, “CANNABIS BUSINESSES”, TO CHAPTER 1, “BUSINESS TAXES”, OF TITLE 3, “FINANCE”, OF THE CITY OF EMERYVILLE MUNICIPAL CODE. Section 3-1.129, “Cannabis Businesses”, is hereby added to Chapter 1, “Business Taxes”, of Title 3, “Finance”, of the City of Emeryville Municipal Code to read as follows:

Section 3-1.129. Cannabis Businesses.

(a) Every person engaged in cannabis business in the City shall pay, for the privilege of operating a cannabis business in the City, a business tax at a rate of up to six percent (6%) of annual gross receipts. The tax under this section shall not be imposed on cannabis businesses unless and until the City Council, by resolution, takes action to set a tax rate not to exceed six percent (6%) of annual gross receipts.

(b) During the first five (5) year period following the initial establishment of the tax rate by resolution of the City Council under subsection (A), the tax rate may not be changed. Following the first five (5) year period, the tax rate may only be changed by a four-fifths (4/5) vote of all members of the City Council.

(c) Notwithstanding the maximum tax rate of six percent (6%) of annual gross receipts established under subsection (a), the City Council may, in its discretion and subject to subsection (b), at any time by resolution, implement a lower tax rate for all cannabis businesses or establish differing tax rates for different categories of cannabis businesses, as defined in such resolution, subject to the maximum rate of six (6%) percent of annual gross receipts. The City Council may also, in its discretion and subject to subsection (b), at any time by resolution, increase any such tax rate from time to time, not to exceed the maximum tax rate of six percent (6%) of annual gross receipts established

under subsection (a).

(d) For purposes of this section, cannabis business shall have the same meaning as set forth in Chapter 28 of Title 5 of the City of Emeryville Municipal Code.

SECTION THREE. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby, and to this end the provisions of this Ordinance are declared to be severable.

SECTION FOUR. CODIFICATION. Sections One and Two of this Ordinance shall be codified in the City of Emeryville municipal code. Sections Three, Four, Five and Six of this Ordinance shall not be codified.

SECTION FIVE. COMPLIANCE WITH CEQA. The action to adopt this Ordinance involves the establishment of a business license tax on cannabis businesses and does not involve any commitment to any specific project that may result in a potentially significant impact on the environment and thus is not a “project” subject to the requirements of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) pursuant to CEQA Guidelines Section 15378 (b)(4); additionally, it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment, and accordingly the adoption of this Ordinance is exempt from the provisions of CEQA pursuant to the “general rule” at CEQA Guidelines Section 15061(b)(3).

SECTION SIX. EFFECTIVE DATE. This Ordinance relates to the establishment of a business license tax on cannabis businesses in the City of Emeryville authorized pursuant to the provisions of Article 3.7 of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code (Sections 53720-53730), for unrestricted general revenue purposes, and submitted to the City of Emeryville electorate at an election called for November 6, 2018. This Ordinance may be approved by a majority vote of the City of Emeryville electorate voting on the measure at the election. If this Ordinance is approved by the City of Emeryville electorate as outlined above, then this Ordinance shall become effective ten (10) days following the date the vote is declared by the City Council in accordance with Elections Code Section 9217.

(The foregoing Ordinance, if approved by a vote of the People of the City of Emeryville on November 6, 2018, will be adopted by Declaration of the November 6, 2018 election results by the City Council of the City of Emeryville.)