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Approved as to Form and Legality

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

A RESOLUTION SUBMITTING, ON THE COUNCIL'S OWN MOTION, TO THE ELECTORS AT THE NOVEMBER 2, 2010 STATEWIDE GENERAL ELECTION, A PROPOSED ORDINANCE ESTABLISHING A NEW SOLID WASTE REMOVAL USERS TAX AND A NEW WATER USERS TAX EACH EQUAL TO 7.50% [OR ____ (NEW RATE)] OF THE SERVICE CHARGES; [AND/OR REDUCING THE UTILITY USERS TAX RATE IN OAKLAND MUNICIPAL CODE CHAPTER 4.28, INCLUDING SECTIONS 4.28.030, 4.28.040, 4.28.050, 4.28.060, AND 4.28.070;] AMENDING CHAPTER 4.28 OF THE OAKLAND MUNICIPAL CODE, TELEPHONE UTILITY USERS TAX TO EXPAND THE DEFINITION OF "TELEPHONE COMMUNICATION SERVICES" TO INCLUDE MODERN COMMUNICATIONS TECHNOLOGY NOT CURRENTLY TAXED WITHOUT INCREASING THE TAX RATE; AND DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE NOVEMBER 2, 2010 STATEWIDE GENERAL ELECTION

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WHEREAS, the Mayor and the City of Oakland City Council ("City Council") are committed to environmental conservation efforts and;

WHEREAS, Waste Management of Alameda County provides solid waste removal services to properties, businesses and residences which are often referred to as garbage services; and

WHEREAS, Waste Management of Alameda County charges solid waste removal users for its services; and

WHEREAS, the East Bay Municipal Utility District ("EBMUD") provides water to properties, homes and businesses and issues water bills to water users that include EBMUD's charges water services; and

WHEREAS, numerous cities in the Bay Area impose a water users tax and;

WHEREAS, the City of Oakland ("City") is facing a rising deficit as a consequence of the severe economic crisis and;

WHEREAS, the City has made significant cuts to the budget, including but not limited to laying off employees and reducing staff salaries and;

WHEREAS, the City Council would like to ensure that the City has the financial resources necessary to preserve the public health, safety, and welfare of the City and;

WHEREAS, in light of the deficit and the City's desire to continue to provide a the current programs and services such as park, library and public safety services and to maintain the City's infrastructure (e.g. sidewalks, streets, and public facilities), the City Council determines that it is in the best interest of the City to submit a solid waste removal users tax and a water users tax to the voters and;

WHEREAS, in June 2008 the voters approved amendments modernizing the definition of telecommunications services in Oakland's telephone utility users tax to uniformly address evolving forms of transmissions communications, remove outdated definitions and references to outdated federal laws; and

WHEREAS, the City Council determines that it is in the best interest of the City of Oakland to submit a telephone utility users tax to the voters that will expand the tax base to include more forms of modern communications technology; and

WHEREAS, accordingly, the City Council of the City of Oakland desires to amend Section 4.28.020 the Oakland Municipal Code in order to expand the definition of "telephone communication services" to include more forms of modern communications technology that currently is not taxed without increasing in the current tax rate;

WHEREAS, the City will deposit all revenues it receives from the Solid Waste Removal Users Tax, and the Water Users Tax and the Telephone Utility Users Tax in the general fund of the City to be expended for any lawful public governmental purpose and;

WHEREAS, at the general election of November 2, 1996, the voters of the State of California amended the state constitution, adding Article XIII C, which requires that the voters approve all new taxes and tax increases before they become effective and;

WHEREAS, the voters' approval of the Solid Waste Removal Users Tax and the Water Users Tax will impose or increase general taxes, as that term is defined in Article XIII C, section 1(a) of the California Constitution; and now, therefore, be it

RESOLVED, that the City Council does hereby submit to the voters at the statewide general election, not more than 88 days and not more than 150 days from the date of passage of this resolution, the text of the proposed ordinance, which shall read as follows:

Section 1. The Municipal Code is hereby amended to add the sections as set forth below.

Section 2. Code Amendment. Chapter 4.28 of the Oakland Municipal Code is hereby amended adding Section 4.28.065 to read as follows:

4.28.065 Solid Waste Removal Users Tax

- A. This ordinance shall be known as the Oakland Solid Waste Removal Users Tax Ordinance.
- B. There is imposed on every person receiving the solid waste services of any solid waste collection ~~business-service supplier~~ in the City a solid waste removal users tax. The tax imposed by this Section shall be at the rate of seven and one-half percent (7.50%) [OR ____ (NEW RATE)] of all charges made for the services and shall be paid by the person paying for such solid waste services.
- C. Definitions. For the purpose of this Section, certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that they have a different meaning:

"Charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the solid waste collection services.

"Director of Finance" means the Director of the Finance and Management Agency of the City of Oakland, or his or her authorized representatives.

~~"Person" means an individual, firm, partnership, joint venture, association, corporation, business or other entity that is required to pay for solid waste services.~~

"Service user" means any person that receives and is required to pay for the solid waste services of any solid waste collection service supplier ~~business~~ in the City.

"Single-family dwelling" means any dwelling which has four or fewer living units within it and/or those dwellings which use can service for, solid waste collection.

"Solid waste" means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes as defined in California Public Resources Code Section 40191, as that section may be amended from time to time, but does not include separately charged source separated recyclables which comply with the residual content limits in Section 8.28.030, abandoned vehicles and parts thereof, hazardous waste or low-level radioactive waste, medical waste, unacceptable waste or yard waste which is source separated at single-family dwellings.

"Solid waste collection service supplier" means the solid waste collector franchised by the City.

"Solid waste services" means removal of solid waste by a solid waste collection service supplier in the City.

- D. The tax imposed by this Section shall be collected from the service user by the solid waste collection service supplier, or its billing agent. ~~The amount collected in each (1) month shall be delivered to the Director of Finance on or before the last day of the following month.~~
- E. The proceeds of the tax imposed under this Section shall be deposited in the General Fund.
- F. The following are exempt from this tax: service users who reside in single family residential units and whose combined family income, from all sources for the previous calendar year, is at or below the income level qualifying as "very low income" for a Family of such size under Section 8 of the United States Housing Act of 1937 (42 U.S.C.A. Sections 1437 et. seq.,) for such year. Service users must apply for the exemption provided for in this section annually by filing a petition with the Director of Finance in the manner and time set forth in procedures established by the Director of Finance. Such petitions shall be on forms provided by the Director of Finance and shall provide

such information as the Director of Finance requires, including, but not limited to, federal income tax returns and W-2 forms of service users eligible for this exemption.

Section 3. Code Amendment. Chapter 4.28 of the Oakland Municipal Code is hereby amended adding Section 4.28.075 to read as follows:

4.28.075 Water Users Tax.

A. This ordinance shall be known as the Oakland Water Users Tax Ordinance.

B. There is imposed a tax upon every person using water that is delivered through mains, pipes or any other form of pipeline distribution system in the City. The tax imposed by this Section shall be at the rate of seven and one-half percent (7.50%) [OR (NEW RATE)] of all charges made for such water and shall be paid by the person paying for such water.

C. Definitions. For the purpose of this Section, certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that they have a different meaning:

The term "charges" shall apply to all services, components and items that are (i) necessary for or common to the receipt, use or enjoyment of water service; or (ii) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following:

1. Water commodity charges (potable or non-potable);
2. Distribution or transmission charges;
3. Metering charges;
4. Customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges that are necessary for or common to the receipt, use or enjoyment of water service; and,
5. Charges, fees, or surcharges for water services or programs that are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

The term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the water services.

"Director of Finance" means the Director of the Finance and Management Agency of the City of Oakland, or his or her authorized representatives.

"Service user" means any person that receives water that is delivered through mains, pipes or any other form of pipeline distribution system in the City.

"Single-family dwelling" means any dwelling which has four or fewer living units within it and/or those dwellings which use can service for solid waste collection

D. The tax imposed by this Section shall be collected from the service user by the water service supplier, or its billing agent. ~~The amount collected in each month shall be delivered to the Director of Finance on or before the last day of the following month.~~

E. The proceeds of the tax imposed under this Section shall be deposited in the General Fund.

F. The Director of Finance may, from time to time, survey the water service suppliers in the city to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by a water district or a state or federal agency as a condition of providing such water service. The Tax Administrator, thereafter, may issue and disseminate to such water service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of water service; or, ii) currently, or historically have been, included in a single or bundled rate for water service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (B) above.

G. There shall be excluded from the base on which the tax imposed in this Section is computed charges made for water which is to be resold and delivered through a pipeline distribution system; and charges made by a municipal water department, water public utility or a county or municipal water district for water used and consumed by such department, utility or district in the conduct of the business of such department, utility or district.

H. The following are exempt from this tax: service users who reside in single family residential units and whose combined family income, from all sources for the previous calendar year, is at or below the income level qualifying as "very low income" for a Family of such size under Section 8 of the United States Housing Act of 1937 (42 U.S.C.A. Sections 1437 et. seq.,) for such year. Service users must apply for the exemption provided for in this section annually by petition to the Director of Finance in the manner and time set forth in procedures established by the Director of Finance. Such petitions shall be on forms provided by the Director of Finance and shall provide such information as the Director of Finance shall require, including, but not limited to, federal income tax returns and W-2 forms of service users eligible for this exemption.

[Section 4. Code Amendment. Section 4.28.030(A) of the Oakland Municipal Code is hereby amended to read as follows:

- A. There is imposed a tax upon every person, other than a telephone corporation, using telephone communication services including, but not limited to, cellular telephones and facsimile transmissions, whose place of primary use is within the city of Oakland. The tax imposed by this section shall be at the rate of _____ (NEW RATE) percent of all charges made for such services and shall be paid by the person using such services, and collected by the provider of such services.]

[Section 5. Code Amendment. Section 4.28.040 of the Oakland Municipal Code is hereby amended to read as follows:

There is imposed a tax upon every person, other than an electrical corporation (as defined by and licensed by the California Public Utilities Commission), who receives electrical energy within the limits of the city from an electrical corporation. The tax imposed by this Section shall be at the rate of _____ (NEW RATE) percent of all charges made for such energy, including minimum charges for service but excluding charges for energy supplied to streetlights, and shall be paid by the person paying for such energy. Excepted from this tax increase are persons qualifying for the low-income rate assistance program (LIRA) offered by the Pacific Gas & Electric Corporation ("PG&E").]

[Section 6. Code Amendment. Section 4.28.050(A) of the Oakland Municipal Code is hereby amended to read as follows:

- A. There is imposed a tax upon every person, other than a gas corporation (as defined by and licensed by California Public Utilities Commission) who receives gas (including but not limited to propane, butane, and any other gas used for fuel) within the limits of the city which is delivered through mains or pipes by a gas corporation or delivered by any means of transportation. The tax imposed by this section shall be at the rate of

____ (NEW RATE) percent of all charges made for such gas, including but not limited to minimum charges for service, or pipeline usage and shall be paid either by the persons paying for such gas, or collected by the service supplier. Excepted from this tax increase are persons qualifying for the low income rate assistance program (LIRA) offered by the Pacific Gas & Electric Corporation ("PG&E").]

[Section 7. Code Amendment. Section 4.28.060 of the Oakland Municipal Code is hereby amended to read as follows:

There is imposed a tax upon every person, other than a cable television corporation, who receives cable television services whether paid periodically or charged per program, event or specific transmission whether delivered by cable, microwave, or any other method within the city. The tax imposed by this section shall be at the rate of ____ (NEW RATE) percent of all charges made for such services and shall be collected by the service supplier.]

[Section 8. Code Amendment. Section 4.28.070 of the Oakland Municipal Code is hereby amended to read as follows:

There is imposed a tax upon every person who receives alternate sources of fuel energy including but not limited to coal, charcoal or any other combustible material within the limits of the city which is delivered by any means of transportation. The tax imposed by this section shall be at the rate of ____ (NEW RATE) percent of all charges made for such fuel, and shall be paid either by the persons receiving such fuel, or collected by the service supplier.]

[Section 9. The Solid Waste Removal Users Tax and the Water Users Tax shall not be imposed unless the City Council lowers the utility users tax rate in Chapter 4.28 of the Oakland Municipal Code, set forth in Sections 4.28.030(A), 4.28.040, 4.28.050(A), 4.28.060, and 4.28.070, to ____ (NEW RATE).]

Section 10. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below: section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strike-through type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

Section 11. Code Amendment. Section 4.28.020 of the Oakland Municipal Code is hereby amended to read as follows:

4.28.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

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"City" means the City of Oakland.

"Commercial or industrial plant location" means one or more contiguous sites for which the service user receives one or more utility billings.

"Month" means a calendar month.

"Person" means any domestic or foreign corporation, firm, association, syndicate, joint-stock company, partnership of any kind, joint venture, club, Massachusetts business or common-law trust, society, or individual, whether engaged in First Amendment or non-First Amendment enterprises.

"Primary place of use" of a telephone communications service shall be the address to which the service supplier sends invoices for that service unless the service user provides evidence to the reasonable satisfaction of the Tax Administrator that the billing address is not the primary place of use.

"Service address" means the address or location where the user has its equipment (e.g., cellular phone, telephone, pager, facsimile machine) receiving utility services.

"Service supplier" means a person required to collect and remit a tax imposed by this chapter.

"Service user" means a person required to pay a tax imposed by this chapter.

"Tax administrator" means the Director of Finance and Management Agency of the City of Oakland or his or her designee.

"Telephone corporation", "electrical corporation", "gas corporation" and "cable corporation" shall have the same meanings as defined in Section 234, 218 and 222, 215.5, respectively, of the Public Utilities Code of the state of California, as said sections existed on January 1, 1975. "Electrical corporation" shall also be construed to include any municipality, district or franchised agency engaged in selling or supplying electrical power.

"Telephone communication services" shall have the following meaning:

1. "Telecommunication services" includes the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whether or not such information is transmitted through interconnected service with the public switched network, whatever the technology used, whether such transmission, conveyance or routing occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service – see 47 USCA Section 332(c) (7) (C) (i) – regardless of radio spectrum used), switching facilities, satellite or any other technology now

existing or developed after the adoption of this section, and includes, without limitation, fiber optic, coaxial cable, and wireless.

2. The term "telephone communication services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with telecommunications services.
3. "Telephone communication services" includes, but is not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling), local number portability, text messaging, ancillary telecommunication services, prepaid and post-paid telecommunications services (including but not limited to prepaid calling cards); mobile telecommunications service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and value-added non-voice data service.
4. For purposes of this section, "private telecommunication service" means any dedicated telephone communications service that entitle a user to exclusive or priority use of communications channels.
5. "Telephone communication services" does not include: internet access services; video programming services; and digital downloads, such as downloads of books, music, ringtones, games and similar digital products.

"Telephone communication services" includes any telephonic quality communication for the purpose of transmitting messages or information (including but not limited to voice, telegraph, teletypewriter, data, facsimile, video, or text) by electronic, radio or similar means through 'interconnected service' with the 'public switched network' (as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission—see 47-USCA Section 332(d)), whether such transmission occurs by wire, cable, fiber-optic, light wave, laser, microwave, broadband, computer processing applications such as voice over internet protocol service and services classified by the Federal Communications Commission as "enhanced" or "value added," radio wave (including, but not limited to, cellular service, wireless broadband, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service—see 47-USCA Section 332(e) (7) (C) (i)—regardless of radio spectrum used), switching facilities, satellite, any other similar facilities, or any other technology new existing or developed after the adoption of this ordinance. Telephone communication services does not include charges for internet access or digital downloads, such as downloads of books, music, ringtones, games and similar digital products."

"Utility" means any person, whether or not regulated by the Public Utilities Commission, that distributes or provides services regarding tangibles or intangibles via the public rights-of-way including but not limited to furnishing services such as telephone, gas, alternate fuels, electrical, cable television, pay television, satellite dish reception, teletype writer, facsimile exchange and other electronic and telecommunication transmissions.

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Section 124. Severability. If a court of competent jurisdiction determines that any provision of this Ordinance, or its application to any person or circumstance is unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person and circumstance and, to that end, the provisions hereof are severable.

Section 134. California Environmental Quality Act Requirements.

This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation Public Resources Code section 21065, CEQA Guidelines 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment.

Section 142. Majority Approval; Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and after the vote is declared by the City Council. The effective date of this Ordinance shall be ten (10) days after the vote is declared by the City Council.

Section 153. Council Amendments. The City Council is hereby authorized to amend Section 4.28.065, ~~and~~ Section 4.28.075 and Section 4.28.020 of the Oakland Municipal Code as adopted by this Ordinance in any manner that does not increase the tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution; and be it

FURTHER RESOLVED, that each ballot used at said election shall have printed therein, in addition to any other matter required by law, the following:

PROPOSED ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO REDUCE THE UTILITY USERS TAX, ADD A SOLID WASTE REMOVAL USERS TAX AND A WATER USERS TAX AND EXPAND THE DEFINITION OF "TELEPHONE COMMUNICATION SERVICES" IN THE TELEPHONE UTILITY TAX TO INCLUDE MODERN COMMUNICATIONS TECHNOLOGY NOT CURRENTLY TAXED WITHOUT INCREASING THE TAX RATE

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<p>Measure __. Shall the Oakland Municipal Code be amended to (1) establish a Solid Waste Removal Users Tax and a Water Users Tax, each at a rate of 7.50% of the service charges, with all proceeds deposited in the City's General Fund to be used for any governmental purpose, and (2) expand the definition of "telephone communication services" to include more forms of modern communications technology that currently are not taxed without increasing the current tax rate? [OR: Shall the Oakland Municipal Code be amended to (1) reduce the utility users tax rate rate for all utility users taxes to ____ (NEW RATE) of the charges, and (2) establish a Solid Waste Removal Users Tax and a Water Users Tax, each at a rate of ____ (NEW RATE) of the charges, with all proceeds deposited in the City's General Fund, and (3) expand the definition of "telephone communication services" to include modern communications technology without increasing the current tax rate? to be used for any lawful public purpose?]</p>	<p>Yes</p>	
	<p>No</p>	

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FURTHER RESOLVED: That the City Council hereby authorizes and directs the City Clerk of the City of Oakland (the "City Clerk") at least 88 days prior to November 2, 2010, to file with the Alameda County Clerk certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, the Government Code and the Elections Code of the State of California; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Ordinance and rebuttals, and said date shall be posted in the Office of the City Clerk; and be it

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FURTHER RESOLVED: That, if the voters approve this Ordinance, the City Administrator hereby is directed to give written notification to the Waste Management of Alameda County, ~~and EBMUD~~ and service suppliers, on or after the effective date of the ~~Solid Waste Removal Users Tax and the Water Users Tax, this Ordinance,~~ requesting that Waste Management of Alameda County, ~~and EBMUD~~ and service suppliers collect the taxes pursuant to Section 799(a)(5) and Section 799(a)(6) of the California Public Utilities Code.

IN COUNCIL, OAKLAND, CALIFORNIA, July __, 2010.

PASSED BY THE FOLLOWING VOTE:

DE LA FUENTE, KERNIGHAN, NADEL, QUAN, BROOKS, REID, KAPLAN, AND
PRESIDENT BRUNNER

AYES -
NOES -
ABSENT -
ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California