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CLERK OF THE CITY CLERK
OAKLAND

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INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY

Kareem Saleem Boyel
CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE NOVEMBER 15, 2011 SPECIAL ELECTION A PROPOSED ORDINANCE CREATING A FIVE-YEAR TEMPORARY FISCAL EMERGENCY SPECIAL PARCEL TAX; DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE SPECIAL ELECTION

WHEREAS, the City of Oakland faces an unprecedented budget deficit in its General Purpose Fund due to impacts from the global, national, state, and regional recession; and

WHEREAS, the General Fund is the primary source of funding for functions such as police, fire, parks and libraries; and

WHEREAS, state and federal budget takeaways as well as declining local revenues put many of these vital City services and programs at risk of being eliminated; and

WHEREAS, the City of Oakland has already made large cuts to essential services, eliminated hundreds of positions, and reduced employee compensation by 15% for almost all positions; and

WHEREAS, as a result of investments made to reduce crime and violence in the City of Oakland, crime has declined three years in a row, and the City needs to stabilize funding so this progress continues; and

WHEREAS, the City Council determines it is in the best interests of the City of Oakland to submit to the voters this proposed ordinance imposing a temporary 5-year parcel tax for the purpose of protecting vital City services including public safety, youth violence prevention, library services, parks and recreation services, and street repair; 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 all new or increased special taxes be submitted to the voters prior to becoming effective; now, therefore be it

RESOLVED: That the City Council of the City of Oakland does hereby submit to the voters at the November 15, 2011 special election, an Ordinance, which reads as follows:

PART 1. GENERAL

Section 1. PURPOSE.

The City will use the proceeds of the special tax imposed under this Ordinance to pay for any costs and expenses related to or arising from restoring City:

- a. Police services and police technology
- b. Fire services
- c. Parks maintenance and recreational services
- d. Library services, including technology
- e. Youth violence prevention
- f. Street and infrastructure repair
- f.g. Senior services

Section 2. FINDINGS.

1. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., 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.

2. Nothing in this Ordinance is intended to preclude owners from recovering the tax from the occupant. Whether the occupant is charged depends on the occupancy agreement and the requirements of the City's Residential Rent Adjustment Program. (Oakland Municipal Code Chapter 8.22.)

Section 3. EFFECTIVE DATE.

The tax imposed by this Ordinance shall become effective upon passage.

Section 4. TERM OF TAX IMPOSITION.

The taxes shall be imposed fiscal year 2011-2012 through, and including, fiscal year 2015-2016. For the fiscal year 2011-2012, the tax is imposed on November 15, 2011. Thereafter, tax is imposed on July 1 each year. The City shall place delinquencies on a subsequent tax bill.

Section 5. SAVINGS CLAUSE.

If any provision, sentence, clause, section or part of this Ordinance is found to be unconstitutional, illegal or invalid by a court of competent jurisdiction, such unconstitutionality, illegality, or invalidity shall affect only such provision, sentence, clause, section or part of this Ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared that the City would have adopted this Ordinance had such unconstitutional, illegal or invalid provision, sentence, clause, section or part thereof not been included herein.

If any tax imposed by this Ordinance is found to be unconstitutional, illegal or invalid by a court of competent jurisdiction, the amounts, services, programs and personnel required to be funded from such tax shall be reduced proportionately by any revenues lost due to such unconstitutionality, illegality or invalidity.

Section 6. REGULATIONS.

The City Administrator is hereby authorized to promulgate such regulations as it shall deem necessary in order to implement the provisions of this Ordinance.

Section 7. NO AMENDMENT.

The tax rates may not be increased by action of the City Council without the applicable voter approval but the City Council may make any other changes to this Ordinance as are consistent with its purpose.

Section 8. INDEPENDENT ANNUAL REVIEW

An annual review shall be performed by an independent firm to ensure accountability and proper disbursement of the proceeds in accordance with the objectives stated herein. In accordance with Government Code sections 50075.1 and 50075.3, the chief fiscal officer shall prepare an annual report, setting forth the amount of fund collected and expended. Tax proceeds may be used to pay for the audit and annual report.

Section 9. SPECIAL ACCOUNT

The City shall deposit into a special account all funds collected by the City from the taxes imposed by this Ordinance and shall appropriate and expend such funds only for the purposes authorized by this Ordinance.

PART 2. PARCEL TAX

Section 1. DEFINITIONS.

For purposes of this Ordinance, the following terms shall be defined as set forth below:

- (A) "Additional" shall mean an increase in the existing number.

(B) "Administrative Costs" shall mean overhead costs, including central services, departmental and/or divisional.

(C) "Building" shall mean 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."

(D) "Family" shall mean one or more persons related by blood, marriage, domestic partnership, or adoption, who are living together in a single residential unit and maintaining a common household. Family shall also mean all unrelated persons who live together in a single Residential Unit and maintain a common household.

(E) "Hotel" shall mean as defined by Oakland Municipal Code section 4.24.020.

(F) "Multiple Residential Unit Parcel" shall mean a parcel zoned for a Building, or those portions thereof, which accommodates or is intended to contain two or more residential units.

(G) "Non-Residential" shall mean all parcels that are not classified by this Ordinance as Residential Parcels, and shall include, but not be limited to, parcels for industrial, commercial and institutional improvements, whether or not currently developed.

(H) "Occupancy" shall be as defined by Oakland Municipal Code section 4.24.020.

(I) "Operator" shall be as defined by Oakland Municipal Code section 4.24.020.

(J) "Owner" shall mean the Person having title to real estate as shown on the most current official assessment role of the Alameda County Assessor.

(K) "Parcel" shall mean a unit of real estate in the City of Oakland as shown on the most current official assessment role of the Alameda County Assessor.

(L) "Person" shall mean an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(M) "Possessory Interest" as it applies to property owned by any agency of the government of the United States, the State of California, or any political subdivision thereof, shall mean possession of, claim to, or right to the possession of, land or Improvements and shall include any exclusive right to the use of such land or Improvements.

(N) "Residential Unit" shall mean a Building or portion of a Building designed for or occupied exclusively by one Family.

(O) "Single Family Residential Parcel" shall mean a parcel zoned for single-family residences, whether or not developed.

(P) "Transient" shall mean any individual who exercises Occupancy of a hotel or is entitled to Occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any individual so occupying space in a Hotel shall be deemed to be a Transient until the period of thirty (30) consecutive days has elapsed.

Section 2. IMPOSITION OF PARCEL TAX.

There is hereby imposed a tax on all Owners of parcels in the City of Oakland for the privilege of using municipal services and the availability of such services. The tax imposed by this Section shall be assessed on the Owner unless the Owner is by law exempt from taxation, in which case, the tax imposed shall be assessed to the holder of any Possessory Interest in such parcel, unless such holder is also by law exempt from taxation. The tax is imposed as of July 1 of each year on the person who owned the parcel on that date. The tax shall be collected at the same time, by the same officials, and pursuant to the same procedures as the one percent property tax imposed pursuant to Article XIII A of the California Constitution.

Base Amount of Tax. The tax hereby imposed shall be set as follows subject to adjustment as provided in Section 5 below:

(A) For owners of all Single Family Residential Parcels, the tax shall be at the annual rate of \$80 per parcel.

(B) For owners of all Multiple Residential Unit Parcels, the tax shall be at the annual rate of per Residential Unit of \$54.66.

(C) The tax for Non-Residential Parcels is calculated using both frontage and square footage measurements to determine total Single Family Residential Unit Equivalents (SFE). A frontage of 80 feet for a commercial/industrial parcel, for example, is equal to one (1) single family resident unit equivalent. (See matrix.) An area of 6,400 square feet for the commercial industrial parcel is equal to one (1) single family resident unit equivalent. The tax is the annual rate (\$40.97) multiplied by the total number of Single Family Equivalents (determined by the frontage and square footage).

LAND USE CATEGORY	FRONTAGE	AREA (SF)
Commercial/Institutional	80	6,400
Industrial	100	10,000
Public Utility	1,000	100,000
Golf Course	500	100,000
Quarry	1,000	250,000

Example: assessment calculation for a Commercial Institutional Parcel with a Frontage of 160 feet and an Area of 12,800 square feet:

Frontage

$$160 \text{ feet} \div 80 = 2 \text{ SFE}$$

Area

$$12,800 \text{ square feet} \div 6,400 = 2 \text{ SFE}$$

$$2 \text{ SFE} + 2 \text{ SFE} = 4 \text{ SFE}$$

$$4 \text{ SFE} \times \$40.97 = \$163.88 \text{ tax}$$

(D) An Owner of An Undeveloped Parcel is exempt from this parcel tax if the owner can prove that the parcel was undeveloped for at least six months of the year in question.

(E) The tax imposed by this Ordinance shall be imposed on each Hotel within the City as follows:

1. Residential Hotels. Rooms in a Hotel occupied by individuals who were not Transients for 80% or more of the previous Fiscal Year shall be deemed Residential Units and the parcel on which they are located shall be subject to the Parcel tax imposed on Multiple Residential Unit Parcels. The remainder of the Building shall be subject to the applicable tax computed in accordance with the Single Family Residential Unit Equivalent formula set forth in Section 2(C).

2. Transient Hotels. Notwithstanding the previous subsection, if 80% or more of the Operator's gross receipts for the previous Fiscal Year were reported as rent received from Transients on a return filed by the Operator in compliance with section 4.24.010 of the Oakland Municipal Code (commonly known as the Uniform Transient Occupancy Tax of the City of Oakland), such Hotel shall be deemed a Transient Hotel. The entire Building shall be deemed a Non-Residential Parcel, categorized as Commercial/Institutional, and shall be subject to the applicable tax computed in accordance with the Single Family Residential Unit Equivalent formula set forth in Section 2(C), and the parcel tax imposed on Multiple Residential Units shall not apply.

Section 3. EXEMPTIONS, REBATES, REDUCTIONS AND PASS-THROUGHS.

(A) Low income household exemption. The following is exempt from this tax: an Owner of a single family residential unit (1) who resides in such unit and (2) whose combined family income, from all sources for the previous fiscal 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 fiscal

year. Owners must apply for the exemption provided for in this section annually by petition to the Director of the Finance and Management Agency of the City of Oakland ("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 provided such information as the Director of Finance shall require, including, but not limited to, federal income tax returns and W-2 forms of owner-occupants eligible for this exemption.

(B) Tenant pass-through. The City Council is directed to amend the Rent Adjustment Ordinance (O.M.C. 8.22.010, et seq. or successor ordinance) to provide that owners of rental units subject to the Rent Adjustment Ordinance may pass through one-half of the tax and subsequent increases thereto (as set out in Part 3, Section 2(B)) to their tenants in the form of a rent increase when the Base Amount of the Tax is imposed or increased.

(C) Fifty percent reduction for affordable housing projects. Rental housing owned by nonprofit corporations and nonprofit-controlled partnerships for senior, disabled and low income households that are exempt from ad valorem property tax pursuant California Revenue and Taxation Code 214(f), (g) and (h) shall be liable for only 50% of the parcel tax. The exemption shall apply in the same proportion that is exempted from ad valorem property tax.

(D) Rebate to tenants in foreclosed single family homes. The City will provide a rebate of one-half of the tax and subsequent increases thereto ("Foreclosure Rebate") to tenants in single family homes that have been foreclosed upon who have paid a passed through Parcel Tax. To qualify for the Foreclosure Rebate, a tenant must: (1) have lived in the unit before foreclosure proceedings commenced; and (2) be 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 fiscal year. The City will provide the Foreclosure Rebate for every month that the tax was applied and the tenant occupied the unit. The City will provide the Foreclosure Rebate at the end of each fiscal year, or when the tenant vacates the unit, whichever is earlier. The City Administrator will promulgate regulations to effectuate this Part 3, Section 3(D).

Section 4. DUTIES OF THE DIRECTOR OF FINANCE; NOTICE OF DECISIONS.

It shall be the duty of the Director of the Finance and Management Agency ("Director of Finance") to collect and receive all taxes imposed by this Ordinance. The Director of Finance is charged with the enforcement of this Ordinance and may adopt rules and regulations relating to such enforcement.

Section 5. EXAMINATION OF BOOKS, RECORDS, WITNESSES; PENALTIES.

The Director of Finance or his/her designee is hereby authorized to examine assessment rolls, property tax records, records of the Alameda County Recorder and any other records of the County of Alameda deemed necessary in order to determine ownership of Parcels and computation of the tax imposed by this Ordinance.

The Director of Finance or his/her designee is hereby authorized to examine the books, papers and records of any person subject to the tax imposed by this Ordinance for the purpose of verifying the accuracy of any petition, claim or return filed and to ascertain the tax due. The Director of Finance, or his/her designee is hereby authorized to examine any person, under oath, for the purpose of verifying the accuracy of any petition, claim or return filed or to ascertain the tax due under this Ordinance and for this purpose may compel the production of books, papers and records before him/her, whether as parties or witnesses, whenever s/he believes such persons have knowledge of such matters. The refusal of such examination by any person subject to the tax shall be deemed a violation of this Ordinance and of the Oakland Municipal Code and subject to any and all remedies specified therein.

Section 6. COLLECTION OF TAX; INTEREST AND PENALTIES.

The tax for the fiscal year 2011-2012 shall be levied and imposed at the full annual rate. At the option of the City, fiscal year 2011-2012 taxes may be collected by handbilling or may be collected at the direction of the City by the Alameda County Tax Collector. Thereafter, the tax levied and imposed by this ordinance shall be due and payable on July 1 of each year, but it may be paid in two installments due no later than December 10 and April 10.

The tax shall be delinquent if the City does not receive it on or before the delinquency date set forth in the notice mailed to the Owner's address as shown on the most current assessment roll of the Alameda County Tax Collector; and the tax shall be collected in such a manner as the City Council may decide. The City may place delinquencies on a subsequent tax bill.

A one-time penalty at a rate set by the City Council, which in no event shall exceed 25% of the tax due per fiscal year, is hereby imposed by this ordinance on all taxpayers who fail to timely pay the tax provided by this Ordinance; in addition, the City Council may assess interest at the rate of 1% per month on the unpaid tax and the penalty thereon.

Every penalty imposed and such interest as accrues under the provisions of this ordinance shall become a part of the tax herein required to be paid.

The City may authorize the County of Alameda to collect the taxes imposed by this Ordinance in conjunction with and at the same time and in the same manner as the County collects property taxes for the City. If the City elects to authorize the County of

Alameda to collect the tax, penalties and interest shall be those applicable to the nonpayment of property taxes.

Section 7. COLLECTION OF UNPAID TAXES.

The amount of any tax, penalty, and interest imposed under the provisions of this ordinance shall be deemed a debt to the City. Any person owing money under the provisions of this Ordinance shall be liable to an action brought in the name of the City for the recovery for such amount.

Section 8. REFUND OF TAX, PENALTY, OR INTEREST PAID MORE THAN ONCE; OR ERRONEOUSLY OR ILLEGALLY COLLECTED.

Whenever the amount of any tax, penalty, or interest imposed by this Ordinance has been paid more than once, or has been erroneously or illegally collected or received by the City it may be refunded provided a verified claim in writing therefore, stating the specific ground upon which such claim is founded, is filed with the Director of Finance within 1 (one) year of the date of payment. The claim shall be filed by the person who paid the tax or such person's guardian, conservator of the executor of her or his estate. No claim may be filed on behalf of other taxpayers or a class of taxpayers. The claim shall be reviewed by the Director of Finance and shall be made on forms provided by the Director of Finance. If the claim is approved by the Director of Finance, the excess amount collected or paid may be refunded or may be credited against any amounts then due and payable from the Person from who it was collected or by whom paid, and the balance may be refunded to such Person, his/her administrators or executors. Filing a claim shall be a condition precedent to legal action against the City for a refund of the tax.

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

Measure ___. Shall the City of Oakland establish a five-year temporary fiscal emergency parcel tax to preserve essential city services, including fire, police services, and police technology, youth violence prevention, library services, parks and recreation, and street repair, by establishing an \$80 parcel tax for single-family homes and specified amounts for multi-family and commercial properties with an exemption for low-income households?	Yes	
	No	

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 15, 2011, to file with the Alameda County Clerk certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Council does hereby request that the Board of Supervisors of Alameda County include on the ballots and sample ballots recitals and measure language to be voted on by the voters of the qualified electors of the City of Oakland; 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, Chapter 3 of the Oakland Municipal Code, the Government Code and the Election Code of the State of California; and be it

FURTHER RESOLVED: That the City Council does hereby request that the Registrar of Voters of the County of Alameda perform necessary services in connection with said election; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to obtain printing, supplies and services as required; and be it

FURTHER RESOLVED: That the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Oakland; 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

FURTHER RESOLVED: That the City Clerk and City Administrator are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the November 15, 2011 special election, and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the November 15, 2011 special election, consistent with law; and be it

FURTHER RESOLVED: That certain sections of this Ordinance may be codified into the City of Oakland Municipal Code at the direction of the City Clerk; and be it

FURTHER RESOLVED: In the event this parcel tax is approved by the voters, the City Administrator, Treasurer and other appropriate officers of the City are hereby authorized and directed, jointly and severally, to take all actions necessary or advisable to ensure collection of the tax and otherwise effectuate the purposes of the Ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KERNIGHAN, NADEL, SCHAAF, and
PRESIDENT REID

NOES
ABSENT
ABSTENTION

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
Of the City of Oakland, California
Date: