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Approved as to Form and Legality

L. Lowery for Kathleen Boyd
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 JUNE 7, 2011 STATEWIDE SPECIAL ELECTION (OR SUCH LATER DATE THE ELECTION IS SET), A PROPOSED ORDINANCE ESTABLISHING A TEMPORARY FISCAL EMERGENCY MEASURE IMPOSING FOR FIVE YEARS A TELEPHONE ACCESS LINE TAX AT A RATE OF \$ [] PER MONTH PER "ACCESS LINE", AND \$ [] PER MONTH PER "TRUNK LINE"; DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE JUNE 7, 2011, STATEWIDE SPECIAL ELECTION (OR SUCH LATER DATE THE ELECTION IS SET); AND CONSOLIDATING THE ELECTION WITH THE STATEWIDE SPECIAL ELECTION

WHEREAS, numerous cities in the Bay Area impose a telephone access line 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 Oakland City Council ("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 wide array of City services including but not limited to 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 five-year temporary telephone access line tax to the voters and;

WHEREAS, the City will deposit all revenues it receives from the tax in the general fund of the City to be expended for general fund purposes 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 Temporary Telephone Access Line 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 special 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. The Oakland Municipal Code is hereby amended to include Chapter 4.29 to read as follows:

4.29. Telephone Access Line Tax

- A. This ordinance shall be known as the Oakland Telephone Access Line Tax Ordinance.
- B. **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:

"Access line" means any connection from a customer within the geographic boundaries of the City of Oakland to a supplier of telephone service offered to the public for compensation. "Access line" includes, but is not limited to, connections providing residential basic exchange service, business basic exchange service, PBX service (private branch exchange), foreign exchange service, and Centrex service. "Access line" also includes a connection from a single mobile telephone to a commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as this section existed on October 1, 2002, which has as its place of primary use, as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(8), a location within the City of Oakland.

"Lifeline service" means discounted telephone service available to eligible low-income residential customers.

"Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service without the provisioning of an access line.

"Prepaid calling service" means the right to access telephone communications service, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount, without the provisioning of an access line.

"Service supplier" means any person supplying a telephone access line to any telephone communications service subscriber at a location within the City of Oakland. Service suppliers may include, without limitation, local exchange carriers, inter-exchange carriers, competitive access providers, cable television providers offering telecommunications services, suppliers of wireless telephone service, and any other entity offering direct connections between their premises and the premises of telephone communications service subscribers.

"Telephone corporation" shall have the same meaning as defined in Section 234 of the Public Utilities Code of the State of California, or the most comparable successor definition. It also includes any person providing wireless telephone service to any telephone communications service subscriber.

"Telephone service" means access to a telephone system, providing two-way telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such telephone system, whether or not such service uses transmission wires. For the purposes of the tax imposed by this Article, a person shall be construed to subscribe to "telephone service" within the City of Oakland if he or she has a "place of primary use" as such term is defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(8), within the

geographic boundaries of the City of Oakland. "Telephone service" does not include any system that is expressly excluded from the definition of "access line" or "trunk line."

"Telephone communications service subscriber" means any person who receives telephone service or its function.

"Trunk line" means a line between a service supplier's switching device and a private branch exchange or automatic call distributing system, or other similar device, at a telephone subscriber location.

- C. There is hereby imposed a tax on every person who subscribes to telephone services within the City of Oakland to the extent permitted by Federal and State law. The tax shall apply to each access line within the City's tax jurisdiction, including, without limitation, access lines billed to a telephone account having a situs in the City, as permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. §116 et seq. There is a rebuttable presumption that service billed to a billing address or provided to a service address in the City is used, in whole or part, within the City's boundaries and that such service is subject to taxation under this Article.
- D. The amount of the tax imposed shall be dollars (\$) per month per access line, and dollars (\$) per month per trunk line.

The tax imposed by this chapter shall be paid, on a per line basis, by the person paying for such telephone service.

Only one payment of the tax herein imposed shall be required for any single access line or trunk line, notwithstanding that access lines of more than one telephone corporation are used in furnishing telephone communications service to a telephone communications service subscriber.

Beginning in Fiscal Year 2012-2013, and every three years thereafter, the City Council may increase the tax imposed hereby only upon a finding that the cost of living in the immediate San Francisco Bay Area, as shown by the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor Statistics, has increased. The percentage increase of the tax imposed hereby shall not exceed such increase, using Fiscal Year 2011-2012 as the index year, and in no event shall any adjustment exceed five percent (5%).

- E. The tax imposed by this Chapter shall be collected from the telephone communications service subscriber by the service supplier.

The tax required to be collected by service suppliers under this ordinance shall be added to and stated separately in the service supplier's billings to telephone communications service subscribers. The charge in such billings shall include only the amount authorized by this Chapter, and shall not include any additional charges or fees which may be imposed by the service supplier to recover the cost of collecting the tax.

Nothing in this Chapter is intended to regulate the ability of a service supplier to recover any costs of collecting the tax imposed under this Chapter, to the extent that recovery may be authorized by state or federal law.

Except as otherwise stated in this Chapter, the tax imposed by this Chapter shall be collected and remitted at the same time as and in the same manner as the tax imposed by Section 30 of Chapter 4.28 of the Oakland Municipal Code.

F. The following are exempt from this tax:

1. Lifeline service customers of service suppliers;
2. Service suppliers;
3. Coin-operated telephones;
4. Prepaid calling services or post-paid calling services;
5. Any person when imposition of such tax upon that person would violate the Constitution of the United States or that of the State of California or preemptive federal or state law; and
6. City of Oakland, County of Alameda, State of California and United States Government offices.

Section 3. 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 4. 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 5. 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 6. Term of Tax Imposition. The tax shall be imposed fiscal year 2011-2012 through, and including, fiscal year 2015-2016.

Section 7. Council Amendments. The City Council is hereby authorized to amend Chapter 4.29 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 ADD A FIVE-YEAR TEMPORARY FISCAL EMERGENCY TELEPHONE ACCESS LINE TAX

<p>Measure __. Shall the City of Oakland establish a five-year temporary, fiscal emergency telephone "access line" tax at a rate of \$ [] per month per access line and \$ [] per month per "trunk line" to preserve essential city services, including police services and technology, youth violence prevention, library services and parks and recreation services and other General Purpose Fund purposes?</p>	<p>Yes</p>	
	<p>No</p>	

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 June 7, 2011, statewide special election (or such later date the election is set), to file with the Alameda County Clerk certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the consolidation of the Oakland Municipal election with the statewide special election of June 7, 2011, (or such later date the election is set), consistent with provisions of State Law; 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 3 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, if the voters approve this Ordinance, the City Administrator is hereby directed to give written notification to service suppliers, on or after the effective date of the Telephone Access Line Tax, requesting that the service suppliers collect the tax pursuant to Section 799(a)(6) of the California Public Utilities Code.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

**AYES -
NOES -
ABSENT -
ABSTENTION -**

ATTEST:

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