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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;] 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

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, the City will deposit all revenues it receives from the Solid Waste Removal Users Tax and the Water Users Tax in the general fund of the City to be expended for any lawful public 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 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 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 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. 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 11. 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 12. 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 13. Council Amendments. The City Council is hereby authorized to amend Section 4.28.065 and Section 4.28.075 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 SOLID WASTE REMOVAL USERS TAX
AND A WATER USERS TAX**

<p>Measure ___. Shall the Oakland Municipal Code be amended to establish a Solid Waste Removal Users Tax and a Water Users Tax, each at a rate of 7.50% of service charges, with all proceeds deposited in the City's General Fund to be used for any lawful public purpose? [OR: Shall the Oakland Municipal Code be amended to (1) reduce the tax rate for all utility users taxes to ___ (NEW RATE) 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 to be used for any lawful public purpose?]</p>	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 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

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, on or after the effective date of the Solid Waste Removal Users Tax and the Water Users Tax, requesting that Waste Management of Alameda County and EBMUD collect the tax pursuant to 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