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INTRODUCED BY COUNCILMEMBER KAPLAN

APPROVED AS TO FORM AND LEGALITY

DRAFT

CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. ____ C.M.S.

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018, A PROPOSED ORDINANCE TO ADOPT A SPECIAL SUPPLEMENTAL BUSINESS TAX ON RENTAL OF PROPERTY AT A RATE OF 1% OF ANNUAL GROSS RECEIPTS IN EXCESS OF \$200,000 TO FUND SOLUTIONS FOR HOMELESSNESS, ILLEGAL DUMPING REMEDIATION, AND RELATED PROGRAMS; AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION

WHEREAS, Oakland is suffering from a serious housing crisis as housing costs in the City increase drastically, making housing at all levels of affordability and particularly affordable housing scarce and unavailable for many Oakland residents; and

WHEREAS, the lack of sufficient housing generally and affordable housing in particular in Oakland is contributing to a large and growing crisis of homelessness, which is increasing human suffering throughout the community, creating public health risks, and negatively affecting economic activity, which deprives residents of income and opportunity. The housing crisis is also causing displacement of long-term Oakland residents, diminishing the richness of the community that contributes to making the City a desirable place to live; and

WHEREAS, traditional funding sources have not kept up with the rising homeless crisis, resulting in increasing numbers of people living in problematic conditions on sidewalks and beneath underpasses; and

WHEREAS, Oakland also suffers disproportionately from blight and illegal dumping, which presents pervasive aesthetic, health, safety, and environmental problems throughout the City of Oakland; and

WHEREAS, it is important to provide a funding source to help address blight, illegal dumping, homelessness, and the lack of sufficient affordable housing throughout the City of Oakland; and

WHEREAS, the City Council desires to submit to the qualified electors of the City a proposed ordinance to adopt a special business tax on rental of property to support affordable housing, illegal dumping remediation, and related programs. The supplemental business tax would apply to every person engaged in the business of renting property with annual gross receipts in excess of \$200,000; and

WHEREAS, the special tax imposed by the proposed ordinance is authorized by Article XIII A of the California Constitution and section 50075 of the California Government Code; and now therefore be it

RESOLVED: That the Oakland City Council finds and determines the forgoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED: That the Oakland City Council does hereby submit to the voters, at the November 6, 2018, General Municipal Election, an Ordinance that reads as follows:

Be it ordained by the People of the City of Oakland:

Section 1. Title.

This Ordinance may be referred to as the "Oakland Homeless Funding Rental Property Tax Act."

Section 2. Purpose.

The taxes imposed under this Ordinance are solely for the purpose of raising revenue necessary to support and fund services for homeless people and affordable housing, blight and trash remediation, and related programs, described below. Because the proceeds of the parcel tax will be deposited into a special fund restricted for the services and programs specified in this Ordinance, the tax is a special tax. The tax imposed by this Ordinance is an excise tax on the privilege of conducting the business of renting property within the City of Oakland. It is not an income tax or any other form of tax and shall not be imposed or calculated as such. The tax is in addition to the business tax imposed by Chapter 5.04 of the Oakland Municipal Code.

Section 3. Code Amendment.

A new Chapter is hereby added to the Oakland Municipal Code to read as follows:

Chapter 4.56 Supplemental Business Tax on Rental of Property

Section 4.56.010 Definitions

Section 4.56.030 Imposition of Supplemental Business Tax on Rental of Property

Section 4.56.040 Homeless Services Fund

- Section 4.56.050 Use of Tax Act Revenue**
- Section 4.56.060 Commission on Homelessness**
- Section 4.56.070 Accountability**

Section 4.56.010. Definitions

"Affordable housing" means housing affordable to lower income households as defined in California Health and Safety Code Section 50079.5 at an affordable housing cost or affordable rent as defined in Health and Safety Code Sections 50052.5 and 50053.

"City" means the City of Oakland.

"Commission" means the Commission on Homelessness authorized by this Ordinance.

"Gross receipts" has the same meaning as in Section 5.04.420(C) of the Oakland Municipal Code for rental of residential property; it has the same meaning as in Section 5.04.430(D) for rental of commercial/industrial property.

"Heavily Impacted Neighborhoods" means the geographic area defined by the boundaries of 2010 Census Tracts 4007, 4008, 4009, 4010, 4014, 4015, 4016, 4017, 4018, 4022, 4024, 4025, 4026, 4027, 4030, 4033, 4057, 4053.02, 4054.01, 4054.02, 4055, 4056, 4058, 4059.01, 4059.02, 4060, 4061, 4062.01, 4062.02, 4063, 4064, 4065, 4071.01, 4071.02, 4072, 4073, 4074, 4075, 4076, 4077, 4085, 4086, 4087, 4088, 4089, 4090, 4091, 4092, 4093, 4094, 4095, 4096, 4097, 4102, 4103, 4104, and 4105. See Map (Attachment A) below.

"Person" has the same meaning as in Section 5.04.030 of the Oakland Municipal Code.

"Rental of commercial/industrial property" means the same activities as described in Section 5.04.430(A) of the Oakland Municipal Code.

"Rental of property" means the rental of commercial/industrial property or the rental of residential property, or both.

"Rental of residential property" means the same activities as described in Section 5.04.420(A) of the Oakland Municipal Code.

"Tax" means the special tax authorized by this Ordinance.

Section 4.56.030. Imposition of Supplemental Business Tax on Rental of Property

A. A special supplemental business tax is hereby imposed on every person engaged in the business of renting property. The tax rate is as set forth below. For persons subject

to this special supplemental business tax on rental of property, the tax shall be in addition to the tax imposed by Sections 5.04.420 or 5.04.430 of the Oakland Municipal Code.

B. The tax constitutes a debt owed to the City by the person engaged in the business of renting property.

C. Unless the City Council selects another method for collection of the tax, the City of Oakland shall collect the tax on each person engaged in the business of renting property as part of the collection of their business tax payment to the City of Oakland, as provided for in Chapter 5.04 of the Oakland Municipal Code.

D. Tax Rate.

The maximum supplemental business tax rate for rental of property shall be one percent (1%) of annual gross receipts in excess of \$200,000.

E. Adjustment in Tax Rate

The City Council may, by resolution, establish an annual tax rate less than the maximum rate. Following any such decrease in the annual tax rate, the City Council may, by resolution, increase the annual tax rate to the maximum, or to any other rate less than the maximum, without obtaining voter approval.

F. Exemptions

1. The following shall be exempt from the tax imposed by this Ordinance:

a. Nonprofit corporations and entities controlled by nonprofit corporations that are organized and operated primarily to provide affordable housing and that rent dwelling units that are subject to deed restrictions or other instruments that restrict rents to affordable levels and occupancy to people who qualify for affordable housing;

b. Any person who would otherwise be subject to the tax imposed under this Section may seek a one-year hardship exemption due to exceptional circumstances. The City Administrator may approve such applications for good cause. Such approvals shall be in writing and specifically state the factors that constitute good cause. Any hardship exemption shall be effective for one tax year only, after which it will expire. Taxpayers who seek hardship exemptions must reapply every year.

2. The City Council may, by ordinance, establish such other exemptions to the tax imposed by this Ordinance and the authorized methods of collection of the tax, as it determines to be appropriate.

Section 4.56.040. Homeless Services Fund

The "Homeless Services Fund" ("Fund") is hereby created as a special revenue fund. Proceeds from this Tax Act, including penalties and interest earned on such proceeds, shall be deposited into the Fund and used only for the purposes listed in Section 4.56.050.

Section 4.56.050. Use of Revenue

A. Monies deposited in the Fund shall be used solely for those purposes identified in this Section.

B. Tax funds may be used to provide services and programs to homeless people, to reduce homelessness, and to support the protection of existing and production of new housing affordable to lower income households as defined in California Health and Safety Code Section 50079.5 at an affordable housing cost or affordable rent as defined in Health and Safety Code Sections 50052.5 and 50053. Examples of such uses include, but are not limited to:

1. Job training, apprenticeship, pre-apprenticeship, drug treatment, and job readiness assistance programs for homeless people or those at risk of becoming homeless;

2. Assistance connecting homeless people or those at risk of becoming homeless with available services and resources, including assistance applying for housing or public benefit programs;

3. Housing assistance, including the provision of temporary housing or move-in expenses, such as first-month's rent and a security deposit, and emergency rental assistance;

4. Sanitation, bathroom, and cleaning services related to homeless encampments, and programs to supplement remedying and deterring blight and illegal dumping throughout the City;

5. Incentive programs to encourage property owners to make space available for low-income housing, including making funds available for physical improvements to enable a unit to be used for a voucher-based housing program;

6. Relocation assistance funding for low-income households facing displacement;

7. Financial assistance for the design, development, construction or operation of affordable housing units, including housing alternatives such as, without limitation, shipping container homes, accessory dwelling units and small homes.

8. Accessibility support to provide or maintain housing, and make needed improvements for accessibility, for seniors and persons with disabilities; and

9. Displacement prevention, tenant education and assistance, emergency rent assistance; and

10. Navigation centers to provide space for people to stay, along with on-site support services for the homeless. Funding may be used for both capital and operating costs related to navigation centers; and

11. Code enforcement and cleanup of blighted vacant properties, other blight elimination, and remedying illegal dumping, including legal action to address any of the foregoing as necessary. No less than twenty-five percent (25%) of the revenue deposited into the Fund in any single year shall be used to pay for the uses listed in this paragraph.

C. Monies in the Fund may be used to pay the costs of audits of the use of monies in the Fund.

D. Monies in the Fund may be used to pay for the City's costs of the election required to obtain voter approval of the tax authorized by this Ordinance, including City Attorney costs to prepare this Ordinance and related documents. City Attorney costs shall be deposited in a Revenue account for sole use by the Office of the City Attorney.

E. Monies in the Fund may be used to pay for the costs of administering the special tax, regardless of how or by what entity those administrative services are provided. No more than fifteen percent (15%) of the revenue deposited into the Fund in any single year may be used to pay for such administrative costs. Notwithstanding the foregoing, the City shall be reimbursed for its actual costs of establishing the program for collecting the tax, which costs shall be confirmed by the City Auditor. Administrative costs include, but are not limited to:

1. The costs to the City of determining and identifying gross receipts from the rental of property that are subject to the tax;

2. The costs to the City associated with monitoring and enforcing compliance with this Ordinance. Authorized costs include, but are not limited to, any expenses, including attorneys' fees, associated with any proceedings needed to enforce the requirements of this Ordinance;

3. The costs to the City associated with developing ordinances and regulations to implement this Ordinance;

4. The costs to the City associated with the operations of the Commission on Homelessness established by Section 4.56.060 of this Ordinance; and

F. If this Ordinance or the use of tax funds is legally challenged, tax funds may be used to reimburse the City for its costs of legal defense, including attorneys' fees and other expenses.

Section 4.56.060. **Commission on Homelessness**

A. There is hereby established a Commission on Homelessness (the "Commission").

B. The Commission shall advise the City Council regarding use of the revenue generated by the Tax as authorized in Section 4.56.050, including services and programs for homeless people, reduction of homelessness, and supporting the provision of affordable housing to households qualifying as at least low-income households.

C. The Commission shall consist of nine (9) members who are all residents of the City. No less than half of the members must be residents of Heavily Impacted Neighborhoods. No less than two members must be currently homeless, formerly homeless or low-income, as the term "low income" is defined by the United States Department of Housing and Urban Development. No less than three members who have professional expertise in, or are providers of, homeless services or housing. No less than one representative who has financial expertise. Members may fulfill more than one of these criteria for the purposes of meeting these requirements. City Councilmembers shall make recommendations for members to the Mayor. Members of the Commission shall be appointed by the Mayor and confirmed by the City Council in accordance with City Charter section 601.

D. Members shall serve three (3) year terms. No member shall serve more than two (2) consecutive three (3) year terms. The initial three (3) year term for each of the initial members shall commence as of the date that six (6) members have been appointed, which is when the Commission may begin its work. A quorum of the Commission shall be five (5) members. A member may be removed for cause pursuant to City Charter section 601. Absence from three (3) consecutive regular meetings, or four (4) regular meetings during a single fiscal year, may constitute cause for removal from the Commission, in accordance with City Charter section 601.

E. Members of the Commission shall serve without pay.

F. The City Administrator or designee shall provide clerical assistance and administrative support and technical assistance to the Commission.

G. The Commission shall meet at least four (4) times per fiscal year.

H. The Commission shall publish an annual report regarding how and to what extent the City Council and Mayor have implemented this Ordinance. Additionally, the Commission may publish reports regarding the following: 1) recommendations on how to allocate the tax funds in accordance with the requirements of this Ordinance; 2) information, if available, concerning the impact of this Ordinance on homelessness and illegal dumping in the City; and 3) any additional information that the Commission deems appropriate. The City Council may assign other duties to the Commission as provided for by Ordinance.

I. Within 15 days of receipt of a Commission report, the City Administrator or designee shall cause the report to be published on the City's Internet website and to be transmitted to the City Council. The Report and Recommendations shall be included in the published packet and provided to the City Council as part of the Agenda at the meeting(s) at which the Council allocates the tax funding.

Section 4.56.070. **Accountability**

A. In accordance with the requirements of California Government Code Sections 50075.1 and 50075.3, the following accountability measures, among others, shall apply to the tax:

1. A separate, special account, referred to as the Homeless Services Fund, shall be created, into which the proceeds of the tax must be deposited.

2. The specific purposes of the tax are for the funding of programs and services for homeless people, to reduce homelessness, and to support the provision of affordable housing and remedying blight and trash, and for as the other purposes set forth in Section 4.56.050 of this Ordinance. The proceeds of the tax shall be applied only to these specific purposes.

3. The Commission established by Section 4.56.060 shall perform the oversight functions listed in that Section to ensure that the revenue from the tax is spent solely for the purposes listed in Section 4.56.050.

4. The City Auditor shall perform regular audits to ensure accountability and proper disbursement of all revenue collected by the City from the tax imposed by this Ordinance, in accordance with the objectives stated herein and in compliance with provisions of California law.

B. During the term of the tax, the City of Oakland shall not reduce the amount of unrestricted General Fund expenditures on illegal dumping remediation below the amount expended in the 2018-2019 fiscal year. The City Auditor's reports on the uses of the Fund shall include the percentage that was spent on illegal dumping remediation and blight remediation and shall also evaluate whether the City has satisfied the

requirement to maintain the level of unrestricted General Fund expenditures on illegal dumping remediation. If the City Auditor finds that in any fiscal year the amount of unrestricted General Fund expenditures on illegal dumping remediation is less than the total amount expended in fiscal year 2018-2019, the City of Oakland shall increase unrestricted General Fund expenditures for illegal dumping remediation within the following two fiscal years so that total unrestricted General Fund expenditures on illegal dumping remediation over three fiscal years is equal to three times fiscal year 2018-19 expenditures.

Section 4. Severability.

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be 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 or circumstance and, to that end, the provisions hereof are severable.

Section 5. California Environmental Quality Act Requirements.

The City Council hereby determines that this Ordinance is not in-and-of-itself a “project” pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation CEQA Guidelines 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the adoption of the ordinance itself may have a significant effect on the environment. To the extent that the supplemental business tax revenues generated by the Ordinance may in the future be used to fund the construction of capital improvements, the Ordinance may assist in the financing of future “projects” that will be subject to environmental review pursuant to CEQA at the “earliest feasible time” prior to “approval” consistent with CEQA Guidelines Sections 15004 and 15352.

Section 6. Approval; Effective Date.

This Ordinance, and all the provisions thereof, shall become effective only upon affirmative passage by a two-thirds majority vote of the voters voting on the Ordinance. This Ordinance shall be considered adopted on the date that the City Council declares the results of the election at which it was voted upon and shall be effective ten days thereafter.

Section 7. Council Amendments.

This Ordinance may only be amended by a vote of the people if the amendment would result in the special tax being imposed, extended, or increased in a manner not authorized by this Ordinance as originally approved by the voters. The City Council of the City of Oakland is hereby authorized to amend Chapter 4.56 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.

Section 8. Expiration of Tax.

This Ordinance shall expire 20 years after it is first levied. The voters of the City of Oakland may amend the term of the tax at any time prior to its expiration.

; and be it

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

Shall the Measure, to fund homeless solutions and related programs, and remedy illegal dumping, by enacting a Supplemental Business Tax on Rental of Property at a rate of 1% of annual gross receipts in excess of \$200,000; raising about \$7,800,000 annually for 20 years; with audits, community oversight, exemptions for non-profits and affordable housing, be adopted?	Yes	
	No	

[SUBJECT TO CITY ATTORNEY APPROVAL]

; and be it

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 6, 2018, 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 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 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 in accordance with the Elections Code and 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 2018 general municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the November 6, 2018 general municipal election; and be it

FURTHER RESOLVED: That this resolution shall be effective immediately upon approval by five members of the Council.

IN COUNCIL, OAKLAND, CALIFORNIA _____, 2018

PASSED BY THE FOLLOWING VOTE:

AYES BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND PRESIDENT REID

NOES

ABSENT

ABSTENTION

ATTEST:

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

ATTACHMENT A

18 JUL 12 PM 4:12

