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**FINANCE AND MANAGEMENT COMMITTEE  
Oakland, California**

**Re: Report Regarding Status of the State's Budget Development and Its Potential Impacts on the City of Oakland's Proposed Budget for Fiscal Year 2009-2011 – Proposition 26**

Dear Chairperson Quan and Members of the Committee:

At its November 16, 2010 meeting, the Committee directed the City Attorney to submit a report on the effect of Proposition 26 and the City's ability to levy new fees or increase fees.

**Proposition 26**

On November 2, 2010, the people of the State of California approved Proposition 26. Proposition 26 requires a two-thirds vote of the Oakland voters before the City of Oakland can impose a new or increased charge or fee. A key provision of Proposition 26 identifies the fees and charges that are exempted from the measure.

**Most Existing Fees and Charges Are Not Affected**

According to the State Legislative Analyst's analysis which, was published in the Voter Information Guide for the November 2, 2010 election: "Most . . . fees or charges in existence at the time of the November 2, 2010 election would not be affected unless... the local government later increases or extends the fees or charges."

**Seven Types of Fees and Charges are Specifically Exempted from Proposition 26**

Proposition 26 also specifically exempts seven types of fees and charges and increases to such fees and charges.

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor. The benefit must not be provided to those not charged and not exceed the

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reasonable costs to the local government of conferring the benefit or granting the privilege.

(2) A charge imposed for a specific government service or product provided directly to the payor. The benefit must not be provided to those not charged, and not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

(6) A charge imposed as a condition of property development.

(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D. These are assessment district assessments.

(Cal. Constitution, Art. XIII C.)

According to Proposition 26, the City has the burden of establishing that a particular fee, charge or increase in a fee/charge qualifies for one of the exemptions. The City must prove by a preponderance of the evidence that:

- (A) a fee or charge is exempt from the two-thirds vote,
- (B) the amount is no more than necessary to cover the reasonable costs of the governmental activity, and
- (C) the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

(Cal. Constitution, Art. XIII C.)

### **Conclusion**

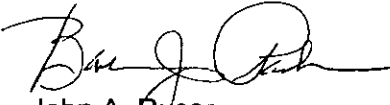
Because the City has the burden of establishing that Proposition 26 exempts any new fees/charges and any increases in existing fees/charges, the City must analyze all future

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fees/charges through this lens. The City staff, City Councilmembers, City Administrator and Mayor should consult the City Attorney's Office when they are contemplating a new fee/charge or an increase in an existing fee/charge so that there is sufficient time to gather information and perform the analysis. The analysis must be performed on a case-by-case basis.

Respectfully submitted,

  
for John A. Russo  
City Attorney

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