

# CITY OF OAKLAND

## AGENDA REPORT

OFFICE

3157 - 01 2007

2007 APR 10 PM 2:45

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Finance and Management Agency  
DATE: April 24, 2007

RE: **An Ordinance Amending Chapter 4.28 of the Oakland Municipal Code to Establish and Codify the Claim Requirements and Procedures for Refunding Overpaid, Erroneously or Illegally Collected Utility Users Tax, Penalties and Interest; and Amending Section 4.28.120 to Grant Authority to the Utility Users Tax Administrator to Examine Books, Records and Witnesses, and to Issue Administrative Subpoenas to Persons in Violation of Chapter 4.28**

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### SUMMARY

Two administrative amendments to the Oakland Utility Users Tax, Chapter 4.28 of the Oakland Municipal Code, are recommended to clarify and improve administration and tax compliance. The proposed amendments will specify requirements and procedures for utility users seeking refunds, and provide specific authority for the Tax Administrator (Director of Finance and Management Agency) to require necessary reporting information, and authority to examine books, records, agents, employees and witnesses to ascertain the accuracy of the amount of taxes due and remitted.

### FISCAL IMPACT

Providing specific requirements and procedures for refunds will limit the City's refund liability to one year from the date of any erroneous or illegally collected Utility Users Tax payment.

Providing specific authority to the Tax Administrator to require necessary reporting information and authority to examine the records and personnel involved with the collection and remittance of Utility Users Tax will ensure greater accuracy and compliance. The new authority is intended to strengthen administration and it is not expected to impact revenue in any significant manner.

### BACKGROUND

Oakland Utility Users Tax, Chapter 4.28 of the Oakland Municipal Code, does not include provisions specifying the requirements or procedures for utility users seeking a refund or any overpaid tax, penalty or interest. The City has, as a matter of practice, limited previous Utility User Tax refunds to one year, consistent with the provisions in the City's Business Tax and Transient Occupancy Tax Ordinances. It is in the best interests of the City of Oakland and taxpayers paying the Utility Users Tax to establish and codify clearly defined refund requirements and procedures, including that in order to receive a refund, a utility user taxpayer

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must file a written claim with the Tax Administrator within one year from the date of payment of such tax, penalty or interest.

The Tax Administrator currently lacks the authority to require sufficient reporting information and authority to examine books, records, agents, employees and other witnesses to ascertain the accuracy of taxes reported and remitted from utility service providers. Staff needs authority and necessary administrative tools in order to ensure compliance with the requirements of Chapter 4.28 by utility service providers and users.

### **KEY ISSUES AND IMPACTS**

It is important to establish clearly defined authority, requirements and procedures to ensure efficient administration and compliance of the Utility Users Tax.

- The current Ordinance does not define the refund requirements or procedures, which leaves open the possibility of inconsistent treatment of taxpayers. Establishment of a one year period for the filing of a refund claim from the date of payment will provide clarity and more consistent application of local tax refund procedures.
- The current Ordinance provides very limited tax reporting and auditing authority which impairs the City's ability to ensure accurate tax reporting, payment and compliance. Added authority is being recommended to allow the City to require more thorough reporting, and the right to examine the books, records, and tax returns of utility service providers and users, as well as issue administrative subpoenas if necessary.

### **SUSTAINABLE OPPORTUNITIES**

Economic: A modified ordinance will ensure better tax compliance and limit liability for refunds.

Environmental: There are no environmental opportunities resulting from the recommended changes to the Ordinance.

Social Equity: The new tax compliance authority and clear refund procedures will ensure greater tax fairness.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

There are no impacts on disability and senior access from the recommended changes to the Ordinance.

## RECOMMENDATION AND RATIONALE

Staff recommends the City Council approve the proposed ordinance amending Chapter 4.28 of the Oakland Municipal Code to establish and codify the claim requirements and procedures for refunding overpaid, erroneously or illegally collected Utility Users taxes, penalties and interest; and amending Section 4.28.120 to add additional reporting requirements, and to grant authority to the Utility Users Tax Administrator to examine books, records and witnesses, and to issue administrative subpoenas to persons in violation of Chapter 4.28.

These amendments to the Oakland Utility Users Tax, Chapter 4.28 of the Oakland Municipal Code, will clarify and improve administration and tax compliance.

## ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends the City Council approve the ordinance amending Chapter 4.28 of the Oakland Municipal Code to establish and codify the claim requirements and procedures for refunding overpaid, erroneously or illegally collected Utility Users Taxes, penalties and interest; and amending Section 4.28.120 to add additional reporting requirements, and to grant authority to the Utility Users Tax Administrator to examine books, records and witnesses, and to issue administrative subpoenas to persons in violation of Chapter 4.28.

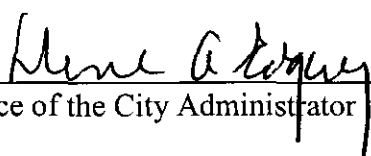
Respectfully submitted,



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WILLIAM E. NOLAND  
Director, Finance and Management Agency

Prepared by:  
Terry Adelman, Revenue Manager  
Revenue Division

APPROVED AND FORWARDED TO THE  
FINANCE & MANAGEMENT COMMITTEE:

  
\_\_\_\_\_  
Office of the City Administrator

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INTRODUCED BY COUNCILMEMBER \_\_\_\_\_  
OFFICE OF THE CITY CLERK

*Kathleen Adams-Bank*  
City Attorney

2007 APR 12 PM 2:45 **OAKLAND CITY COUNCIL**

**ORDINANCE No. \_\_\_\_\_ C.M.S.**

**AN ORDINANCE AMENDING CHAPTER 4.28 OF THE OAKLAND MUNICIPAL CODE TO ESTABLISH AND CODIFY THE CLAIM REQUIREMENTS AND PROCEDURES FOR UTILITY USERS TAX REFUNDS OF TAX, PENALTIES OR INTEREST, OVERPAID, ERRONEOUSLY OR ILLEGALLY COLLECTED, AND AMEND SECTION 4.28.120 TO GRANT AUTHORITY TO THE UTILITY USERS TAX ADMINISTRATOR TO EXAMINE BOOKS, RECORDS AND WITNESSES, AND TO ISSUE ADMINISTRATIVE SUBPOENAS TO PERSONS IN VIOLATION OF CHAPTER 4.28.**

**WHEREAS**, the City of Oakland Utility Users Tax at Chapter 4.28 of the Oakland Municipal Code (the "Municipal Code"), does not include provisions specifying the requirements or procedures for utility users seeking a refund of any "overpaid" business tax, penalty or interest; and

**WHEREAS**, it is in the best interests of the City of Oakland and taxpayers paying the Utility Users Tax to establish and codify clearly defined refund requirements and procedures, including that in order to receive a refund, a utility user taxpayer must file a written claim with the Tax Administrator within one year from the date of payment of such tax, penalty or interest; and

**WHEREAS**, the City of Oakland desires that the Tax Administrator be provided all tools necessary in order to ensure compliance with the requirements of Chapter 4.28 by utility service suppliers and users; and

**WHEREAS**, the authority to examine books, records, agents, employees and other witnesses is necessary for the Tax Administrator to ascertain the amount of tax due from service users and accuracy of service suppliers collection and remittance of the tax; now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. The City Council finds and determines the forgoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike~~

through type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

SECTION 3. Chapter 4.28 of the Municipal Code is hereby amended in its entirety to read as follows:

**4.28.180 Refund to the service user of taxes, penalties and/or interest erroneously or illegally collected.**

Whenever the City or utility service supplier erroneously or illegally collected or received an overpayment of tax, penalties or interest under this Chapter 4.28, the City may refund to the service user, the amount of the tax that was overpaid if the service user or his or her guardian, conservator, executor or administrator files a written claim with the Tax Administrator within one year from the date the tax was paid. All claims must specify the specific grounds for the claim, and shall be made and verified by the service user. No other agent, including the taxpayer's attorney, may sign a refund claim. No claim may be filed on behalf of a class of persons unless each class member verifies the claim in accordance with the requirements of this section.

SECTION 4. Section 4.28.120 of the Municipal Code is hereby amended in its entirety to read as follows:

**4.28.120 Reporting and remitting; examination of books, records, witnesses.**

(a) ~~Every service supplier shall,~~ On or before the forty-fifth day after close of the billing cycle that ends on the last business day of any given month, every service supplier must make a return to the Tax Administrator, on forms provided by him or her, stating the amount of taxes collected by service collector supplier during the preceding month billing cycle and setting forth the applicable factor or factors that constitute the service supplier's measure of the tax, together with such other information as shall be required by the Tax Administrator to enable it to administer the provisions of this chapter and shall pay at such time the amount of the tax computed thereon. At the time the return is filed, the service supplier must remit the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator may establish shorter reporting periods for any service supplier if he or she deems it necessary in order to insure collection of the tax and he or she may require further information in the return. Returns and remittances are due immediately upon cessation of business for any reason. (Prior code § 5-23.08)

(b) The Tax Administrator, or any duly authorized employee, is authorized to examine the books, papers, tax returns and records of any service supplier or service user subject to this chapter for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the tax due or collected under Chapter 4.28. Every person subject to the provisions of this chapter is directed and required to furnish to the Tax Administrator or duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations. The Tax Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the tax due under this chapter. In order to ascertain the tax due under this chapter, the Tax Administrator may compel, by administrative subpoena, the production

of relevant books, papers and records and the attendance of all persons as parties or witnesses. The refusal to submit to such examination or production by any employer or person subject to the provisions of this chapter shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable state law.

SECTION 5. This ordinance shall be effective on immediately, if passed by the affirmative vote of at least six City Council members; if this ordinance is passed by the affirmative vote of five City Councilmembers it will be effective seven days after final passage.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2007

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID AND PRESIDENT  
DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the  
Council of the City of Oakland, California