

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

Resolution Submitting, On The City Council's Own Motion, To The Electors At The November 2, 2010 General Election, A Proposed Ordinance Establishing A Temporary Parcel Tax Solely To Assist the City In Preserving, Protecting and Enhancing "Vital Public Safety And Violence Prevention Services" 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, 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 City of Oakland submit all new taxes and any tax increase to the voters for their approval before they become effective; and

WHEREAS, the City of Oakland is facing an unprecedented budget deficit in its General Purpose Fund due to the local impacts from the global, national, state, and regional recession; and

WHEREAS, as a result of that economic recession City of Oakland General Purpose Fund revenues have gone from \$491 million in 2006 down to a projected \$401 million for the 2011 fiscal year; and

WHEREAS, Police and Fire services account for almost 75% of the General Purpose Fund; and

WHEREAS, the City has been implementing a multi-prong approach to public safety that includes prevention, intervention, enforcement, and sustainability (PIES) strategies; and

WHEREAS, beginning in November 2008, the City of Oakland maintained a police force of about 800 officers and is currently down to 696 officers and will be reduced by another 122 officers should November revenue measures fail to pass; and

WHEREAS, there are currently insufficient funds to provide for the approved Police and Fire staffing levels; and

WHEREAS, in 2009, homicides were down approximately 20 percent and overall crime was down more than 10 percent; and

WHEREAS, the City of Oakland is committed to the continuation of a multi-prong public safety approach; and

NOW, THEREFORE BE IT RESOLVED:

That the City Council of the City of Oakland does hereby submit to the voters at the November 2, 2010 general election, an ordinance, which reads as follows:

PART 1. GENERAL

Section 1. TITLE.

This ordinance may be cited as the "Violence Prevention and Public Safety Act of 2010."

Section 2. FINDINGS

1. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., 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.

2. Nothing in this ordinance is intended to preclude owners from recovering the tax from the occupant. Whether the occupant is charged depends on the occupancy agreement and the requirements of the City's Residential Rent Adjustment Program. (Oakland Municipal Code Chapter 8.22.)

Section 3. USE OF PROCEEDS

The tax proceeds raised by this ordinance may be used only for any of the following purposes:

- 911 police and fire response
- 911 police and fire dispatch
- Community and neighborhood policing
- Park policing
- Police investigations and oversight
- A minimum of 75% of the annual amount appropriated may be used only for any of the police and fire services listed above.
- Costs, including but not limited to recruitment, training and equipment costs, to provide the police and fire services listed above
- Violence prevention services, including but not limited to, outreach workers
- Not more than five percent of the amount appropriated annually for the annual costs of administering the ordinance (such as evaluation, financial reviews, tax collection, calculation of the amounts of the tax for each parcel)

PART 2. OVERSIGHT, MINIMUM STAFFING AND TERM OF TAX IMPOSITION

Section 1. ANNUAL REVIEW.

An annual review shall be performed to assure accountability and the proper disbursement of the proceeds of this tax in accordance with the objectives stated herein in accordance with Government Code sections 50075.1 and 50075.3.

Section 2. SPECIAL FUND

The City shall deposit into a special fund in the City treasury all funds collected by the City from the taxes imposed by this ordinance and shall appropriate and expend such funds only for the purposes authorized by this Ordinance.

Section 3. OVERSIGHT

The Violence Prevention and Public Safety Oversight Committee established by Measure Y, the Violence Prevention and Public Safety Act of 2004 shall review the annual review, evaluate, inquire and review the administration, coordination and evaluations of the programs and make recommendations to the Mayor and the City Council for any new regulations, resolutions or ordinances for the administration of the programs to comply with the requirements and intent of this Ordinance.

Section 4. TERM OF TAX IMPOSITION

The taxes imposed by this Ordinance shall become effective until June 30, 2015.

Section 5. SAVINGS CLAUSE.

If a court of competent jurisdiction determines that any provision, sentence, clause, section or part of this ordinance is unconstitutional, illegal or invalid, the courts' finding shall affect only the provision, sentence, clause, section or part of this ordinance that the courts have found to be unconstitutional, illegal or invalid and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared to be the intention of the City, that the City would have adopted this ordinance if any such unconstitutional, illegal or invalid provision, sentence, clause, section or part of this ordinance had not been included in this ordinance.

If the courts find that any tax or surcharge imposed by this ordinance is unconstitutional, illegal or invalid, the amounts, services, programs and personnel (as set forth in Part 3) that such taxes and surcharges are required to fund, shall be reduced proportionately by any revenues lost due to such unconstitutionality, illegality or invalidity.

Section 6. REGULATIONS.

The City Council is hereby authorized to promulgate such regulations or ordinances as it may deem necessary in order to implement or clarify the provisions of this ordinance.

Section 7. COUNCIL AMENDMENTS

The City Council may amend this ordinance, except that the tax rates may not be amended by action of the City Council without the applicable voter approval.

Section 8. CHALLENGE TO TAX.

Any action to challenge the taxes imposed by this ordinance shall be brought pursuant to Government Code section 50077.5 and Code of Civil Procedure section 860 et seq.

PART 3. PARCEL TAX

Section 1. DEFINITIONS.

The following terms shall be defined as set forth below:

"Building" shall mean any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "Building" includes the word "structure."

"Community and neighborhood policing" shall mean any cost for neighborhood beat officers, officers to respond to school safety and truancy, officers to investigate and respond to illegal narcotic transactions and commission of violent crimes in identified violence hot spots, officers to team with social service providers to intervene in situations of domestic violence and child abuse, including child prostitution.

"Family" shall mean one or more persons related by blood, marriage, domestic partnership, or adoption, who are living together in a single residential unit and maintaining a common household. Family shall also mean all unrelated persons who live together in a single Residential Unit and maintain a common household.

"Hotel" shall mean as defined by Oakland Municipal Code section 4.24.020.

"Multiple Residential Unit Parcel" shall mean a parcel zoned for a building, or those portions thereof, that accommodate or is intended to contain two or more residential units.

"Non-Residential" shall mean all parcels that are not classified by this ordinance as Residential Parcels, and shall include, but not be limited to, industrial, commercial and institutional improvements, whether or not currently developed.

"Occupancy" shall be as defined by Oakland Municipal Code section 4.24.020.

"Operator" shall be as defined by Oakland Municipal Code section 4.24.020.

"Owner" shall mean the Person having title to real estate as shown on the most current official assessment role of the Alameda County Assessor.

"Parcel" shall mean a unit of real estate in the City of Oakland as shown on the most current official assessment role of the Alameda County Assessor.

"Person" shall mean an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"Possessory Interest" as it applies to property owned by any agency of the government of the United States, the State of California, or any political subdivision thereof, shall mean possession of, claim to, or right to the possession of, land or Improvements and shall include any exclusive right to the use of such land or Improvements.

"Residential Unit" shall mean a Building or portion of a Building designed for or occupied exclusively by one Family.

"Single Family Residential Parcel" shall mean a parcel zoned for single-family residences, whether or not developed.

"Transient" shall mean any individual who exercises Occupancy of a hotel or is entitled to Occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any individual so occupying space in a Hotel shall be deemed to be a Transient until the period of thirty (30) consecutive days as elapsed.

"Vital Public Safety and Violence Prevention Services" shall mean the services listed in Part 1, Section 3 of this Ordinance.

"Violence Prevention" shall mean violence prevention social services programs provided by or facilities operated by the City of Oakland or community-based nonprofit organizations.

Section 2. IMPOSITION OF PARCEL TAX.

There is hereby imposed a special tax on all parcels in the City of Oakland. The tax imposed by this Section shall be assessed unless the parcel is by law exempt from taxation.

The tax hereby imposed shall be at the following rates, subject to annual adjustment as provided in Section 4:

(A) For all Single Family Residential Parcels, the tax shall be at the annual rate of \$360.00 per Parcel.

(B) For all Multiple Residential Unit Parcels, the tax shall be at the annual rate of \$245.95 per occupied Residential Unit. Units that are vacant for six months or more per fiscal year, may apply to the Director of Finance to have the rate reduced by 50% to \$122.97 per vacant Residential Unit located on the Parcel.

(C) The tax for Non-Residential Parcels is calculated using both frontage and square footage measurements to determine total Single Family Residential Unit Equivalents (SFE). A frontage of 80 feet for a commercial/industrial parcel, for example, is equal to one (1) single family resident unit equivalent. (See matrix.) An area of 6,400 square feet for the commercial industrial parcel is equal to one (1) single family resident unit equivalent. The tax is the annual rate (\$184.38) multiplied by the total number of Single Family Equivalents (determined by the frontage and square footage).

| LAND USE CATEGORY | FRONTAGE | AREA (SF) |
|--------------------------|----------|-----------|
| Commercial Institutional | 80 | 6,400 |
| Industrial | 100 | 10,000 |
| Public Utility | 1,000 | 100,000 |
| Golf Course | 500 | 100,000 |
| Quarry | 1,000 | 250,000 |

Example: assessment calculation for a Commercial Institutional Parcel with a Frontage of 160 feet and an Area of 12,800 square feet:

Frontage

160 feet ÷ 80 = 2 SFE

Area

12,800 square feet ÷ 6,400 = 2 SFE

2 SFE + 2 SFE = 4 SFE

4 SFE x \$184.38 = \$737.52 tax

(D) The tax imposed by this Ordinance shall be imposed on each Hotel within the City in accordance with the following:

Residential Hotels. If rooms in a Hotel were occupied by individuals who were not Trans ients for 80% or more of the previous fiscal year, such Hotel shall be deemed a Residential Hotel, and such rooms shall be deemed Residential Units and shall be subject to the Parcel tax imposed on Multiple Residential Units. The remainder of the

Building shall be subject to the applicable Square Footage tax computed in accordance with the Single Family Residential Unit Equivalent calculations.

Transient Hotels. Notwithstanding the previous sub-section, a Hotel shall be deemed a Transient Hotel if the Operator reported 80% or more of the Operator's gross receipts for the previous fiscal year as rent received from Transients on a return the Operator filed in compliance with section 4.24.010 of the Oakland Municipal Code (commonly known as the Uniform Transient Occupancy Tax of the City of Oakland). If a Hotel is deemed a Transient Hotel under this section, the entire Building (1) shall be deemed a Non-Residential Parcel, categorized as Commercial, Institutional, and (2) shall be subject to the Square Footage and Single Family Residential Unit Equivalent calculations set forth in Section 4(C), and the parcel tax imposed on Residential Units shall not apply.

(E) For fiscal year 2010-2011, the rates shall be the full annual rates set forth above.

Section 3. EXEMPTIONS.

Low income household exemption. The following are exempt from this tax: an Owner of a single family residential unit (1) who resides in such unit and (2) whose combined family income, from all sources for the previous fiscal 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 fiscal year. Owners must apply for the exemption provided for in this section annually by petition to the Director of the Finance and Management Agency of the City of Oakland ("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 provided such information as the Director of Finance shall require, including, but not limited to, federal income tax returns and W-2 forms of owner-occupants eligible for this exemption.

Section 4. REDUCTION IN TAX; RATE ADJUSTMENT.

(A) Subject to paragraph (B) of this section, the tax rates imposed by this ordinance are maximum rates and the City Council may not increase the tax rates above such maximum rates. The City Council may suspend, reduce or eliminate the tax imposed by the ordinance for the next fiscal year upon a vote of the City Council on or before June 30th. Such suspension, reduction or elimination shall be effective for the next fiscal year following such vote.

(B) Beginning in Fiscal Year 2011-2012, and each fiscal year thereafter, the City Council may increase the tax imposed hereby by the percentage increase in the cost of living in the immediate San Francisco Bay Area, as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area and as published by the U.S. Department of Labor Statistics, above the previous fiscal year. The City Council must make a finding of such CPI increase to increase the tax. The percentage increase in the tax imposed

hereby shall not exceed the increase in the CPI, provided that in no event shall any annual adjustment exceed 5% (five percent).

Section 5. DUTIES OF THE DIRECTOR OF FINANCE; NOTICE OF DECISIONS.

It shall be the duty of the Director of the Finance and Management Agency ("Director of Finance") to collect and receive all taxes imposed by this ordinance, and to keep an accurate record thereof.

The Director of Finance is charged with the enforcement of this ordinance, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this ordinance, including provisions for the re-examination and correction of returns and payments. The Director of Finance may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

Upon disallowing any claims submitted pursuant to this ordinance, the Director of Finance shall mail written notice thereof to the claimant at his/her address as shown on the Alameda County Assessor's property tax rolls.

Section 6. EXAMINATION OF BOOKS, RECORDS, WITNESSES; PENALTIES.

The Director of Finance or his/her designee is hereby authorized to examine assessment rolls, property tax records, records of the Alameda County Recorder and any other records of the County of Alameda deemed necessary in order to determine ownership of Parcels and computation of the tax imposed by this ordinance.

The Director of Finance or his/her designee is hereby authorized to examine the books, papers and records of any person subject to the tax imposed by this ordinance for the purpose of verifying the accuracy of any petition, claim or return filed and to ascertain the tax due. The Director of Finance, or his/her designee is hereby authorized to examine any person, under oath, for the purpose of verifying the accuracy of any petition, claim or return filed or to ascertain the tax due under this ordinance and for this purpose may compel the production of books, papers and records before him/her, whether as parties or witnesses, whenever s/he believes such persons have knowledge of such matters. The refusal of such examination by any person subject to the tax shall be deemed a violation of this ordinance.

Section 7. COLLECTION OF TAX; INTEREST AND PENALTIES.

For the 2010-2011 fiscal year, the tax levied and imposed by this ordinance shall be due and payable on January 1, 2011, but it may be paid no later than 45 days after the date the City or its agent sends notice. For subsequent years, the tax levied and imposed by this ordinance shall be due and payable on July 1 of each fiscal year, but it may be paid in two installments due no later than December 10 and April 10.

The tax shall be delinquent if the City does not receive it on or before the delinquency date set forth in the notice mailed to the Owner's address as shown on the most current assessment roll of the Alameda County Tax Collector; and the tax shall be collected in such a manner as the City Council may decide. The City may place delinquencies on a subsequent tax bill.

A one-time penalty at a rate set by the City Council, which in no event shall exceed 25% of the tax due per fiscal year, is hereby imposed by this ordinance on all taxpayers who fail to timely pay the tax provided by this ordinance; in addition, the City Council may assess interest at the rate of 1% per month on the unpaid tax and the penalty thereon.

Every penalty imposed and such interest as accrues under the provisions of this ordinance shall become a part of the tax herein required to be paid.

The City may authorize the County of Alameda to collect the taxes imposed by this ordinance in conjunction with and at the same time and in the same manner as the County collects property taxes for the City. If the City elects to authorize the County of Alameda to collect the tax, penalties and interest shall be those applicable to the nonpayment of property taxes.

Section 8. COLLECTION OF UNPAID TAXES.

The amount of any tax, penalty, and interest imposed under the provisions of this ordinance shall be deemed a debt to the City. Any person owing money under the provisions of this ordinance shall be liable to an action brought in the name of the City for the recovery for such amount.

Section 9. REFUND OF TAX, PENALTY, OR INTEREST PAID MORE THAN ONCE; OR ERRONEOUSLY OR ILLEGALLY COLLECTED.

Whenever the amount of any tax, penalty, or interest imposed by this ordinance has been paid more than once, or has been erroneously or illegally collected or received by the City it may be refunded provided a verified claim in writing therefore, stating the specific ground upon which such claim is founded, is filed with the Director of Finance within 365 days from the date of payment. The claim shall be filed by the person who paid the tax or such person's guardian, conservator of the executor of her or his estate. No claim may be filed on behalf of other taxpayers or a class of taxpayers. The claim shall be reviewed by the Director of Finance and shall be made on forms provided by the Director of Finance. If the claim is approved by the Director of Finance, the excess amount collected or paid may be refunded or may be credited against any amounts then due and

payable from the Person from who it was collected or by whom paid, and the balance may be refunded to such Person, his/her administrators or executors. Filing a claim shall be a condition precedent to legal action against the City for a refund of the tax.

Section 10. MISDEMEANOR VIOLATION.

Any Owner or holder of possessory interest who fails to perform any duty or obligation imposed by this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than \$1,000 or by imprisonment for a period of not more than one year, or by both such fine and imprisonment.

The penalties provided in this section are in addition to the remedies provided in this ordinance, as well as any remedies provided by other applicable laws.

Section 11. BOARD OF REVIEW.

Any person dissatisfied with any decision of the Director of Finance adversely affecting the rights or interests of such person made by the Director of Finance under the authority of this ordinance, may appeal therefrom in writing to the Business Tax Board of Review (the "Board") within sixty (60) days from the date of mailing such decision by the Director. All filings with the Board relating to appeals or otherwise shall be made to the Chairperson of the Business Tax Board of Review in care of the Revenue Department, 250 Frank Ogawa Plaza, 1st Floor, Oakland, CA 94612. The Board may affirm, modify or reverse such decision or dismiss the appeal therefrom, as may be just, and shall prescribe such rules and regulations relating to appeals as it may deem necessary. The Board's decision on appeal will become final upon mailing notice thereof to the Person appealing the Board's decision at such Person's last known address shown on the Tax Records.

Any tax, penalty or interest found to be owed is due and payable at the time the Board's decision becomes final.

The Board shall approve, modify or disapprove all forms, rules and regulations prescribed by the Director of Finance in administration and enforcement of this tax. Such forms, rules and regulations shall be subject to and become effective only on such approval.

All decisions rendered by the Board shall be final, and no further administrative appeal of these decisions is provided or intended.

Section 12. APPROPRIATIONS LIMIT.

Pursuant to Article 13B, Section 4 of the California Constitution, the appropriations limit for the City of Oakland is hereby increased by the maximum aggregate amount projected to be collected pursuant to the special tax imposed by this Chapter.

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 ESTABLISHING A PARCEL TAX FOR POLICE SERVICES, FIRE SERVICES AND VIOLENCE PREVENTION

| | | |
|---|-------------------|--|
| <p>Measure __. Shall the City of Oakland establish a temporary parcel tax solely to assist the City in preserving, protecting and enhancing "vital public safety and violence prevention services", which is subject to independent, annual financial reviews and oversight by a citizens committee?</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 November 2, 2004, 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 the recitals and measure language contained in this resolution to be voted on by the voters of the qualified electors of the City of Oakland; 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 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 obtain printing, supplies and services as required; and be it

FURTHER RESOLVED: That the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Oakland; 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 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 November 2, 2010 election and the Council hereby appropriates all monies necessary for the City Administrator and City Clerk to prepare and conduct November 2, 2010, election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, JULY , 2010

PASSED BY THE FOLLOWING VOTE:

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

AYES-

NOES-

ABSENT-

ABSTENTION-

Attest: _____

LATONDA SIMMONS
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA