

# OAKLAND CITY COUNCIL

FILED  
OFFICE OF THE CITY  
OAKLAND

RESOLUTION No. \_\_\_\_\_ C.M.S.

*Rock. Q. Jones*

2004 JUN -3 PM 7:51

## RESOLUTION OF THE CITY OF OAKLAND SUPPORTING ASSEMBLY CONSTITUTIONAL AMENDMENT 10 (ACA 10), WHICH EXEMPTS FEES AND CHARGES FOR STORM WATER AND URBAN RUNOFF MANAGEMENT FROM THE REQUIREMENTS OF PROPOSITION 218

**WHEREAS**, the City of Oakland and its residents would be positively affected by Assembly Constitutional Amendment 10; and

**WHEREAS**, the City of Oakland currently has no storm drain fee and its storm drain system is in need of significant improvements as indicated by the City's Storm Drain Master Plan; and

**WHEREAS**, The City of Oakland must meet the National Pollutant Discharge Elimination System (NPDES) permit requirements, which require the City to minimize pollutants in storm water runoff; and

**WHEREAS**, ACA 10, which exempts fees and charges for storm water and urban runoff management from voting requirements of Proposition 218, would allow the City of Oakland to assess a storm drain fee and further develop a storm drain and urban runoff management program to help reduce flooding and erosion throughout the City, and to meet the NPDES permit requirements; now, therefore be it

**RESOLVED**: that the City of Oakland declares its support for ACA 10 (To exempt fees and charges for storm water and urban runoff management from requirements of Prop. 218) introduced by Assembly Member Tom Harman; and be it

**FURTHER RESOLVED**: That the City Council directs the City Manager and the City's legislative lobbyist to advocate for the above positions in the State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20 \_\_\_\_\_

### PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

*5-11*  
**RULES & LEGISLATION  
CMTE JUN 10 2004**

**CITY OF OAKLAND  
BILL ANALYSIS FORMAT**

**DEPARTMENT INFORMATION**

**Contact:** Lesley Estes

**Date** June 5, 2004

**Department:** Public Works Agency/ Environmental Services Division

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**Bill Number:** ACA 10

**Bill Author:** Tom Harman

**Topic:** Assembly Constitutional Amendment 10

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**Summary of Constitutional Amendment**

Assembly Constitutional Amendment 10 (ACA 10), introduced by Assembly Member Tom Harman, amends the California Constitution to exempt fees and charges for storm water and urban runoff management from voter approval requirements of Proposition 218. Existing law exempts fees associated with sewer, drinking water, and refuse collection services from the voter approval requirements for the imposition or increase of property-related fees, but does not exempt storm water and urban runoff.

**Positive Factors For Oakland**

ACA 10 places before the voters an opportunity to create an additional resource for local governments looking to fund storm water and urban runoff management programs in order to comply with National Pollutant Discharge Elimination System (NPDES) permit requirements. The City of Oakland would be able to assess a fee for storm water and urban runoff management that would allow improvements to the City's existing storm drain system and to meet the NPDES permit requirements.

**Negative Factors for Oakland**

No negative factors affecting Oakland appear to be associated with this constitutional amendment.

**Other Information:**

None

**RECOMMENDED POSITION:**

**Support**

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

**1 Urgent (top priority for city lobbyist, city position required ASAP)**

**2 Very Important (priority for city lobbyist, city position necessary)**

**3 Somewhat Important (position desired if time and resources are available)**

4 **None (do not review with City Council, position not required)**  
Other known support:

**Other known opposition: Not available**

**Is state/federal legislative committee analysis available? (If yes, please attach)**

**Yes, please see the attachment.**

ASSEMBLY THIRD READING  
 ACA 10 (Harman)  
 As Introduced February 11, 2003  
 2/3 vote

LOCAL GOVERNMENT      6-1                      ELECTIONS                      4-2

Ayes:	Salinas, Lieber, Leno, Mullin, Steinberg, Wiggins	Ayes:	Longville, Jerome Horton, Levine, Nunez
Nays:	La Suer	Nays:	Samuelian, Strickland

APPROPRIATIONS                      18-3

Ayes:	Steinberg, Berg, Kehoe, Corbett Diaz, Firebaugh, Goldberg, Leno, Nation, Chan, Nunez, Pacheco, Pavley, Ridley-Thomas, Simitian, Wiggins, Yee, Laird		
Nays:	Haynes, Runner, Samuelian		

SUMMARY : Amends the California Constitution to exempt fees and charges for storm water and urban runoff management from voter approval requirements for the imposition or increase of property-related fees.

EXISTING LAW :

- 1) Allows property-related fees and charges to be imposed or increased upon the approval of a majority of the property owners of the property subject to the fee or charge or, at the option of the agency, a two-thirds vote of the electorate residing in the affected area.

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2) Exempts fees associated with sewer, water, and refuse collection services from the voter approval requirements for the imposition or increase of property-related fees.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis, General Fund costs of approximately \$275,000 for preparation of voter pamphlets, and substantial increases in local government fee revenue for storm water and urban runoff management to the extent that lowering eliminating voter approval requirements makes it easier for local governments to impose such fees.

COMMENTS : Proposition 218, which was approved by California voters in 1996, requires both property owner and voter approval for property-related fees, defined as fees that are imposed "upon a parcel or upon a person as an incident of property ownership, including user fees or charges for a property-related service." Fees for water, sewer and garbage collection services were specifically exempted from the voter approval requirements of Proposition 218.

The federal Clean Water Act recently initiated "Phase II" of its permit system for discharges from municipal storm water systems.

Under Phase I, cities with populations greater than 100,000 are required to apply for National Pollutant Discharge Elimination System (NPDES) permits to discharge urban runoff collected in storm drains. Phase II, which went into effect in the beginning of this year, applies to cities with populations less than 100,000. According to proponents, urban runoff contributes to a list of pollutants, including polychlorinated biphenyls (PCBs), and may contribute to a range of human health maladies, including immune deficiencies, reproductive difficulties, skin ailments, and death. In addition, supporters state that storm water and urban runoff can significantly damage aquatic habitat in streams, wetlands, and the ocean, and has been attributed to beach closings and advisories after storm water washes pollutants into beachwater.

This constitutional amendment places before the voters the opportunity to create an additional resource for local governments looking to fund storm water and urban runoff management programs in order to comply with NPDES permit requirements. Storm water management fees are of increasing importance, as more vigorous enforcement of the federal Clean Water Act by the state's Regional Water Quality Control Boards

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and by environmental advocacy groups has imposed an enormous,

unfunded mandate on California cities and counties. Proponents contend that Proposition 218 hamstring local governments' ability to fund the prevention and treatment programs necessary to reduce storm water and urban runoff pollution. Currently, fees associated with sewer, water, and garbage collection services are exempted from the two-thirds voter approval requirement for property-related fees. Supporters argue that storm water, as the nexus of water and sewer pollution, should be added to this short list of exemptions as a technically clarifying but necessary change in the law. Proponents further contend that this change would be consistent with the spirit of Proposition 218 while affording local governments the ability to reduce this health, environmental, and economic threat.

Opponents assert that this constitutional amendment would overturn a recent court decision and deprive property owners of their right to vote on increases in fees associated with storm water and urban runoff charges. Opponents contend that Proposition 218 does not prohibit increases in storm water runoff charges, but requires that they be approved by affected property owners. A core belief of opponents is that these issues should be decided by the taxpayers who would be paying the bill for any imposition or increase in fees.

Proposition 218, approved by California voters in 1996, provided the only current exception to the vote requirement for property-related fees. At that time, storm water and urban runoff were not a major consideration of local governments. The recent implementation of NPDES permit requirements under the federal Clean Water Act, as well as a dramatic increase in beach closures in recent years, have significantly raised the profile of the importance of mitigating storm water and urban runoff pollution.

Analysis Prepared by : Mark McKenzie / L. GOV. / (916)  
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FN: 0001452

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