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CITY OF OAKLAND



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Office of the City Attorney
John Russo
City Attorney

April 21, 2009

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**Honorable City Council
City Hall
Oakland, California**

Re: Item 19

A RESOLUTION SUBMITTING TO THE VOTERS AT THE NEXT SPECIAL ELECTION, NOT LESS THAN 88 DAYS AND NOT MORE THAN 150 DAYS FROM PASSAGE OF THIS RESOLUTION A PROPOSED ORDINANCE AMENDING THE REAL PROPERTY TRANSFER TAX, CHAPTER 4.20 OF THE OAKLAND MUNICIPAL CODE, TO CLARIFY APPLICATION OF THE TAX TO TRANSFERS OF REAL ESTATE RESULTING FROM CHANGES IN THE OWNERSHIP AND CONTROL OF CORPORATIONS AND OTHER LEGAL ENTITIES WITHOUT INCREASING THE TAX RATE; TO REMOVE THE CURRENT REQUIREMENT OF CONFORMITY TO STATEWIDE RULES; TO ADD A DEFINITION OF "PERSON" TO THE TAX; REQUESTING THE SERVICES OF THE REGISTRAR OF VOTERS; AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE SPECIAL ELECTION.

Dear President De La Fuente and Members of the City Council:

This attached correction to the proposed City Council resolution submitting an ordinance amending the real property transfer tax to the voters is presented by the City Attorney pursuant to the authority provided under the Sunshine Ordinance section 2.20.080(G), which provides an exception that allows the City Attorney to conform documents as to form and legality. In addition, the changes are offered pursuant to the authority provided under the Sunshine Ordinance sections 2.20.080(B)(3) and (4), to supplement agenda related materials with information not known at the time agenda-related materials were filed and correct errors in agenda related materials.

Very truly yours,

John A. Russo
City Attorney

By:

Kathleen Salern-Boyd
Kathleen Salern-Boyd
Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION SUBMITTING TO THE VOTERS AT THE NEXT SPECIAL ELECTION, NOT LESS THAN 88 DAYS AND NOT MORE THAN 150 DAYS FROM PASSAGE OF THIS RESOLUTION A PROPOSED ORDINANCE AMENDING THE REAL PROPERTY TRANSFER TAX, CHAPTER 4.20 OF THE OAKLAND MUNICIPAL CODE, TO CLARIFY APPLICATION OF THE TAX TO TRANSFERS OF REAL ESTATE RESULTING FROM CHANGES IN THE OWNERSHIP AND CONTROL OF CORPORATIONS AND OTHER LEGAL ENTITIES WITHOUT INCREASING THE TAX RATE; TO REMOVE THE CURRENT REQUIREMENT OF CONFORMITY TO STATEWIDE RULES; TO ADD A DEFINITION OF "PERSON" TO THE TAX; REQUESTING THE SERVICES OF THE REGISTRAR OF VOTERS; AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE SPECIAL ELECTION.

WHEREAS, pursuant to Chapter 4.20 of the Oakland Municipal Code, the City of Oakland imposes a real property transfer tax on transfers of real property located in Oakland; and

WHEREAS, the Council determines that although not expressly stated in the language of the ordinance, it was the intent of the Council to impose the tax on all transfers of real property unless expressly excepted from taxation; and

WHEREAS, transfers of real property occurring as a result of changes in the ownership of corporations, and other legal entities, through mergers, consolidations, and acquisitions escape taxation, while Oakland homeowners and small businesses pay the real estate transfer tax; and

WHEREAS, the Council determines that it is in the best interest of the City of Oakland to submit an amended real property transfer tax to the voters that will clarify the intent of the ordinance to fairly and equally tax all transfers of real property, including transfers of real property that result from changes in ownership and control of corporations and other legal entities; and

WHEREAS, the Council determines that statewide rules sometimes conflict with Oakland's interests as an independent charter city and that current requirement of conformity with statewide rules should be removed ; and

WHEREAS, accordingly, without increasing the tax rate, the City Council of the City of Oakland desires to amend Chapter 4.20, sections 4.20.020 and 4.20.030 of the Oakland Municipal; and

WHEREAS, all revenues received from the tax will be deposited in the general fund of the City to be expended for general fund purposes; now, therefore, be it

RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the Special Municipal election consistent with the provisions of state law; and be it

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby submit to the voters at the special election not more than 88 days and not more than 150 days from the date of passage of this resolution the text of the proposed ordinance, which shall be as follows:

AN ORDINANCE AMENDING THE REAL PROPERTY TRANSFER TAX, CHAPTER 4.20 OF THE OAKLAND MUNICIPAL CODE, TO CLARIFY APPLICATION OF THE TAX TRANSFERS OF REAL ESTATE RESULTING FROM CHANGES OWNERSHIP AND CONTROL OF CORPORATIONS AND OTHER LEGAL ENTITIES.

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

Section 1. 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 2. Code Amendment. Section 4.20.020 of the Oakland Municipal Code is hereby amended to read as follows:

4.20.020 Imposition of tax.

There is imposed a tax on all transfers by deeds, instruments, writings, or any other document, or changes in control and ownership of legal entities, by which any lands, tenements or other interests in real property located in the city, are or is granted, assigned, transferred, or otherwise conveyed to or invested in a transferee, or transferees thereof, which shall be levied at the rate of one and one-half (1.50) percent of the value of consideration.

~~Such tax shall be administered to the statewide rules governing the documentary transfer tax as stated in California Revenue and Taxation Code Sections 11911 through 11930, as codified on the date of passage of the ordinance codified in this section, including the exemptions from tax that are itemized therein, except where the exemptions appearing within this Chapter 4.20, provide greater protection to the taxpayer.~~

Section 3. Code Amendment. Section 4.20.030 of the Oakland Municipal Code is hereby amended to read as follows:

4.20.030 Definitions.

As used in this chapter:

"Changes in control and ownership of legal entities" means any direct or indirect acquisition or transfer of ownership interest or control in a legal entity that constitutes a change in ownership or transfer of the real property of the entity under California Revenue and Taxation Code section 64, as such statute reads and is interpreted by the California Board of Equalization on June 3, 2009.

"Person" and "persons" mean any natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, limited liability company, municipal corporation, political subdivision of the state of California, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof, and any natural person, who as an individual or with a spouse, owns fifty-one (51%) percent or more of the capital stock of a corporation obligated to file a declaration and pay tax pursuant to this chapter; and in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations under the provisions of this chapter. A person as defined herein, who is also an officer or director of a corporation obligated to file declarations and pay tax pursuant to this chapter, shall be presumed to be a person with the power to control the fiscal decision-making process. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to association shall mean the owners or part owners thereof, and as applied to corporation, the officers thereof.

"Real property" and "realty" mean real property as defined by and under the laws of the state of California.

"Value of consideration" means the total consideration, valued in money of the United States, paid or delivered, or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness existing immediately prior to the transfer which is secured by a lien, deed of trust or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust or encumbrances after such transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of transfer.

"Value of the consideration" also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where such special assessment is a lien or encumbrance on the property and the

purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after such transfer, shall not be included in determining the value of the consideration. If the "value of the consideration" cannot be definitely determined, or is left open to be fixed by future contingencies, "value of the consideration" shall be deemed to mean the fair market value of the property at the time of transfer, after deducting the amount of any lien or encumbrance, if any, of a type which would be excluded in determining the "value of the consideration" pursuant to the above provisions of this section.

Unless a transfer is a "gift", i.e., "free and clear" of liens or encumbrances, it is presumed that the value of consideration of a given property being transferred is the fair market value of that property, unless circumstances supporting a departure therefrom can be furnished to the sole satisfaction of the Director or his or her designee(s).

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. Majority Approval; Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

Section 6. Council Amendments. The City Council of the City of Oakland is hereby authorized to amend Sections 4.20.020 and 4.20.030 of the Oakland Municipal Code as adopted by this Ordinance in any manner that does not increase the rate of the real estate transfer tax, otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution or entirely dispense with the requirement for independent audits stated in Section 4.28.190.

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby find and determine that pursuant to Article XIIC, section 2(b) of the California Constitution the City Council of the City of Oakland has adopted a resolution declaring the existence of a fiscal emergency in the City of Oakland that necessitates asking the voters to approve the amendment to the real estate transfer tax tax before the next regular election of the Oakland City Council; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 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 in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed ordinance in the manner provided for by law; 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.

FURTHER RESOLVED: That the City Clerk is hereby directed to obtain printing, supplies and services as required.

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.

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 special election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the special election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION

Attest: _____

LaTonda Simmons
City Clerk and Clerk of the
Council of the City of Oakland, California