

*Kateleen Sullivan-Boyle*  
 City Attorney

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

OFFICE OF THE CLERK

2007 APR 17 PM 2:46 **OAKLAND CITY COUNCIL****ORDINANCE No. 12805 -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, JUN 19 2007, 2007

**PASSED BY THE FOLLOWING VOTE:**

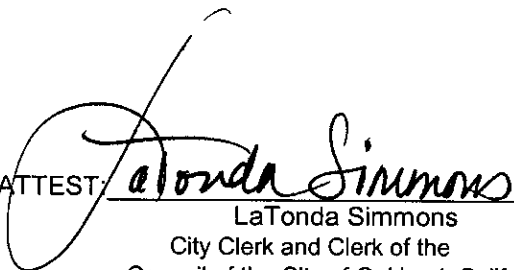
AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID AND PRESIDENT DE LA FUENTE — 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

Introduction Date: **MAY 15 2007**

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