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November 16, 2004

**HONORABLE CITY COUNCIL**  
Oakland, California

**Subject: Report Regarding Decision by California Court of Appeal in Kaiser Aluminum & Chemical Corp. v. City of Oakland, Upholding Constitutionality of the City's Business Tax on Landlords**

President De La Fuente and Members of the City Council:

The purpose of this informational report is to advise the Council of the recent decision by the Court of Appeal upholding the constitutionality of the tax on landlords under the City's Business Tax Ordinance.

On behalf of itself and Kalan Associates (owner/lessor of the Kaiser Center), Kaiser Aluminum & Chemical sought declaratory relief and a refund of taxes paid to the City between 1984 and 2002 based on three alternate legal theories: (1) that rents paid by Kaiser to Kalan were finance payments not properly subject to the City's tax on rents; (2) that the City was unconstitutionally taxing business activity by landlords occurring outside of the City; and, (3) that Oakland's tax structure is unconstitutional. The trial court entered judgment in favor the City.

Giving up its other claims, Kaiser argued on appeal that the structure of Oakland's business tax ordinance discriminates against intercity landlords and places an unconstitutional burden on intercity commerce. Appellate counsel for Kaiser, Charles Ajalat, argued that he had successfully litigated the same principles in General Motors Corporation v. City of Los Angeles (1995) 35 Cal.App.4<sup>th</sup> 1736, General Motors Corporation v. City and County of San Francisco (1999) 69 Cal.App.4<sup>th</sup> 448, and Union Oil of California v. City of Los Angeles (2000) 79 Cal.App.4<sup>th</sup> 383. Throughout the appellate process, Ajalat repeatedly pressured for settlement claiming that the City's tax refund exposure exceeded \$12,000,000.00, and that Oakland would be liable for interest dating back as far as 1984 and attorney's fees.

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In a scathing decision filed on October 28, 2004, Division Three of the Court of Appeal for the First District soundly rejected Kaiser's appeal. The Court found that Oakland's business license tax ordinance does not provide an exemption to the tax on commercial rental receipts collected by taxpayer in an administrative headquarters. In addition, the Court unequivocally held that the City's tax structure does not discriminate or place additional burdens on intercity commerce because local landlords pay the same tax as intercity landlords.

The Kaiser decision completely exonerates the City and clears the way for Oakland's continued exercise of a municipality's right to impose fair and equal taxes on all business activity occurring within its boundaries.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John A. Russo", with a long horizontal flourish extending to the right.

JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
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