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February 24, 2009
Finance Committee
Oakland City Council
Oakland, California

Re: Resolution Submitting, on the City Council's Own Motion, to the Electors at the June 2, 2009 Special Election, a Proposed Ordinance Creating the 2009 Lighting, Parks and Trees Emergency Health and Safety Measure; and Directing the City Clerk to Fix the Date for Submission of Arguments and Provide for Notice and Publication in Accordance with the June 2, 2009 Special Election

Dear President Brunner and Members of the Finance Committee:

In order to maximize the City and Councils options for the next two year budget, including avoiding further staffing reductions and possible restoration of park, lighting, tree and median maintenance to 2007-2008 levels, I respectfully submit this report to describe the proposed 2009 Lighting, Parks and Trees Emergency Health and Safety Measure, a ballot initiative for a possible June 2, 2009 special election or as soon as an election is called.

SUMMARY

The 2009 Lighting, Parks and Trees Emergency Health and Safety Measure provides voters the opportunity to restore the funds for the streetlighting, park and tree services that were cut in October 2008 as well as some of the anticipated July 1, 2009 budget reductions. This initiative will restore streetlight replacement, park maintenance and tree maintenance to pre-October 2008 service levels. This Measure is not intended to address all of the park, streetlight and tree service level impacts of the 2009-11 Budget. Those impacts are not yet known.

BACKGROUND

Most of the costs for park, tree, landscaping and lighting maintenance in Oakland have been covered by the Landscaping and Lighting Assessment District (LLAD). The LLAD, however, does not include an annual cost-of-living provision and the numbers of

Item: _____
Finance and Management Committee
February 24, 2009

parks, streetlights and trees have increased substantially throughout the City since the LLAD began in 1989.

Since 2002 the LLAD has not had a balanced budget and has run a deficit, which was being covered by other non-LLAD funding sources. To help balance the LLAD's budget, the City asked Oakland property owners in both 2006 and 2008 for increases in the LLAD. In 2006 the increase of \$10.5 million was not approved. In 2008 the increase of \$12.0 million was approved but not imposed because of a recent California Supreme Court decision concerning assessment districts.

By October 2008, after bringing in other funding sources to fill the gap in LLAD funding, there was still \$5.4 million gap between what the LLAD was taking in and what it cost to perform services covered by the LLAD. Although much of the gap was filled by other funding sources, those other sources remain in jeopardy. The only recourse was to cut jobs to balance the remaining \$5.4 million gap. 55.5 positions were eliminated to balance the LLAD budget. Eliminating those positions translated to direct service cuts for parks, streetlights and trees. The effects have yet to be felt fully because it is winter. The grass, plants, trees and weeds are not growing as vigorously as they will be in the spring and summer months. Parks are not being visited as much as they will be in the spring and summer so trash and litter are not currently at their peak. What Oakland residents, employees and visitors will begin to experience is:

Parks and park facilities:

- Unkempt parks and buildings
- No weeding or new planting
- Many fewer gardeners
- Facilities not as clean as they used to be
- Overflowing litter containers and removal of cardboard litter containers in parks
- No maintenance in open space or on trails
- Taller grass in lawns and athletic fields with mowing every three weeks instead of every two.
- Graffiti will stay on buildings, furniture and tot lots for longer periods of time.
- Building repairs will take longer

Streetlights:

- Darker streets.
- Burned out lamps are taking up to 15 days to replace versus seven days

Trees:

- No tree planting or truck watering
- Pruning only for hazardous conditions
- More tree and tree limb failures

The City is currently preparing its 2009-2011 Budget and the outlook is not good. The other funding sources that fund park landscape and tree maintenance also have increased costs that must be balanced, resulting in the potential for additional major reductions. This will translate into more jobs being cut. In the worst, and most likely, case scenario another similar and perhaps larger number of jobs will need to be cut. Not only will additional experienced City employees lose their jobs, the result will most likely be:

Parks and park facilities:

- Some parks and facilities will not receive any routine maintenance
- Only emergency median maintenance
- Limited maintenance services for new parks
- Limited custodial services
- No litter containers in parks, only on sidewalks

Streetlights:

- Even longer response times

Trees:

- Even longer delays for removing fallen trees

All of these services, even when only partially restored through this proposed parcel tax, will make the City more pleasant to live in, play in, work in and visit. These services also make the City more appealing to new commercial businesses, residents and visitors, and safer and healthier for everyone. The forecast, if this measure is not placed on the ballot and passed, is for an emergency situation from a health and safety perspective but also visually and economically.

Not only will the lack of funding create emergency health and safety issues, but parks and trees that are not maintained may never recover, take years to recover or need to be completely renovated with scarce funding.

It will be important to track the spending of this proposed parcel tax. It will also be important to set and track performance goals. This Ordinance would establish an Audit Committee that will meet annually to first establish and then monitor a set of performance standards for maintenance and servicing parks, streetlights and trees. The Audit Committee will also review the parcel tax's fiscal audit annually and make recommendations.

FISCAL IMPACT

The 2009 Lighting, Parks and Trees Emergency Health and Safety Measure, if approved, would restore streetlight replacement, park maintenance and tree maintenance budget cuts taken in October 2008, as well as some of the anticipated budget cuts approved in June 2009. This parcel tax would generate roughly \$8.0 million annually and include an annual cost-of-living index as well as an independent audit, and a low-income household exemption.

The table below shows the proposed rates for the new parcel tax.

<i>Land Use Category</i>	<i>Parcel Tax Rate</i>
Single Family Residential	\$46.00 per parcel
Multi-family Residential	\$34.50 per unit
Non-Residential	\$56.00 (The formula is based on square footage and frontage defined in the ordinance.)

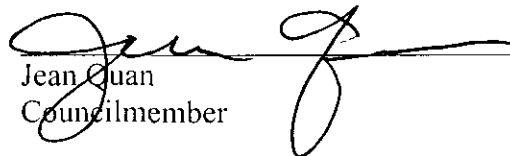
Since single family parcels represent over 63% of the total parcels in Oakland, it is used as the basic unit for the parcel tax and is defined as 1.00 SFE (Single Family Unit equivalents). The average single family parcel has average streetlighting, trees and park access. Multi-family residential units are considered 0.75 SFEs due to their reduced population density, size of structure relative to the typical single family residence, and less streetlighting and fewer trees. The non-residential parcel tax rate is higher than the single family parcel rate due to more streetlighting and trees.

Specific language and more details are included in the attached proposed Ordinance.

ACTION REQUESTED OF THE CITY COUNCIL

Approve the 2009 Lighting, Parks and Trees Emergency Health and Safety Measure on the June 2, 2009 ballot and the allocation of the associated election costs.

Respectfully submitted,


 Jean Quan
 Councilmember

Item: _____
 Finance and Management Committee
 February 24, 2009

Prepared by:

Sabrina Birnbaum Landreth
Legislative Analyst
Oakland City Council

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 FEB 11 PM 3:56
INTRODUCED BY COUNCIL MEMBER QUAN

APPROVED AS TO FORM AND LEGALITY

DRAFT

CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION SUBMITTING, ON THE CITY COUNCIL'S OWN MOTION, TO THE ELECTORS AT THE NEXT MUNICIPAL SPECIAL ELECTION, A PROPOSED ORDINANCE CREATING THE 2009 LIGHTING, PARKS AND TREES EMERGENCY HEALTH AND SAFETY MEASURE AND PARCEL TAX; AND DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE NEXT MUNICIPAL SPECIAL 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 all new or increased special taxes be submitted to the voters prior to becoming effective,

NOW, THEREFORE BE IT RESOLVED:

That the City Council of the City of Oakland does hereby submit to the voters at the next municipal special election, an ordinance, which reads as follows:

PART 1. GENERAL

Section 1. TITLE AND PURPOSE.

(A) Title. This ordinance may be cited as the "2009 Lighting, Parks and Trees Emergency Health and Safety Measure."

(B) Purpose. The taxes imposed or increased under this ordinance are solely for the purpose of raising revenue necessary to provide, maintain, and service street lighting, landscaping, trees, public park and recreation facilities and appurtenant facilities in the City of Oakland.

The parcel tax imposed is not an ad valorem tax on real property, nor a transaction tax or sales tax on the sale of real property. Because the proceeds of the tax will be deposited in a special fund restricted for the services and programs specified herein, the tax is a special tax.

1. 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 Residential Rent Adjustment Program. Moreover, non-payment will not be a lien on the property but a personal obligation of the occupant or owner.

2. It is not feasible for the City to collect the tax from the non-owner occupants on whom it is imposed because the records available to the City do not include the names of non-owner occupants. Therefore, the only practical way to collect a tax imposed on occupants is to collect it from the owners of the occupied properties.

3. 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.

Section 2. USE OF PROCEEDS

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

Provision, maintenance, and servicing of street lighting, landscaping, trees, public park and recreation facilities and appurtenant facilities. This includes, but is not limited to

- A) paying for the cost of personnel, utilities such as energy and water, materials, contractual services and other items necessary for the facilities and assets located within the incorporation limits of the City of Oakland,
- B) the furnishing of services, labor, and materials for the ordinary and usual operations, maintenance and servicing including repair, removal or replacement of all or part of any of the landscaping, trees, street lighting, public park and recreational facilities, or appurtenant facilities
- C) providing for the life, growth, health, and beauty of the landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, and treating for disease or injury, and the removal of trimmings, rubbish, debris, and other solid waste,
- D) furnishing of water for the irrigation of the landscaping
- E) maintenance of any street lighting facilities or appurtenant facilities, and
- F) the furnishing of electric current or energy, gas, or other illuminating agent for the street lighting, public park, and recreational facilities or appurtenant facilities.

Tax proceeds raised by the Ordinance also may be used for audit, oversight and engineer as set forth in Part 2, Sections 1 and 3 below.

PART 2. AUDIT AND OVERSIGHT.

Section 1. ANNUAL AUDIT AND ENGINEER.

An independent audit 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. The audit shall include:

- (a) The amount of funds collected and expended.
- (b) The status of the provision, maintenance, and servicing of any street lighting, landscaping, trees, public park and recreation facilities and appurtenant facilities funded by this tax.

Tax proceeds may be used to pay for the audit. The City will, from time to time, retain an engineer for services pertaining to this parcel tax.

Section 2. PERFORMANCE STANDARDS.

Performance standards shall be established every two years by the City Council. An evaluation of these standards shall be submitted to the City Council and be available for public review on an annual basis

Section 3. SPECIAL FUND

All funds collected by the City from the taxes imposed by this ordinance shall be deposited into a special fund in the City treasury and appropriated and expended only for the purposes authorized by this Ordinance.

Section 4. CITIZENS REVIEW COMMITTEE

To ensure proper administration of the revenue collection and spending, and the implementation of the programs mandated by this ordinance, nine members of a "Citizens Review Committee" shall be appointed and confirmed by the Mayor and City Council. The committee composed of at least one individual that lives in each City Council district. The committee shall meet at least annually and may recommend and monitor performance standards for maintenance and servicing parks, streetlights and trees. The committee shall also meet annually to review the annual audit and after such review make recommendations.

Section 5. SAVINGS CLAUSE.

If any provision, sentence, clause, section or part of this ordinance is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such provision, sentence, clause, section or part of this ordinance 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 had such unconstitutional, illegal or invalid provision, sentence, clause, section or part thereof not been included herein.

If any tax or surcharge imposed by this ordinance is found to be unconstitutional, illegal or invalid, the amounts, services, programs and personnel (as set forth in Part 3) required to be funded from such taxes and surcharges 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 shall deem necessary in order to implement the provisions of this ordinance.

Section 7. NO AMENDMENT.

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.

For purposes of this part only, the following terms shall be defined as set forth below:

(A) "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."

(B) "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.

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

(D) "Multiple Residential Unit Parcel" shall mean a parcel used for a building, or those portions thereof, that accommodates or is intended to contain two or more residential units. This includes condominiums.

(E) "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.

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

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

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

(I) "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.

(J) "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.

(K) "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.

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

(M) "Single Family Residential Parcel" shall mean a used for a single-family residence.

(N) "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.

Section 2. IMPOSITION OF PARCEL TAX.

There is hereby imposed a special tax on all Owners of parcels in the City of Oakland for the privilege of using municipal services and the availability of such services. The tax imposed by this Section shall be assessed on the Owner unless the Owner is by law exempt from taxation, in which case, the tax imposed shall be assessed to the holder of any Possessory Interest in such parcel, unless such holder is also by law exempt from taxation. The tax is imposed as of July 1 of each year on the person who owned the parcel on that date.

The tax hereby imposed shall be at the following rates, subject to annual adjustment as provided in Section 5:

(A) For owners of all Single Family Residential Parcels, the tax shall be at the annual rate of \$46.00 (forty-six dollars) per Parcel.

(B) For owners of all Multiple Residential Unit Parcels, the tax shall be at the annual rate of \$34.50 (thirty-four dollars and fifty cents) per occupied Residential Unit.

Owners of units that are vacant for six months or more per year, may apply to the Director of Finance to have the rate reduced by 50% to \$17.25 (seventeen dollars and twenty-five cents) per vacant Residential Unit located on the Parcel.

(C) The tax for a Non-Residential Parcels is calculated using both frontage and square footage measurements to determine total Single Family Residential Unit Equivalents. The tax rate for Non-Residential Parcels is \$56.00 (fifty-six dollars) per Single Family Residential Unit Equivalents ("SFE"). The tax for a Non-Residential Parcels is calculated using both frontage and square footage measurements. To calculate the tax for a non-residential parcel, first determine the land use category of the parcel. Second, take the parcel's frontage measurement and divide that number by the frontage denominator for the parcel's land use category (see matrix). This number will be the Single Family Residential Unit Equivalent for the parcel's frontage. Third, take the parcel's square footage measurement and divide that number by the area denominator for the parcel's land use category (see matrix). This number will be the Single Family Residential Unit Equivalent for the parcel's area. Add the Single Family Residential Unit Equivalent for the parcel's frontage to the Single Family Residential Unit Equivalent for the parcel's area. This number will be the parcel's total Single Family Residential Unit Equivalent. Multiply the total Single Family Residential Unit Equivalent times the tax rate for the year. This number will be the annual tax for the parcel.

LAND USE CATEGORY	FRONTAGE DENOMINATOR	AREA DENOMINATOR (SQUARE FEET)
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 an owner of a commercial parcel with a frontage of 160 feet and an area of 12,800 square feet:

1. Calculate Frontage SFE.

$$160 \text{ feet} / 80 = 2 \text{ SFE}$$

2. Calculate the Area SFE

$$12,800 \text{ square feet} / 6,400 = 2 \text{ SFE}$$

3. Add the two SFEs together

$$2 \text{ SFE} + 2 \text{ SFE} = 4 \text{ SFE}$$

4. Multiply total SFE to \$56.00 to determine total tax

$$4 \text{ SFE} \times \$56.00 = \$224.00$$

(D) An Owner of An Undeveloped Parcel is exempt from this parcel tax if the owner can prove that the parcel was undeveloped for at least six months of the year in question.

Section 3. HOTELS

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

1. Residential Hotels. If rooms in a Hotel were occupied by individuals who were not Transients 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.

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

Section 4. EXEMPTIONS.

Low income household exemption. Exempt from this tax are owners of single family residential units in which they reside whose combined family income, from all sources for the previous calendar 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 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 5. REDUCTION IN TAX; RATE ADJUSTMENT.

(A) Subject to paragraph (B) of this section, the tax rates imposed by this ordinance are maximum rates and may not be increased by the City Council above such

maximum rates. The tax imposed by the ordinance may be suspended, reduced or eliminated by the City Council for a subsequent fiscal year upon a vote of the City Council on or before June 30th in any year in which the City Council determines that after such suspension, reduction or elimination there will be sufficient revenues available to balance the City Council's Adopted Policy Budget and provide the services and programs described in Part 1, Section 3 above. Such suspension, reduction or elimination shall be effective for the fiscal year following such vote.

(B) Beginning in Fiscal Year 2010-2011, and each year thereafter, the City Council may increase the tax imposed hereby only upon a finding that 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 as published by the U.S. Department of Labor Statistics, has increased. The percentage increase of the tax imposed hereby shall not exceed such increase, using Fiscal Year 2010-2011 as the index year and in no event shall any annual adjustment exceed 5% (five percent).

Section 6. 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 7. 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 8. COLLECTION OF TAX; INTEREST AND PENALTIES.

The tax levied and imposed by this ordinance shall be due and payable on July 1 of each year, but it may be paid in two installments due no later than December 10 and April 10. The tax shall be delinquent if not received 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 shall be collected in such a manner as the City Council may decide.

A one-time penalty at a rate set by the City Council, which in no event shall exceed 25% of the tax due per year, is hereby imposed by this ordinance on all taxpayers who fail to timely pay the tax provided by this ordinance; in addition, interest shall be assessed 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 to have the taxes imposed by this ordinance collected by the County of Alameda in conjunction with and at the same time and in the same manner as the County's collection of property taxes for the City.

Section 9. 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 10. 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 one (1) year 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 11. MISDEMEANOR VIOLATION.

Any Owner 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 several remedies provided in this ordinance, or as may otherwise be provided by law.

Section 12. 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.

RESOLVED: The City Council may designate one or more of its members to advise the City Attorney regarding the abbreviated statement of measure (ballot question);

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 the appropriate election 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

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

Attest:

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