

**DRAFT**

**OAKLAND CITY COUNCIL**

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

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**RESOLUTION AUTHORIZING FILING OF LETTER  
SUPPORTING THE POSITION OF CITY AND  
COUNTY OF SAN FRANCISCO IN *LOCKYER V. CITY  
AND COUNTY OF SAN FRANCISCO ET AL*,  
CALIFORNIA SUPREME COURT NO. S122923,  
LITIGATION CHALLENGING SAN FRANCISCO'S  
AUTHORITY TO ISSUE SAME-SEX MARRIAGE  
LICENSES**

**WHEREAS**, the City and County of San Francisco asked the Oakland to file in the California Supreme Court a letter supporting San Francisco's position in *Lockyer v. City and County of San Francisco*; and

**WHEREAS**, in February of this year, Attorney General Bill Lockyer filed a petition for writ of mandate, prohibition, certiorari and/or other appropriate relief in the California Supreme Court, requesting, among other things, that the Supreme Court issue an order (1) directing San Francisco to cease and desist issuing or registering license and certificate of marriage forms to same-sex couples and (2) declaring the invalidity of the same-sex marriage licenses and certificates that San Francisco has issued; and

**WHEREAS**, Lockyer argues, among other things, that San Francisco cannot ignore California law and encourage others to ignore state laws that require San Francisco to deny marriage licenses to same-sex couples in the absence of any controlling judicial determination that those state laws are unconstitutional; and

**WHEREAS**, Lockyer contends that a county, as a political subdivision of the state, is charged with administering state government and local registrars of vital statistics act as state officers and state agents, who cannot refuse to enforce state law, because they have a ministerial duty to perform their duties in conformity with state law; and

**WHEREAS**, the California Supreme Court asked San Francisco to brief the question whether San Francisco and its officials are exceeding or acting outside the scope of their authority in refusing to enforce the provisions of the Family Code (hereinafter, the "marriage statutes") in the absence of a judicial determination that such provisions are unconstitutional; and

**WHEREAS**, the City Council has adopted non-discrimination policies and laws that prohibit discrimination on the basis of gender and sexual orientation; and

**WHEREAS**, the City's domestic partners policy provides benefits without regard to whether the partners are same-sex or heterosexual couples; and

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**WHEREAS**, the City Council desires to support San Francisco's position in the pending litigation that it has the authority to issue same-sex marriage licenses because state laws that require counties to deny marriage licenses to same-sex couples are unconstitutional; now therefore be it

**RESOLVED:** that the Council of the City of Oakland authorizes the City Attorney to file letters supporting the position of San Francisco in *Lockyer v. City and County of San Francisco*, and in any subsequent appellate proceedings.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2004

**PASSED BY THE FOLLOWING VOTE:**

AYES -

NOES -

ABSENT -

ABSTENTION -

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

CEDA FLOYD

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