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Office of the City Attorney
John A. Russo
City Attorney

November 6, 2007

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HONORABLE CITY COUNCIL
Oakland, California

Re: Supplemental Report Recommending Change To Alternative 2 Language For Affordable Housing Exemption In Section 5.04.630 Of An Ordinance Amending Chapter 5.04 Of The Oakland Municipal Code.

President De La Fuente and Members of the City Council:

At its October 9, 2007 meeting, the Finance and Management Committee recommended the addition of alternative language extending the proposed affordable housing exemption to any portion of a project that meets the specified affordability requirements. Since the Committee meeting, the City Attorney's Office has had opportunity to review the proposed alternative language. We have found that the language does not conform to our business tax ordinance in that it purports to exempt property rented as affordable low income housing rather than the gross receipts generated from the rental of the affordable units, which are taxed under the Business Tax Ordinance. If Council decides to adopt the alternative recommended by the Finance Committee, we recommend the language set forth in Exhibit A attached hereto.

Very truly yours,

John A. Russo
City Attorney

By:

A handwritten signature in black ink, appearing to read "Kathleen Salem-Boyd".

Kathleen Salem-Boyd
Deputy City Attorney

KSB:ww

cc: City Administrator, Deborah Edgerly

EXHIBIT A

B. The owner of an affordable housing project that has received federal and/or state low income housing tax credits in connection with the affordable housing ownership, is exempt from the payment of business taxes pursuant this Chapter in connection with such affordable housing project; provided that the property is owned and operated by a partnership in which the managing partner is an eligible nonprofit corporation or limited liability company and provided that the property qualifies for the property tax exemption pursuant to Section 214(g) of the California Revenue and Taxation Code. ~~To the extent that a portion of the property is eligible for the Section 214(g) exemption, the property shall be exempt from the Business Tax in the same proportion as the Section 214(g) exemption.~~ The gross receipts of the owner's business derived solely from the portion of the property that is eligible for the exemption pursuant to Section 214(g) shall be exempt from the Business Tax. The owner must submit an application and statement to the Business Tax Section setting forth evidence establishing its qualifications for this exemption, including a copy of the Section 214(g) exemption, in form and substance satisfactory to the Business Tax Section. The owner shall file annual statements setting forth such information necessary to determine continued eligibility for the exemption.