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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER KAPLAN

CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO.C.M.S.

A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE STATEWIDE GENERAL ELECTION ON NOVEMBER 6, 2018, A PROPOSED ORDINANCE TO ADOPT A SPECIAL PARCEL TAX ON VACANT PROPERTIES TO FUND AFFORDABLE HOUSING AND SUPPORT PROGRAMS FOR HOMELESS PEOPLE; AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 6, 2018 STATEWIDE GENERAL ELECTION.

WHEREAS, Oakland is suffering from a serious housing crisis as housing costs in the City increase drastically, making housing at all levels of affordability and particularly affordable housing scarce and unavailable for many Oakland residents; and

WHEREAS, the lack of sufficient housing generally and affordable housing in particular in Oakland is contributing to a large and growing crisis of homelessness, which is increasing human suffering throughout the community, creating public health risks, and negatively affecting economic activity, which deprives residents of income and opportunity. The housing crisis is also causing displacement of long-term Oakland residents, diminishing the richness of the community that contributes to making the City a desirable place to live; and

WHEREAS, Oakland is also experiencing significant vacancy of property, including residential and commercial land and buildings left unused for long periods of time; and

WHEREAS, there are a number of properties in the City that are being kept vacant, undeveloped, and unoccupied by any legal use; and

WHEREAS, properties that are vacant or undeveloped deprive the community of the economic opportunity and housing that could be provided if those properties were put into use, reducing the supply of units available to house people and businesses, thus making it more difficult for people to find space to live or operate businesses within the City; and

WHEREAS, properties that are vacant also deprive the City of the revenue needed to provide public services, by reducing the tax revenue that is generated when properties provide space for active uses or are developed for housing or businesses; and

WHEREAS, when properties are kept in a vacant state they have negative impacts on the community, including encouraging blight, crime, and illegal dumping; and

WHEREAS, properties that are vacant contribute to a negative and unpleasant atmosphere, deterring economic and community activity from locating in the area; and

WHEREAS, traditional funding sources have not kept up with the rising homeless crisis, resulting in increasing numbers of people living in problematic conditions on sidewalks and beneath underpasses; and

WHEREAS, in order to help remedy homelessness and the affordable housing crisis, it is important both to reduce the number of properties that are kept vacant or undeveloped, and to provide a funding source for homeless and affordable housing solutions; and

WHEREAS, the City Council desires to submit to the qualified electors of the City a proposed ordinance to adopt a special parcel tax on vacant properties to support affordable housing and services for homeless people; and

WHEREAS, such a special tax will also discourage property owners from keeping properties vacant; and

WHEREAS, the proposed tax will have a hardship exemption process, so that people with financial difficulty or other valid reason the property had to be vacant can have the tax waived, and non-profits are exempt; and

WHEREAS, the special tax imposed by the proposed ordinance is authorized by Article XIII A of the California Constitution and section 50075 of the California Government Code; and now therefore be it

RESOLVED, that the Oakland City Council finds and determines the forgoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED, that the Oakland City Council does hereby call for a municipal election and submit to the voters, at the November 6, 2018, Statewide General Election, an Ordinance that reads as follows:

Be it ordained by the People of the City of Oakland:

Section 1. Title.

This Ordinance may be referred to as the "Oakland Vacant Property Tax Act."

Section 2. Purpose.

The taxes imposed under this Ordinance are solely for the purpose of raising revenue necessary to support and fund services for homeless people and affordable housing, and related programs, described below. Because the proceeds of the parcel tax will be deposited into a special fund restricted for the services and programs specified in this Ordinance, the tax is a special tax.

Section 3. Code Amendment.

A new Chapter is hereby added to the Oakland Municipal Code to read as follows:

Chapter 4.56 Vacant Property Tax

Section 4.56.010	Definitions
Section 4.56.020	Determination of Vacancy
Section 4.56.030	Imposition of Parcel Tax on Vacant Property
Section 4.56.040	Vacant Property Tax Fund
Section 4.56.050	Use of Vacant Property Tax Act Revenue
Section 4.56.060	Commission on Homelessness
Section 4.56.070	Accountability

Section 4.56.010. Definitions

"City" means the City of Oakland.

"Commission" means the Commission on Homelessness authorized by this Ordinance.

"County" means Alameda County.

"Mixed use parcel" means a parcel that is improved with both: i) at least one residential unit, and ii) uses other than a residential unit.

"Multifamily residential parcel" means all parcels that are improved with more than one residential unit.

"Owner" means the owner or owners of the real property located within the City of Oakland.

“Nonresidential parcel” means all parcels that are improved with uses other than residential units.

“Parcel” shall mean a unit of real property in the City of Oakland as shown on the most current official assessment role of the Alameda County Assessor.

“Residential parcel” means all parcels that are improved with one or more residential units.

“Residential unit” means a building or structure, or portion thereof, designed for or occupied exclusively by one household, including unrelated persons who live together and maintain a common household.

“Secondary unit” shall have the same meaning as in Section 17.09.040 of the Municipal Code, as it may be amended.

“Single-family residential parcel” means all parcels which are improved with only one residential unit.

“Tax” means the special tax authorized by this Ordinance.

“Undeveloped parcel” means all parcels, regardless of zoning or other land use designation, upon which no permanent improvements have been constructed or placed.

Section 4.56.020. **Determination of Vacancy**

A. For the purposes of this ordinance, a parcel of real property shall be deemed “vacant” and subject to the tax imposed by Section 4.56.030 below if the parcel is any of the following:

1. A single-family residential parcel and is not occupied by any active use for at least 50 days in a calendar year.
2. A condominium, duplex, or townhouse unit under separate ownership and is not occupied by any active use for at least 50 days in a calendar year.
3. A multifamily residential parcel and any residential unit located on the parcel is not occupied by any active use for at least 50 days in a calendar year.
4. A nonresidential parcel and is not occupied by any active use for at least 50 days in a calendar year.
5. A nonresidential parcel with multiple nonresidential units and any nonresidential unit located on the parcel is not occupied by any active use for at least 50 days in a calendar year.

6. An undeveloped parcel and is not occupied by any active use for at least 50 days in a calendar year.

B. For the purposes of this Ordinance, a single-family residential parcel that includes a secondary unit shall be treated as vacant only if all units on the parcel are not occupied for at least 50 days.

C. The City Council shall establish, by ordinance, a method for determining and identifying the use and vacancy status of each parcel of real property in the City, including, but not limited to, a method for determining the number of nonresidential units on a nonresidential parcel and number that are vacant, if any.

Section 4.56.030. **Imposition of Parcel Tax on Vacant Property**

A. A special tax in the amounts set forth below is hereby imposed on every vacant parcel of real property within the City.

B. The tax constitutes a debt owed by the Owner of each parcel to the City.

C. Unless the City Council selects another method for collection of the tax, the County shall levy and collect the tax on each parcel of real property in the City for which the Owner receives a separate ad valorem property tax bill, at the same time and manner, and subject to the same penalties and procedures as ad valorem property taxes collected by the County except as otherwise set forth in this Ordinance.

D. If the City Council selects collection of the tax by the County, the tax shall be imposed on the ad valorem property tax bill for the fiscal year that begins July 1 following the end of the calendar year in which the parcel was vacant. The special tax shall first be imposed on the ad valorem property tax bill for fiscal year 2020-2021 for parcels that were vacant in calendar year 2019.

E. Tax Rates.

1. The tax rates for each property type shall be as set forth in the table below. The City shall be responsible for assigning a tax rate for each parcel.

PROPERTY TYPE	ANNUAL TAX RATE
Single-Family Residential	\$6,000 per parcel
Multifamily Residential	\$3,000 per vacant residential unit
Nonresidential	\$6,000 per parcel if entirely vacant
Nonresidential – multi-unit	\$3,000 per vacant nonresidential unit
Undeveloped	\$6,000 per parcel

2. For mixed use parcels, if a residential portion of a parcel is vacant, then either the single-family or multifamily parcel tax rate shall apply, depending upon the type of residential use that is vacant; if a nonresidential portion of a parcel is vacant, then either the nonresidential or multi-unit nonresidential parcel tax rate shall apply, depending upon the type of nonresidential use that is vacant. By way of example only and without limiting the generality of the foregoing, if a mixed use parcel has only a single nonresidential unit, and that unit is vacant, the tax rate shall be the one for a nonresidential parcel. If both residential and nonresidential portions of a single mixed use parcel are vacant, the parcel shall be subject to the applicable annual tax rate for each type of residential and nonresidential use that is vacant.

3. The tax rate for vacant condominium, duplex, and townhouse units shall be the Multifamily Residential Rate set forth in subsection (1), above, as that rate may be adjusted in the future.

4. The maximum annual tax for a nonresidential parcel shall be \$6,000, regardless of the number of vacant nonresidential units on the parcel. The maximum annual tax for a residential parcel shall be \$6,000, regardless of the number of vacant units on the parcel. The maximum annual tax amounts established by this subsection may be adjusted for inflation by the formula in subsection (G) in any year in which the City Council adjusts the tax rates.

F. Real property otherwise wholly exempt from ad valorem tax by state law shall also be exempted from the tax imposed by this Ordinance.

G. Adjustment in Tax Rate

1. The City Council may, by resolution, establish an annual tax rate less than the maximum amount then authorized. Following any such decrease in the annual tax rate, the City Council may, by resolution, increase the annual tax rate to the maximum rate

then permitted, or to any other amount less than the maximum rate then permitted, without obtaining voter approval.

2. Beginning in fiscal year 2024-2025, and each year thereafter, the City Council may increase the annual tax rate imposed by this Ordinance by up to the same percentage as the percentage increase in the cost of living in the immediate San Francisco Bay Area, as determined by the 12-month Annual Percentage Change in the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the Bureau of Labor Statistics of the United States Department of Labor.

H. For parcels divided by Tax Rate Area lines, the payment for the portion of the parcel within Alameda County shall be calculated at the same rates as set forth above. For properties wholly within Alameda County and divided by Tax Rate Area lines into multiple parcels, the property shall be taxed as a single parcel at the rates set forth above.

I. Exemptions

1. The following shall be exempt from the tax imposed by this Ordinance:

a. An Owner who qualifies as very low-income, as the term "very low income" is defined by the United States Department of Housing and Urban Development.

b. An Owner for whom the payment of the tax imposed by this Ordinance would be a financial hardship due to specific factual circumstances.

c. An Owner whose property is vacant as a result of a demonstrable hardship that is not financial.

d. An Owner who can demonstrate that exceptional specific circumstances prevent the use or development of the property. By way of example only and without limiting the generality of the foregoing, exceptional specific circumstances that prevent the use or development of property include property damage by a recent natural disaster, an undeveloped parcel adjoining a developed residential parcel and used by the occupants as part of the yard, and property with physical conditions that prevent development. The details of this exemption shall be further defined by separate ordinance of the City Council.

e. An Owner of property for which an active building permit application is being processed by the City.

f. An Owner (1) who is 65 years of age or older and (2) who qualifies as "low income," as the term "low income" is defined by the United States Department of Housing and Urban Development.

g. An Owner who receives Supplemental Security Income for a disability, regardless of age.

h. An Owner who Receives Social Security Disability Insurance benefits, regardless of age, whose yearly income does not exceed 250 percent of the 2012 federal poverty guidelines issued by the United States Department of Health and Human Services.

2. The City Administrator, Finance Director, or the designee of either shall establish the procedures and guidelines for owners to apply for, and grant, the exemptions identified in this section. Owners who claim an exemption may be required to submit information annually to substantiate their continuing qualification for the exemption.

3. The City Council may, by ordinance, establish such other exemptions to the tax imposed by this Ordinance and the authorized methods of collection of the tax, as it determines to be appropriate.

Section 4.56.040. **Vacant Property Tax Fund**

The "Vacant Property Tax Fund" ("Fund") is hereby created as a special revenue fund. Proceeds from the Oakland Vacant Property Tax Act, including penalties and interest earned on such proceeds, shall be deposited into the Fund and used only for the purposes listed in Section 4.56.050.

Section 4.56.050. **Use of Vacant Property Tax Act Revenue**

Monies deposited in the Vacant Property Tax Fund shall be used solely for those purposes identified in this Section.

A. Tax funds may be used to provide services and programs to homeless people, to reduce homelessness, and to support the provision of affordable housing to households qualifying as at least low-income households, as that term is defined by the United States Department of Housing and Urban Development. Examples of such uses include, but are not limited to:

1. Job training, apprenticeship, pre-apprenticeship, drug treatment, and job readiness assistance programs for homeless people or those at risk of becoming homeless;

2. Assistance connecting homeless people or those at risk of becoming homeless with available services and resources, including assistance applying for housing or public benefit programs;

3. Housing assistance, including the provision of temporary housing or move-in expenses, such as first-month's rent and a security deposit, and emergency rental assistance;

4. Sanitation, bathroom, and cleaning services related to homeless encampments, and remedying blight and illegal dumping throughout the City;

5. Incentive programs to encourage property owners to make space available for low-income housing, including making funds available for physical improvements to enable a unit to be used for a voucher-based housing program;

6. Relocation assistance funding for low-income households facing displacement;

7. Financial assistance for the design, development, construction or operation of affordable housing units, including housing alternatives—such as, without limitation, shipping container homes—accessory dwelling units and small homes.

8. Accessibility support to provide or maintain housing, and make needed improvements for accessibility, for seniors and persons with disabilities; and

9. Displacement prevention, tenant education and assistance, emergency rent assistance; and

10. Navigation centers to provide space for people to stay, along with on-site support services for the homeless. Funding may be used for both capital and operating costs related to navigation centers; and

11. Code enforcement and cleanup of blighted vacant properties.

B. Monies in the Vacant Property Tax Fund may be used to pay the costs of audits of the use of monies in the Fund.

C. Monies in the Vacant Property Tax Fund may be used to pay for the City's costs of the election required to obtain voter approval of the tax authorized by this Ordinance.

D. Monies in the Vacant Property Tax Fund may be used to pay for the costs of administering the special tax, regardless of how or by what entity those administrative services are provided. No more than fifteen percent (15%) of the revenue deposited into the Vacant Parcel Tax Fund in any single year may be used to pay for such administrative costs. Administrative costs include, but are not limited to:

1. The costs to the City of determining and identifying the use and vacancy status of every parcel in the City;

2. The costs to the City associated with monitoring and enforcing compliance with this Ordinance. Authorized costs include, but are not limited to, any expenses, including attorneys' fees, associated with any proceedings needed to enforce the requirements of this Ordinance;

3. The costs to the City associated with developing ordinances and regulations to implement this Ordinance;

4. The costs to the City associated with the operations of the oversight committee established by Section 4.56.060 of this Ordinance; and

5. Reimbursement to the County for the costs it incurs in collecting the tax.

E. If this Ordinance or the use of tax funds is legally challenged, tax funds may be used to reimburse the City for its costs of legal defense, including attorneys' fees and other expenses.

Section 4.56.060.

Commission on Homelessness

There is hereby established a Commission on Homelessness (the "Commission").

A. The Commission shall advise the City Council regarding services and programs for homeless people, reduction of homelessness, and supporting the provision of affordable housing to households qualifying as at least low-income households, including programs and services authorized in Section 4.56.050(A).

B. The Commission shall consist of nine (9) members who are all residents of the City. City Councilmembers shall make recommendations for members to the Mayor. Members of the Commission shall be appointed by the Mayor and confirmed by the City Council in accordance with City Charter section 601.

C. Members shall serve three (3) year terms. No member shall serve more than two (2) consecutive three (3) year terms. The initial two (3) year term for each of the initial members shall commence as of the date that six (6) members have been appointed, which is when the Commission may begin its work. A quorum of the Commission shall be five (5) members. Absence from three (3) consecutive regular meetings, or four (4) regular meetings during a single fiscal year, shall constitute resignation from the Commission

D. Members of the Commission shall serve without pay.

E. The City Administrator or designee shall provide clerical assistance and administrative support and technical assistance to the Commission.

F. The Commission shall meet at least four (4) times per fiscal year.

G. The Commission shall publish an annual report regarding how and to what extent the City Council and Mayor have implemented this Ordinance. Additionally, the Commission may publish reports regarding the following: 1) recommendations on how to allocate the tax funds in accordance with the requirements of this Ordinance; 2) information, if available, concerning the impact of this Ordinance on homelessness in the City; and 3) any additional information that the Commission deems appropriate.

H. Within 15 days of receipt of a Commission report, the City Administrator or designee shall cause the report to be published on the City's Internet website and to be transmitted to the City Council.

Section 4.56.070. **Accountability**

In accordance with the requirements of California Government Code Sections 50075.1 and 50075.3, the following accountability measures, among others, shall apply to the tax:

A. A separate, special account, referred to as the Vacant Property Tax Fund, shall be created, into which the proceeds of the tax must be deposited.

B. The specific purposes of the tax are for the funding of programs and services for homeless people, to reduce homelessness, and to support the provision of affordable housing and for as the other purposes set forth in Section 4.56.050 of this Ordinance. The proceeds of the tax shall be applied only to these specific purposes.

C. The Commission established by Section 4.56.060 shall perform the oversight functions listed in that Section to ensure that the revenue from the tax is spent solely for the purposes listed in Section 4.56.050.

D. The City Auditor shall perform regular audits to ensure accountability and proper disbursement of all revenue collected by the City from the tax imposed by this Ordinance, in accordance with the objectives stated herein and in compliance with provisions of California law.

Section 4. Severability.

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 5. California Environmental Quality Act Requirements.

The City Council hereby determines that this Ordinance is not in-and-of-itself a "project" pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation CEQA Guidelines 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the adoption of the ordinance itself may have a significant effect on the environment. To the extent that vacant property tax revenues generated by the Ordinance may in the future be used to fund the construction of capital improvements, the Ordinance may assist in the financing of future "projects" that will be subject to environmental review pursuant to CEQA at the "earliest feasible time" prior to "approval" consistent with CEQA Guidelines Sections 15004 and 15352.

Section 6. Approval; Effective Date.

This Ordinance, and all the provisions thereof, shall become effective only upon affirmative passage by a two-thirds majority vote of the voters voting on the Ordinance. This Ordinance shall be considered adopted on the date that the City Council declares the results of the election at which it was voted upon and shall be effective ten days thereafter.

Section 7. Council Amendments.

This Ordinance may only be amended by a vote of the people if the amendment would result in the special tax being imposed, extended, or increased in a manner not authorized by this Ordinance as originally approved by the voters. The City Council may establish rules that are necessary and desirable for implementation of this Ordinance and may amend any aspect of the Ordinance as long as such amendment does not result in an increase in the authorized tax rate.

Section 8. Expiration of Tax.

This Ordinance shall not expire, and shall remain in effect unless repealed or amended by the voters of the City of Oakland.

; and be it

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the consolidation of the Oakland Municipal election called for herein with the state primary election of November 6, 2018, consistent with provisions of State Law; and be it

FURTHER RESOLVED, that each ballot used at said election shall have printed therein, in addition to any other matter required by law, the following:

CITY OF OAKLAND MEASURE _____

<p>Shall the Measure, to fund homeless solutions and related programs, and discourage vacant properties, by enacting a Vacant Property Tax on properties in use less than 50 days per year, at annual rates of \$6,000 per single family home, undeveloped lot or nonresidential parcel, and \$3,000 for a unit in multi-unit property; raising about \$20,000,000 annually unless repealed; with audits, community oversight, exemptions for very low income, low-income seniors and hardship, be adopted?</p> <p>[SUBJECT TO CITY ATTORNEY APPROVAL]</p>	<p>Yes</p>	
	<p>No</p>	

; and be it

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 November 6, 2018, 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 recitals and measure language 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, Chapter 3 of the Oakland Municipal Code, the Government Code and the Election Code of the State of California; and be it

FURTHER RESOLVED, that in accordance with the Elections Code and the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Ordinance and rebuttals, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED, that certain sections of the Ordinance submitted to the voters may be codified into the City of Oakland Municipal Code at the direction of the City Clerk upon approval by the voters; and be it

FURTHER RESOLVED, that this resolution shall be effective immediately upon approval by five members of the Council.

IN COUNCIL, OAKLAND, CALIFORNIA _____, 2018

PASSED BY THE FOLLOWING VOTE:

AYES

NOES

ABSENT

ABSTENTION

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
Of the City of Oakland, California