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CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

REBECCA KAPLAN
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Date: April 25, 2019
To: Members of City Council and Members of the Public
From: Council President Kaplan
Re: A Resolution Requesting The City Attorney Enter Into A Tolling Agreement on Measure AA

Dear Colleagues on the City Council and Members of the Public,

We are currently facing lengthy and expensive litigation regarding Measure AA. There is a great deal of need to fund youth. However, the cost to collect, escrow, and litigate the AA taxes would need to be spent now – estimated in the millions of dollars – and this cuts into currently funding our most urgent needs for youth.

As such I am introducing this resolution which would have the benefit of reducing the time, strife and money involved in litigation and amend the Council's action taken on December 14, 2018 for "Resolution No. 87485, 'Certifying Measure AA, a proposed amendment to the Oakland City Charter creating The 'Children's Initiative Of 2018' and approving a parcel tax to fund early childhood education and college readiness programs, on the November 6, 2018 Oakland General Election, as passing and directing the City Administrator to present a validation ordinance to the Council and directing the City Attorney to bring a validation action for the measure" as follows:

- (1) to direct the City Administrator not to present a validation ordinance to the Council; and
- (2) to direct the City Attorney to negotiate a tolling agreement with Plaintiff in Jobs & Housing Coalition, et al. v. City of Oakland, Alameda County Superior Court Case No. RG19005204 to toll (i.e., suspend the statute of limitations) for the lawsuit for one year.

The City Council has already voted not to collect the tax for the first year. Therefore, it is reasonable to avoid the extra time and cost of litigation for the first year, during which we can learn more from other cities litigation and have more discussions with stakeholders about options going forward.

Attached please find today's Resolution with this memo along with the following supporting documents:

1. Attachment A: Motion from April 16, 2019 City Council Meeting
2. Attachment B: Statement from Council President Kaplan
3. Attachment C: Statement from Councilmember Lynette McElhaney
4. Attachment D: Text of Oakland Ballot Measure AA (November 2018)
5. Attachment E: Oakland Ballot Measure History
6. Attachment F: Text of San Francisco Ballot Proposition C (June 2018)
7. Attachment G: SF Chronicle Article on Measure AA
8. Attachment H: Oakland News Now Article
9. Attachment I: East Bay Times Article
10. Attachment J: Block by Block Letter
11. Attachment K: League of Women Voters Call to Action

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca Kaplan".

Rebecca Kaplan
Oakland City Council President



City Attorney's Office

EXHIBIT A

OAKLAND CITY COUNCIL MOTION

MOTION PUBLICLY DIRECTING THE CITY ADMINISTRATOR NOT TO COLLECT FIRST YEAR MEASURE AA (THE CHILDREN'S INITIATIVE OF 2018) TAXES; AND RESTATING THAT PURSUANT TO COUNCIL'S DECEMBER 14, 2018 RESOLUTION NO. 87485 C.M.S. THE CITY ADMINISTRATOR IS DIRECTED TO SUBMIT A VALIDATION ORDINANCE FOR THE TAXES, AND THE CITY ATTORNEY IS DIRECTED TO FILE A VALIDATION ACTION

WHEREAS, on December 14, 2018, the City Council passed Resolution No. 87485 C.M.S. "Certifying Measure AA, A Proposed Amendment To The Oakland City Charter Creating The 'Children's Initiative Of 2018' And Approving A Parcel Tax To Fund Early Childhood Education And College Readiness Programs, On The November 6, 2018 Oakland General Election, As Passing And Directing The City Administrator To Present A Validation Ordinance To The Council And Directing The City Attorney To Bring A Validation Action For The Measure"; and

WHEREAS, on April 2, 2019 the City Council discussed in closed session under Item No. 1(c) pending litigation filed by the Jobs and Housing Coalition against the City of Oakland, and under Item No. 2, multiple threats of litigation challenging the Children's Initiative of 2018 (Measure AA) on the City of Oakland's November 6, 2018 ballot, and passed a motion directing the City Administrator not to collect first year Measure AA taxes (hereinafter referred to as the "Motion"); and

WHEREAS, the City Attorney reported out the Motion in open session at the April 2, 2019 Council, and the vote on the Motion was made by Councilmember Thao, seconded by Councilmember Gallo, and passed with 7 Ayes (Councilmember Gibson McElhaney was excused); and

WHEREAS, the Council's direction not to collect first year Measure AA taxes does not evidence any intent of the Council to relinquish or waive the City's rights to collect Measure AA taxes in subsequent years; now, therefore, be it

RESOLVED: That the Council directs the City Administrator not to collect first year Measure AA taxes; and be it

~~**FURTHER RESOLVED:** That the Council's direction to the City Administrator not to collect first year Measure AA taxes does not waive or relinquish the City's rights to collect Measure AA taxes in subsequent years.~~

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

5 AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

2 NOES – KALB, REID

1 ABSENT – GIBSON MCELHANEY (excused)

0 ABSTENTIONS –

ATTEST: _____

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

2733383v2

A better way forward

Reducing strife and litigation costs, and helping programs for our youth

-Council President Rebecca Kaplan

In December 2018, the advocates for Measure AA strongly urged the City Council to vote to certify the Measure after it got 62% of the vote, arguing that it was an independent citizen measure not bound by the normal rules of government-run taxes, and promised to help with the expected litigation which would arise, including promising to raise money for legal costs. In order to help shorten and consolidate potential litigation, the Council also voted to direct the Administrator to file a “validation” ordinance and the attorney to file a validation action – which would help reduce the size and length of litigation.

In the intervening months, the Administration did not file the validation ordinance – and in the meantime, Oakland was sued by a group of plaintiff property owners to challenge the legality of the Measure AA tax. The Measure AA committee and supporters have not yet donated the funds they had promised to support the litigation.

Instead, the Measure AA Committee devoted significant money to pay a consultant to send out press releases and tweets pressuring the Council to spend money on this fight and to collect the AA tax, even while it is in litigation because they say there is an “emergency” and immediate need for programs for our youth.

There is in fact a great deal of need to fund youth programing, but unfortunately collecting the AA tax now would do nothing to help with the immediate and urgent needs facing our schools and our young people. The litigation is expected to take three years – so any AA taxes collected now would be held up for about three years. However, the cost to collect, escrow, and litigate the AA taxes would need to be spent now – estimated in the millions of dollars – so in fact, spending that money to collect and fight the contested taxes would mean we would have even less money now for urgent needs. However – we DO HAVE THE OPTION to take immediate action to fund vital needs, by spending funds directly to fill pending cuts in vital programs like Restorative Justice for our youth – which is another item on the Council agenda.

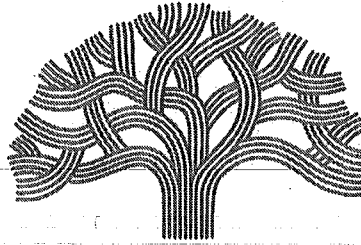
Another risk of spending more time and money to fight for the contested Measure AA, is that the years it would take and strife it would involve would further reduce voter trust and willingness to support future funding measures, and would lose us the opportunity of time to put a replacement measure on the ballot – which would be the best way to ensure protecting funding for important programs for our youth – by passing a measure with 2/3 and avoiding the threat of litigation.

A San Francisco case is moving ahead, on Measure C (June 2018), which stated on the ballot that it would only need a 50% vote to pass. However, the Oakland Measure AA ballot description said it would require 2/3. A new Measure could be brought in Oakland to serve the funding need and restore trust and unity. Oakland has a long and strong history of voting for measures by over 2/3, in fact, the failure of Measure AA to reach that threshold despite spending about \$2 million is unprecedented. A well-written measure with a strong campaign should be able to get 2/3 of the vote, and thus would both restore trust, and provide a guaranteed source of funding for vital needs for our youth without the threat of litigation.

In fact, thanks to California changing our presidential primary schedule, we have a great opportunity, very soon, to accomplish this vital goal – as we could work together to put a new measure on the March 2020 ballot! With multiple democratic presidential primary candidates mobilizing here, voter turnout in Oakland should be very high. And, passing a new Measure, less than one year from now – would provide funding sooner than waiting through 3 years of litigation, and with more certainty. IF we skip trying to pass a new measure for 2020 because we focus on litigating instead, we will lose this high voter turnout opportunity, potentially delaying the opportunity to pass a replacement measure for many years.

THEREFORE, I would like to offer a new, more harmonious option, which would have the added benefit of reducing the time, strife, and money involved in litigation. Which is:

- 1) Enter into agreement with the Plaintiffs to pause the lawsuit for a year (this is called “tolling” a lawsuit).
- 2) During the year, we will have the opportunity to learn more about the potential of the litigation by seeing the progress of a case in San Francisco.
- 3) During the year, convene stakeholders to consider a potential new Measure for the ballot, which could get 2/3 of the vote, which could go on the March 2020 ballot. (Note that because the Primary is early in 2020, it would be completed in time for the tax to be collected on the 2020 rolls, so we would not miss any future years of funding).
- 4) We could take a pause on all litigation actions, including defending the lawsuit that was filed against Oakland, and would not need to file the validation, if the tax were not collected, and we would not need to deal with the problem or cost of tax payers challenging the assessing/collecting of the tax. This would save us the cost of litigation.
- 5) Because we would save the over \$2 million that it would cost to go ahead with the AA proposal for collecting the tax, that money would be available to pay for immediate urgent needs, including important needs for our youth.



CITY OF OAKLAND

CITY HALL ~ 1 Frank H. Ogawa Plaza ~ Oakland, California 94612

Lynette Gibson McElhaney
Councilmember – District 3
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While on Bereavement, Finance Chair Issues Statement on Measure AA

April 16 2019 – Last year, the Oakland City Council certified Measure AA despite it falling short of the 2/3 voter threshold stated on the ballot. I was the sole dissenting vote at the time and I stand by that decision today. The City Council's action to validate the measure has resulted in a deeply divided electorate and has undermined public trust. While passions are high on both sides, I have been particularly moved by the arguments made by supporters of the measure who decry the subsequent decisions to change the rules after the fact.

Already the costs to litigate this contentious effort has increased risk to the public purse. Assuming the action to collect, hold and refund the tax further puts at risk an estimated \$2 million in administrative costs, funds our City desperately needs to fund services to address the housing crisis, tackle illegal dumping and invest in the health and welfare of our residents.

I urge my colleagues to reaffirm the Closed Session decision to wait until the litigation is resolved. I support Council President Kaplan's motion to not collect the tax and to return to the voters in 2020. This proposal has the best chance of avoiding costly litigation and affirming our commitment to minimize the risks to the public treasury and trust.

Councilmember Lynette Gibson McElhaney

Representing #LoveLife in the Heart & Soul of the Town

Oakland District 3

CITY OF OAKLAND MEASURE AA

AA	Shall the measure amending Oakland's Charter for the purposes of funding services to: expand access to early childhood and preschool education; improve high school and college graduation and career readiness; provide mentoring and college financial assistance; by establishing a \$198, 30-year parcel tax for single-family parcels and specified rates for other parcel types, raising approximately \$25,000,000 - 30,000,000 annually, with citizen's oversight, and exemptions for low-income households and others, be adopted?	YES
		NO

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE AA

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

BALLOT TITLE:

Proposed Amendment to the Oakland City Charter Creating the Children's Initiative of 2018 and Approving a Parcel Tax to Fund Early Childhood Education and College Readiness Programs

BALLOT SUMMARY:

This measure would amend the City Charter to add Article XVI, "The Children's Initiative of 2018", and authorize a thirty-year annual special parcel tax. The tax revenue could be used only for the purposes specified in the measure, which include the following:

- 62% would be used to support programs to expand access to and quality of early childcare and education and preschool to increase educational outcomes and reduce educational inequality.
- 31% would be used to reduce disparities in postsecondary education outcomes, and increase college awareness and expectations, college savings, family economic well-being, college and career access, college application, enrollment, admission rates, affordability and graduation rates.
- 7% would be used for oversight and accountability costs including the cost of operating the Citizens' Oversight Commission ("Commission") established by the measure, staffing, operations, audits, implementation planning, outreach and independent third-party evaluations.

This measure creates a new City staff position to serve as the Children's Initiative accountability officer. This measure establishes guidelines for programs funded by tax revenue ("Guidelines") for the first five years. After the first five years, Guidelines would be developed by the accountability officer and approved by the Commission. The Commission would be appointed by the Mayor subject to City Council confirmation, to oversee programs funded by this measure and perform other tasks. The Commission would select a nonprofit or government agency to administer

the funds.

The parcel tax would be imposed through fiscal year ("FY") 2048-2049. The tax for each single-family residential parcel is \$198. For multiple unit residential parcels, the tax is \$135.25 per occupied unit. For non-residential parcels, the tax would vary depending on parcel frontage and square footage, based on the formula specified in the measure. Exemptions from the parcel tax would be available to qualifying low-income households, low-income senior households, and affordable housing projects. The City would provide a rebate of 50% of the tax to qualifying tenants in single-family homes that have been foreclosed upon.

Beginning in FY 2020-2021, and each year thereafter, the City Council could increase the parcel tax by making one of the following findings:

- The cost of living in the immediate San Francisco Bay Area, as determined by the U.S. Department of Labor, has increased, or
- California per capita personal income, as determined by the California Department of Finance, has increased.

The increase in the parcel tax could not exceed the greater of the verified increase in the cost of living in the Bay Area using 2019 as the index year and the California per capita personal income, using FY 2018-2019 as the index year.

Passage of this measure requires approval by two-thirds of the voters who cast ballots. A "yes" vote will approve the parcel tax; a "no" vote will reject the parcel tax.

s/BARBARA J. PARKER
City Attorney

2018 Ballot Measures		Amount Spent
Measure Z - Oakland hotel workers measure	YES 76.29%	\$100,441
Measure W - Oakland vacant property tax to fund homeless services	YES 70.04%	Less than \$1,000
Measure V - Oakland, cannabis taxes	YES 79.82%	Less than \$1,000
Measure X - tiered transfer tax Oakland	YES 69.48%	\$26,701
ONLY Measure AA failed to exceed 2/3	YES 62.47%	\$1,819,374

2014 Ballot Measures	
Alameda County Measure BB - Transportation Expenditure Plan	YES 70.76%
Measure N - Funding for OUSD	YES 76.57%
Measure Z - violence prevention for Oakland	YES 77.49%
Oakland Measure CC - Oakland Ethics Commission	YES 73.92%
Oakland Measure EE - Municipal Retirement System	YES 73.59%
Oakland Measure FF - Minimum Wage Increase	YES 81.77%

July 2009 Special Election	
Measure F: Tax on cannabis	YES 80%
Measure C: Hotel tax	YES 76.79%
Measure D: Kids First Funding	YES 71.85%
Measure H: Real Estate Transfer Tax	YES 74.82%

C Additional Business Taxes to Fund Homeless Services

Shall the City impose additional business taxes to create a dedicated fund to support services for homeless people and prevent homelessness, including one tax of 0.175% to 0.69% on gross receipts over \$50 million that a business receives in San Francisco, and another tax of 1.5% on certain administrative offices' payroll expense in San Francisco, raising an estimated \$250–300 million in combined tax revenues annually, and with no expiration date for these taxes?

YES ←

NO ←

Digest by the Ballot Simplification Committee

The Way It Is Now: The City collects a tax on gross receipts from many businesses operating in San Francisco. The current maximum tax rates on gross receipts range from 0.16 percent to 0.65 percent.

Certain businesses with more than \$1 billion in gross receipts, 1,000 employees nationwide, and administrative offices in San Francisco pay an administrative office tax based on their payroll instead of gross receipts. For those businesses, the tax rate is 1.4 percent of their payroll expense.

Some businesses, including certain nonprofit organizations, banks and insurance companies, are exempt from these taxes.

Increasing tax revenue spending limits requires San Francisco voter approval.

The Proposal: Proposition C would impose additional business taxes:

- For businesses that pay a gross receipts tax, an additional tax of 0.175 percent to 0.690 percent on those gross revenues in San Francisco over \$50 million;
- For businesses that pay the administrative office tax, an additional tax of 1.5 percent of their payroll expense in San Francisco.

These additional taxes would not apply to:

- Certain nonprofit organizations and businesses exempt from local taxation, such as banks and insurance companies;
- Revenues that are exempt from the gross receipts tax; and

- Revenues from commercial rents that are subject to The City's Early Care and Education Commercial Rents Tax.

Proposition C would deposit this additional tax revenue into a dedicated fund serving homeless people and preventing homelessness. The Board of Supervisors would determine each fiscal year how to distribute the additional funds from these new taxes, within these limits:

- At least 50 percent to secure permanent housing for homeless people;
- At least 25 percent for mental health services specifically designed for homeless people with severe behavioral health issues;
- Up to 15 percent for services for people who have recently become homeless or are at risk of becoming homeless; and
- Up to 10 percent to secure short-term shelter and access to hygiene programs for homeless people.

The fund would be administered by the Mayor and Board of Supervisors. An advisory committee would monitor the fund.

Proposition C would increase The City's annual tax revenue spending limit for four years.

A "YES" Vote Means: If you vote "yes," you want to impose additional business taxes to create a dedicated fund to support services for homeless people and prevent homelessness.

A "NO" Vote Means: If you vote "no," you do not approve these additional business taxes.

This measure requires 50%+1 affirmative votes to pass.

The above statement is an impartial analysis of this measure. Arguments for and against this measure immediately follow. The full text begins on page 107. Some of the words used in the ballot digest are explained starting on page 58.

SF Chronicle

Oakland vote on collecting education tax puts council in tough spot



Students attend an art class at Oakland Technical High School in February. The council will vote on not collecting an education tax that voters approved.

Photo: Liz Hafalia / The Chronicle

Here's something to think about on Tax Day.

On Tuesday, the Oakland City Council will vote on a motion to *not* collect taxes on Measure AA.

That's the measure, promoted as the catalyst to overcoming the racial inequities in Oakland's schools, that got 62% of voter approval five months ago. The measure didn't reach the required two-thirds majority vote that City Attorney Barbara Parker had declared it needed to pass.

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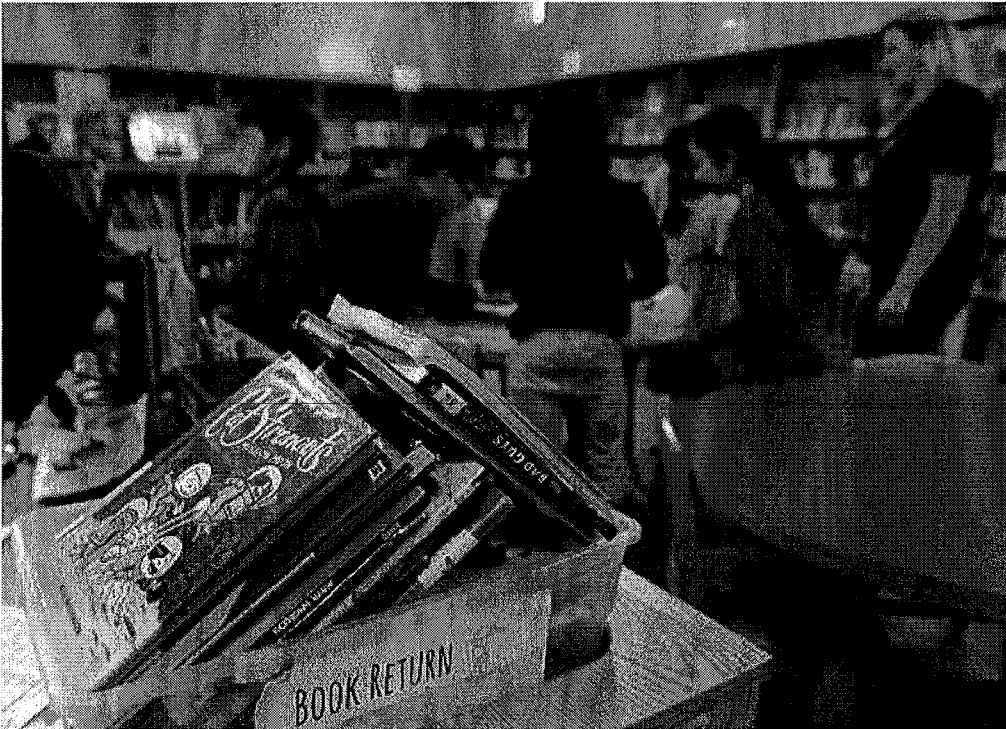
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Regardless, the council certified the measure in a 6-1 vote in December to declare that it would be implemented without the two-thirds majority — and to allow the city to begin collecting the tax.

~~Now, the council has decided to hold back. It gave first approval of the motion on April 2~~ and is expected to give second and final approval Tuesday.

The measure calls for an annual parcel tax of \$198 a year on single-family homes and \$135 a year per unit of each multiunit residence for the next 30 years. It would generate \$30 million in annual revenue.

The extra money would fund early child care and preschool programs, and college readiness programs, tuition assistance and efforts to fix racial inequities in access to higher education.



An Oakland measure to fund preschool and college readiness programs is in limbo after property owners sued the city over its certification.

Photo: Paul Chinn / The Chronicle

But the tax is in limbo because a coalition of property owners sued the city over the certification in February. The property owners believe the certification is an abuse of election law.

Still, by certifying the measure, Oakland can begin to collect tens of millions of dollars even if it won't spend a dime until after a legal ruling.

"The measure's passed, so if the measure passes you should collect the tax," Assemblyman Rob Bonta, D-Alameda, told me outside City Hall on Friday morning before a Measure AA rally. "I think we need to position ourselves so that we can go either way and follow the law that the court decides."

Bonta said the city should hold the money in escrow so it can already be in the bank if the certification is upheld — or easily refunded if a court rejects the certification. If not, he said the city would be foregoing revenue that could transform lives.

Allie Whitehurst of the Oakland NAACP said the city can't afford to pass on the money.

"The need is now," she said. "There is enough research out there that shows what early childhood education does in terms of leveling the playing field for our children. It's a matter of emergency."

Look, I voted for the measure, and my support of the intent remains steadfast. But by moving forward with the tax collection on a measure that is stuck, the city runs the risk of repulsing voters. When the council certified the measure, it felt like the rules were changed after the game had been decided. Yes, the council can collect taxes, but it shouldn't have certified the measure in the first place. Measure AA should be reworked — and, maybe, reworded — before being placed again before voters next year.

There's time to start over and get this done the right way — through voting and not a court decision.

Greg McConnell, the CEO of Jobs and Housing Coalition, the coalition of homeowners and landlords that sued the city, said the council should wait until the lawsuit is resolved to collect.

"They will be collecting, if they win, \$30 million per year year for the next 30 years," McConnell said. "Waiting a year is not going to break anything."

McConnell is losing patience with the city, which he said has requested two extensions to file its response to the coalition's lawsuit. McConnell isn't sure when the city will get around to it. Parker couldn't be reached for comment.

Councilwoman Rebecca Kaplan acknowledged getting pressured by Measure AA supporters to vote for collecting the tax money.

"There's an active lawsuit. It's not a question of what we feel like doing," said Kaplan, who added the litigation is expected to take three years. "If we lose, then we will have skipped the 2020 election as an opportunity to fix it with a better measure."

Loren Taylor, the District Six representative on the council, told me he is leaning toward voting not to collect the tax.

"My charge is to be a steward of their resources," he said. "So because of that, I err on being less aggressive versus more aggressive with the dollars in my constituents' pockets."

Happy Tax Day.

San Francisco Chronicle columnist *Otis R. Taylor Jr.* appears *Mondays and Thursdays*.
Email: otaylor@sfchronicle.com Twitter: [@otisrtaylorjr](https://twitter.com/otisrtaylorjr)

Oakland News Now

Oakland Measure AA Should Be Redone Not Forced On Taxpayers

ONN – Oakland Measure AA Should Be Redone Not Forced On Taxpayers

The City Of Oakland, lead by the 50th Mayor of Oakland Libby Schaaf, advanced a 2018 Election ballot measure called Measure AA that, if passed, would have put a \$198 tax on property owners. It needed 66.67 percent of the vote by California State Law.

UPDATE: [Why Oakland Measure AA Should Not Be Collected](#)

It got 62 percent of the Oakland vote.

Then on December 11th 2018, the Oakland City Council that was outgoing – some were not returning either via election loss or not running again – voted to enforce the tax anyway. Well, that is wrong. It's not what past City leaders have done in Oakland.

They would admit defeat and go back to the drawing board.

That is what this Oakland Mayor Libby Schaaf should do.

If the tax were to end homelessness – as discussed in the upcoming documentary Sheltered Mercy – the tax would have gotten 80 percent of the vote.

Maybe that's what the Mayor of Oakland should try?

Stay tuned.

Oakland News Now Note: this post demonstrates the full and live operation of the latest version of an experimental Zennie62Media mobile media video-blogging system network – part of a new approach to the production of media. The uploaded video is from a vlogger with the Zennie62 on YouTube Partner Channel, then uploaded to and formatted

automatically at the Oakland News Now site and social media pages. The objective is smartphone-enabled, real-time, on the scene reporting of news, interviews, observations, and happenings anywhere in the World and within seconds and not hours. We are constantly working to improve the system network coding and also seek interested content and media technology partners.

via ~~IFTTT~~

https://youtu.be/js_W41N6iZg

East Bay Times

Editorial: Schaaf's outrageous push to collect disputed Oakland tax

**Measure AA failed to gain two-thirds approval, faces
court challenge, yet mayor wants council to impose
levy now**



(Jane Tyska/Bay Area News Group)

Oakland Mayor Libby Schaaf wants the city to collect taxes from Measure AA while the initiative is tied up on court.

It was bad enough that the Oakland City Council undermined the election process by moving the goal posts for an education initiative and declaring the measure passed.

Now, collecting the tax called for in Measure AA while it remains in legal limbo would be doubling-down on outrageous behavior. We find out Tuesday whether the council will cave to pressure from Mayor Libby Schaaf and others to go along with the latest abusive proposal. Let's hope not.

AdChoices

ADVERTISING

The council will decide whether to start levying homeowners the \$198-a-year parcel tax called for under Schaaf's \$1 billion-plus, 30-year measure. The \$25 million-\$30 million collected each year would help fund early childhood education and provide mentoring and financial assistance to help balance inequities in access to college education.

They are good goals in a horribly drafted measure. But this isn't about the measure. It's about the election process.

City Attorney Barbara Parker told voters that Measure AA required two-thirds approval for passage last November. Then, after the ballot count showed only 62 percent support, the City Council declared the measure needed just a simple majority.

The League of Women Voters of Oakland said the council's "shocking and disappointing" action "undermines public confidence in our elected officials." Precisely.

Council members said they would file a motion asking a court to validate their action. But they haven't yet. Not surprisingly, outraged taxpayers and business leaders filled the void, filing a lawsuit seeking to overturn the council action.

The issue now is whether the city should start collecting the tax while Measure AA is in legal limbo. The answer should be obvious: No.

Even council members realize that. In closed session, they decided unanimously not to collect the tax and announced they would publicly affirm that decision at Tuesday's meeting.

But some Measure AA backers, including Schaaf, are pushing council members to reverse themselves. Take the money out of the pockets of property owners now, they argue. The city can give it back if it loses in court.

It's a cynical disregard for the electoral process and taxpayers' pocketbooks. The case could take years. The city administrator estimates the cost of collecting the money and then refunding it three years later would be about \$2 million. Her analysis makes no mention of paying property owners interest for that time.

Will council members have the backbone to stick by their decision to not collect the tax? Expect an Oakland-style political brawl at the meeting, which starts at 5 p.m. in the council chamber.

Those who support implementing the tax now will refuse to acknowledge that the measure was badly flawed. They will portray themselves as protectorates of children and upholders of majority rule. They will demonize opponents as greedy special interests using the state's unfair tax-election rules to protect their pocketbooks.

But those are the rules that state voters have approved. Those are the rules the city attorney announced for the Measure AA election — the ones campaigns on both sides relied on when planning their strategies.

If backers of the measure didn't like Parker's determination that two-thirds approval would be required, they had ample time to challenge it in court before the voter pamphlet was printed and mailed out. They didn't.

Now that they lost, they're claiming a majority threshold should have applied. They cite a 2017 state Supreme Court ruling that suggests local initiatives like Measure AA, put on the ballot through a signature-gathering process, require only majority approval.

But that Supreme Court case had to do with election timing, not the vote threshold. The council should avoid an over-broad interpretation until the high court provides clarity.

The City Council has a steep legal hurdle to clear to uphold its claim that Measure AA passed. Oakland shouldn't be taking property owners' money until the issue is resolved.



Block By Block Organizing Network

Volunteers Working Together for One Oakland

TO: Oakland City Council
FROM: Block by Block Organizing Network
RE: Measure AA

Last fall among the many candidates and initiatives Oaklanders voted on was an initiative that levied a \$200 property tax on every property owner in order to provide more funding for early childhood programs and other possible activities for our students.

Built into the measure was a written acknowledgement that it required two thirds vote to win based on Prop 218, in force since 1996, that would require special taxes (as opposed to general fund taxes) to receive 67% of the vote. The measure did get 62% a majority of the vote but nowhere near the 2/3 normally required and as expressed within the measure.

Our neighborhood-based organization is made up of Oakland activists many of whom are teachers and parents and some who especially focus on our schools. We always support programs for our kids, especially students whose neighborhood schools have not been adequately funded or supported.

But we were keenly aware that this was a controversial proposal not only because of the large tax it imposed but because of the vagueness of the implementation language. In a city which has been adversely impacted by the proliferation of charter schools and other privatization schemes, cynicism about public funds and how often they seem to find their way to private hands, is high, very high.

Voters want to know who will control the funds and how they will be spent before they vote. On the one hand, our taxpayers generally support and have recently given the two thirds blessing to OUSD, Peralta Community Colleges, and the city budget, but this one struck many as poorly written at a minimum.

Once the measure did not, in fact, pass, many in the school community suggested a more carefully written proposition might be devised. It was a shock then to many in the political community, not to mention those who are not normally seen at city hall, to hear its implementation being touted at there at December's lame duck council.

Many who strongly supported the measure or who are unaware of the court cases swirling around it, are demanding that the new councilmembers "implement" the tax but there are no means to implementation available until and UNLESS a California court allows an exemption to Prop 218 in this particular case. What they are asking the city to do is collect the property tax and place the funds in escrow in hopes that the court will certify the measure.

There does not seem to be any consensus as to whether the court will uphold the city's "certification," and there is now a lawsuit against collecting the funds based on the existing law and the two thirds requirement for passage.

We find it extremely manipulative and more than a bit cynical to imply that upholding the measure which did not receive the requisite vote to be equated to not supporting children, particularly poor children. But there seems to be a well-funded and underhanded campaign to do just that.

As the League of Women Voters (many of them parents) stated, **“We urge you to nullify the certification of Measure AA as Passed and accurately certify the measure as Failed....** By certifying Measure AA as passed, the Council in effect changed the rules after the game had been played. Had the proponents, the City Attorney, or the Council elected to rely on the Upland decision allegedly holding that measures placed on a ballot by initiative need only a simple majority vote, they had ample opportunity to do so as Measure AA and information about it were being prepared for the ballot.”

Some of the measure’s proponents seem to think that money is owed to the city and as such should be collected but that sort of thinking encourages voter anger and distrust in public institutions-already running at a high pitch. It is dangerous to be cavalier about the rules that voters rely on both to our democratic institutions and to our ability to put more funding proposals in front of voters.

There are other choices for increasing the opportunity for our marginalized and underserved students: 1) rewrite the measure including concerns about the 30% that would go to an unnamed, private overseer with unspecified benefits. 2) Support a revise of Prop 218 so that majority vote on taxes is clearly the rule, 3) Support the Schools and Communities First ballot measure on the 2020 ballot that will return billions to our public institutions while making corporations pay their fair share.

How about we, neighborhood leaders, educators, and parents, work together to do all three? If we truly want a better future for the next generation of Californians, we can do no less.

(signed)
Sheryl Walton and Sharon Rose
BBBON Co-Chairs

League of Women Voters

Call to Action: Measure AA Parcel Tax

Measure AA on last November's ballot was a \$198 parcel tax to fund child care programs and other programs for youth under the banner of "The Oakland Promise."

According to the ballot information pamphlet sent to all voters, Measure AA needed two-thirds vote to pass. But it only received 62.47%, well short of two-thirds.

Nonetheless, on December 14, 2018 the Oakland City Council declared Measure AA certified as passed. Some Council members said that since Measure AA was a citizen initiative placed on the ballot by signatures, it only required a simple majority vote.

It is the position of the League that the Council changed the rules after the fact. **In January we filed a request that the Council nullify its action and accurately certify Measure AA as having failed.** That request is at www.lwvoakland.org.

In February, the Jobs and Housing Coalition (JHC) filed suit against the City in Superior Court to invalidate the Council's vote. The City has not yet filed a response to the suit.

On Tuesday, April 2, the Oakland City Council voted in closed session not to collect the Measure AA parcel tax for the first year of the tax and is scheduled to publicly confirm that decision this coming Tuesday, April 16.

Please contact both your Councilmember and At-large Councilmember Rebecca Kaplan to ask that they vote AYE on the resolution not to collect the tax.

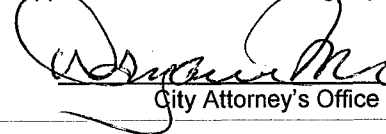
Come to City Hall on Tuesday to show your support. Sign up to speak at the Council meeting. We may ask you to cede time to another League member so that we can give single presentations longer than a minute.

Also tell councilmembers that they could still place on an upcoming agenda and pass the League's proposal to nullify the December 14, 2018 resolution whereby it declared Measure AA *passed* despite its not having received the two-thirds vote shown to be necessary in the voter information pamphlet for the November 2018 election. The JHC suit would be withdrawn. Most importantly, the Council will take an important step in restoring public confidence in Oakland government.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

19 APR 25 PM 3:31

Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO.

C.M.S.

INTRODUCED BY COUNCIL PRESIDENT KAPLAN

RESOLUTION AMENDING THE COUNCIL'S DECEMBER 14, 2018 RESOLUTION NO. 87485 C.M.S., "CERTIFYING MEASURE AA, A PROPOSED AMENDMENT TO THE OAKLAND CITY CHARTER CREATING THE 'CHILDREN'S INITIATIVE OF 2018' AND APPROVING A PARCEL TAX TO FUND EARLY CHILDHOOD EDUCATION AND COLLEGE READINESS PROGRAMS, ON THE NOVEMBER 6, 2018 OAKLAND GENERAL ELECTION, AS PASSING AND DIRECTING THE CITY ADMINISTRATOR TO PRESENT A VALIDATION ORDINANCE TO THE COUNCIL AND DIRECTING THE CITY ATTORNEY TO BRING A VALIDATION ACTION FOR THE MEASURE" AS FOLLOWS:

(1) TO DIRECT THE CITY ADMINISTRATOR NOT TO PRESENT A VALIDATION ORDINANCE TO THE COUNCIL; AND

(2) TO DIRECT THE CITY ATTORNEY TO NEGOTIATE A TOLLING AGREEMENT WITH PLAINTIFF IN JOBS & HOUSING COALITION, ET AL. V. CITY OF OAKLAND, ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG19005204 TO TOLL (I.E., SUSPEND THE STATUTE OF LIMITATIONS) FOR THE LAWSUIT FOR ONE YEAR.

WHEREAS, on December 14, 2018, the City Council passed Resolution No. 87485 C.M.S. "Certifying Measure AA, A Proposed Amendment To The Oakland City Charter Creating The 'Children's Initiative Of 2018' And Approving A Parcel Tax To Fund Early Childhood Education And College Readiness Programs, On The November 6, 2018 Oakland General Election, As Passing And Directing The City Administrator To Present A Validation Ordinance To The Council And Directing The City Attorney To Bring A Validation Action For The Measure"; and

WHEREAS, on April 2, 2019 the City Council discussed in closed session under Item No. 1(c) pending litigation filed by the Jobs and Housing Coalition against the City of Oakland, and under Item No. 2, multiple threats of litigation challenging the Children's Initiative of 2018 (Measure AA) on the City of Oakland's November 6, 2018 ballot, and passed a motion directing the City Administrator not to collect first year Measure AA taxes (hereinafter referred to as the "Motion"); and

WHEREAS, the City Attorney reported out the Motion in open session at the April 2, 2019 Council, and the Motion was made by Councilmember Thao, seconded by Councilmember Gallo, and passed with 7 Ayes (Councilmember Gibson McElhaney was excused); and

WHEREAS, the Motion makes clear that the Council's direction not to collect first year Measure AA taxes does not evidence any intent of the Council to relinquish or waive the City's rights to collect Measure AA taxes in subsequent years; and

WHEREAS, the City Attorney further reported out that the Council would schedule a Motion for the Council's April 16, 2019 open session agenda to publicly confirm its Motion; and

WHEREAS, the Council's April 16th open session agenda included the Motion (Item No. 12), a copy of which Motion is attached to this Resolution as Exhibit A, and Council passed the Motion confirming its direction to the City Administrator not to collect first year Measure AA taxes. The motion was made by President Kaplan and seconded by Councilmember Thao and passed with a vote of 5_ayes (Kaplan, Bas, Gallo, Taylor, Thao) and 2 noes (Kalb, Reid), (Councilmember Gibson McElhaney was excused); and

WHEREAS, the Council desires to amend Resolution No. 87485 C.M.S. which the Council passed on December 14, 2018; now, therefore, be it

RESOLVED: That the Council hereby amends its December 14, 2019 Resolution No. 87485, C.M.S. "Certifying Measure AA, A Proposed Amendment To The Oakland City Charter Creating The 'Children's Initiative Of 2018' And Approving A Parcel Tax To Fund Early Childhood Education And College Readiness Programs, On The November 6, 2018 Oakland General Election, As Passing And Directing The City Administrator To Present A Validation Ordinance To The Council And Directing The City Attorney To Bring A Validation Action For The Measure" which the Council passed on December 14, 2018 as follows:

- (1) to direct the City Administrator not to submit a validation ordinance to the Council; and
- (2) to direct the City Attorney to negotiate a tolling agreement with plaintiff In *Jobs & Housing Coalition, et al. v. City Of Oakland*, Alameda County Superior Court Case No. Rg19005204 to toll (i.e., suspend the statute of limitations) for the lawsuit for one year.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California