

CITY OF OAKLAND MEASURE C

<p>C To provide additional funding to the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center, cultural arts programs and festivals and the Oakland Convention and Visitor Bureau, shall the City of Oakland add a three percent (3%) surcharge to the current eleven percent (11%) Transient Occupancy Tax (Hotel Tax) that persons who stay in Oakland hotels pay?</p>	YES
	NO

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE C
BALLOT TITLE

A Proposed Ordinance Amending the City's Transient Occupancy Tax (Hotel Tax) to Provide an Additional Three Percent (3%) Surcharge that Will be Paid by Persons Who Stay in Oakland Hotels, In Order to Provide Additional Revenue to Several Oakland Programs

BALLOT SUMMARY

This proposed ordinance would amend the City of Oakland's transient occupancy tax (Hotel Tax) to provide an additional surcharge of 3% that will be paid by persons who stay in any single Oakland hotel for less than 30 consecutive days in order to provide funding to the Oakland Zoo, Oakland Museum, the Chabot Space and Science Center, cultural arts programs and festivals and the Oakland Convention and Visitor's Bureau. The current hotel tax is 11%.

The revenue from the 3% surcharge will be allocated as follows: 50% to the Oakland Convention and Visitor's Bureau, and 12.5% each to the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center and cultural arts programs and festivals. The language "cultural arts programs and festivals" is broad and would allow the City to distribute this category of funds to outside organizations or to programs operated directly by the City. The measure also does not provide specificity regarding the criteria for allocating this category of revenue; nor does it identify the decision-making process by which these funds will be distributed. The City does have an existing process under the Cultural Funding Program of the City's Cultural Arts and Marketing Division and the cultural arts programs' funds could be distributed through this program.

s/JOHN RUSSO
City Attorney

CITY ATTORNEY'S IMPARTIAL LEGAL ANALYSIS OF MEASURE C

California cities may impose special taxes only if two-thirds of a city's voters approve the tax. (California Constitution Article XIII(A), Section 4). A "special tax" is a tax that the City can use only for the purposes specified in the tax measure. This measure would add a 3% surcharge to the City's existing 11% Transient Occupancy Tax (Hotel Tax) to provide funds to the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center, cultural arts programs and festivals, and the Oakland Convention and Visitor's Bureau. The Hotel Tax is paid only by persons who stay in any single Oakland hotel for less than 30 consecutive days. The new Hotel Tax would not apply to residents of hotels who reside in the hotel for 30 consecutive days or more. If two-thirds of the voters approve this surcharge, the total hotel tax will be 14%.

Purpose of the Surcharge Tax

The revenue stream generated from this additional 3% surcharge may be expended as follows:

- A. 50% to Oakland Convention and Visitor's Bureau.
- B. 12.5% each to the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center, and cultural arts programs and festivals.

The language "cultural arts programs and festivals" is broad and would allow the City to distribute this category of funds to outside organizations or to programs operated directly by the City. The measure also does not provide specificity regarding the criteria for allocating this category of revenue; nor does it identify the decision-making process by which these funds will be distributed. Therefore, the City Council has the budgetary power under the City Charter to make these decisions. The City does have an existing process under the Cultural Funding Program of the City's Cultural Arts and Marketing Division and the cultural arts programs' funds could be distributed through this program.

Independent Audit or Review

This measure also requires an annual independent audit or review to assure accountability and the proper disbursement of the 3% surcharge revenues. However, the measure does not specify whether this audit or review is to be conducted by the City Auditor, by an outside auditor at the direction of the City Auditor, or by an outside agency at the direction of the City Council.

s/JOHN RUSSO
City Attorney

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CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF MEASURE C

SUMMARY

Measure C authorizes the City of Oakland to add Section 4.24.031 to the Municipal Code, which would require a supplemental surcharge of 3% to the City's Transient Occupancy Tax (Hotel Tax), in addition to the current 11% hotel tax. The measure specifies that the revenues generated from the 3% surcharge will be appropriated according to the percentages listed below:

- 50% Oakland Convention and Visitors Bureau
- 12.5% Oakland Zoo
- 12.5% Oakland Museum of California
- 12.5% Chabot Space and Science Center
- 12.5% Cultural Arts Programs and Festivals

The measure stipulates that these hotel tax revenues will be used to distribute appropriations through set percentages described above, and thus are regarded as special taxes.

This surcharge cannot be appropriated for any other use and would constitute a steady stream of revenue for these institutions.

Existing transient occupancy taxes are considered general taxes, where proceeds are deposited into the general fund. The revenues to be collected through the proposed 3% hotel tax surcharge are mandated to be deposited into a separate, special fund.

The hotel operator may state the 11% tax and the 3% surcharge as a single tax of 14% on receipts provided to transients. The revenue generated through the supplemental 3% hotel tax is not intended to replace or supplant any other established sources of funding.

The proposed surcharge will be in effect starting on January 1, 2010 if it receives two-thirds approval by Oakland voters.

The measure requires an annual independent audit or review shall be performed to assure accountability and the proper disbursement of the proceeds of this tax and tax proceeds may be used to pay for the audit or review.

FINANCIAL IMPACT

As of the FY 2008-09 October Midcycle Budget the 11% hotel tax budgeted \$12.7 million in revenues for Oakland. In FY 2009-10, due to a difficult economy, the City projects hotel tax revenues to decrease by \$2.6 million from lower hotel occupancy. The table below shows the estimated FY 2009-10 hotel tax and proposed surcharge revenue that is projected:

Fiscal Year	Estimated Hotel Tax Revenue (11%)	Proposed Surcharge (3%)	Total Projected Hotel Tax Revenue
2009-10	\$10,097,740	\$2,753,929	\$12,851,669

Based on our analysis of the data provided by City staff, the supplemental revenues projected from the 3% sur-

charge appear reasonable to strengthen the specific programs targeted for pre-determined appropriations under Measure C. We relied on the best data available at this time, however actual results may vary from our estimates.

s/COURTNEY A. RUBY, CPA
City Auditor

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ARGUMENT IN FAVOR OF MEASURE C

A **“Yes” vote** on Measure C ensures that Oakland children and families will continue to have access to world-class learning experiences at some of the region’s top educational and entertainment attractions, like the Oakland Museum of California, the Chabot Space & Science Center, the Oakland Zoo, and cultural arts programs and festivals.

A **“Yes” vote** on Measure C means jobs and economic stimulus for Oakland, and it does not cost Oakland residents anything. The revenue Measure C generates will be invested in our tourism attractions and services, which will create good, local jobs, attract more visitors to Oakland, and increase overall tax revenues for City services.

A **“Yes” vote** on Measure C will continue funding city programs for teacher training and educational services for Oakland’s youth – providing them with safe, accessible activities and recreation outside of school.

The Hotel Tax is paid by travelers staying in our hotels and using and receiving city services. Increasing the rate by 3% (about \$3.00 more a night for a room that costs \$100) will generate approximately \$3 million in much-needed revenue each year. This money will be used right here in Oakland and cannot be taken away by Sacramento.

Our city is missing out on valuable revenue, and fixing that won’t put us at a disadvantage in the region. Oakland’s Hotel Tax will be no higher than other major cities, like San Francisco.

Measure C is not a blank check for the city government. It generates dedicated funding for the Oakland Museum of California, the Chabot Space & Science Center, the Oakland Zoo, the OCVB and cultural arts programs and festivals that benefit all Oakland residents.

Please join us in voting **“Yes” on Measure C** to fund important programs for youth and families and bring jobs and revenue to our city.

s/Joel Parrott

Executive Director – Oakland Zoo

s/Dick Spees

Board Member – Chabot Space & Science Center
Foundation

s/Richard Edwards

Vice-Chair – Oakland Museum of California
Foundation

s/Patricia Scates

Chair of the Board of Directors – Oakland Metropolitan
Chamber of Commerce

s/Sharon Cornu

Executive Officer – Alameda Central Labor Council,
AFL-CIO

**NO ARGUMENT AGAINST MEASURE C WAS
SUBMITTED.**

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FULL TEXT OF MEASURE C

A Proposed Ordinance Amending the City's Transient Occupancy Tax (Hotel Tax) to Provide an Additional Three Percent (3%) Surcharge That Will Be Paid by Persons Who Stay In Oakland Hotels, In Order To Provide Additional Revenue to Several Oakland Programs

WHEREAS, the City Council of the City of Oakland desires to amend the Oakland Municipal Code in order to provide for a supplemental three percent (3%) transient occupancy tax, in addition to the eleven percent tax specified in Section 4.24.030; and

WHEREAS, tourism promotions and marketing programs will build greater awareness of the City of Oakland as a tourist, meeting, and event destination; and

WHEREAS, Oakland visitors and residents benefit from quality cultural and educational experiences and institutions located within the city; and

WHEREAS, the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center, and Cultural Arts programs and Festivals are valuable assets that enhance the quality of life of Oakland residents; and

WHEREAS, the increasing costs of maintenance and operations and dwindling private resources are ongoing threats to the viability of Oakland's most valuable institutions; and

WHEREAS, it is the desire of the City Council to establish a steady stream of revenue for Oakland Convention And Visitors Bureau ("OCVB"), the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center and Cultural Arts Programs and Festivals; and

WHEREAS, in many cities tourism programs and regional cultural institutions such as these, are funded from hotel taxes; and

WHEREAS, these institutions attract a large number of visitors to the City of Oakland; and

WHEREAS, all revenues received from the 3% increase in transient occupancy tax shall be allocated as follows: 50% to OCVB for its expenses and promoting tourism activities, and 12.5% each to the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center and Cultural Arts Programs and Festivals; and

WHEREAS, this economic investment in OCVB, the Oakland Zoo, the Oakland Museum of California, the Chabot Space & Science Center, and the Cultural Arts Programs & Festivals will enhance the City of Oakland's attractiveness to visitors and provide employment and enrichment to the City's residents; and

WHEREAS, OCVB, the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center and the Cultural Arts Programs and Festivals shall engage in marketing efforts to promote the City of Oakland; now, therefore be it

RESOLVED: That the City Council of the City of Oakland does hereby submit to the voters at a special municipal election that is not less than 88 days and no more than 150 days after the date the council passes this resolution the following:

SECTION 1. The Oakland Municipal Code is hereby amended by adding Section 4.24.031 to read as follows:

Section 4.24.031. Imposition of surcharge.

A. There shall be a tax of three percent (3%) of the rent charged by the operator of a hotel, in addition to the eleven percent tax specified in Section 4.24.030, for the privilege of occupancy in any hotel in the City of Oakland (the "Surcharge"). Subject to subsection E, below, the Surcharge so collected shall be appropriated to the Oakland Convention and Visitors Bureau (OCVB), the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center and the Cultural Arts Programs and Festivals as follows: 50% (fifty percent) to OCVB, 12.5% (twelve point five percent) to the Oakland Zoo, 12.5% (twelve point five percent) to the Oakland Museum of California, 12.5% (twelve point five percent) to Chabot Space and Science Center and 12.5% (twelve point five percent) for Cultural Arts Programs and Festivals. The Surcharge shall not be appropriated for any purpose other than specifically set forth in this subsection. Appropriations will be subject to applicable City of Oakland policies.

B. Said Surcharge constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the Surcharge shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the Surcharge due is not paid to the operator of the hotel, the Tax Administrator may require that such a Surcharge shall be paid directly to the Tax Administrator.

C. All funds collected by the City from the Surcharge imposed by this section shall be immediately segregated from all other funds collected and shall be deposited into a special fund in the City treasury (the "Surcharge Fund"). All monies in the Surcharge Fund shall be distributed pursuant to subsection A herein on a monthly basis, following the month in which they were collected by the City.

D. Pursuant to Section 4.24.050, on the receipt provided to the transient, the operator may state the current eleven percent (11%) tax specified in Section 4.24.030 and the three percent (3%) Surcharge as a single transient occupancy tax of fourteen percent (14%).

E. Annual Audit. An independent audit or review shall be performed annually as provided by Government Code sections 50075.1 and 50075.3 to assure accountability and the proper disbursement of the proceeds of this Surcharge in accordance with the purposes stated herein. Surcharge proceeds may be used to pay for the audit or review.

SECTION 2. This ordinance shall be effective upon 2/3 vote approval by Oakland voters at an election, or such later date as required by state law, and may not be repealed or amended except by a subsequent vote of the voters of Oakland.

SECTION 3. Severability: If any article, section, subsection sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

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SECTION 4. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation, Public Resources Code section 21065, CEQA Guidelines 15378(b)(4) and 15061(b)(3), 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 5. There are existing transient occupancy taxes that are general taxes, the proceeds of which are deposited in the general fund. The Surcharge revenues received as a result of this ordinance will be used for the purposes set forth in Section 4.24.031 and thus are special taxes.

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CITY OF OAKLAND MEASURE D

<p>D Shall the City Charter be amended to require that the City (1) set aside 3.0% of its annual unrestricted General Purpose Fund revenues for grants to children's and youth services, (2) in addition to the set aside, continue to spend the amount that the City already spends on children and youth, and (3) every twelve years extend these requirements for twelve more years or seek voter approval of the extension?</p>	YES
	NO

for appropriating the funds, soliciting funding applications from non profit and public agencies and making recommendations to the City Council to fund specific agencies whose programs support children's and youth programs.

A yes vote on this measure would amend the Charter to maintain a set aside for children's and youth programs by requiring that the City set aside 3.0% of its unrestricted general purpose fund revenue for such programs. A no vote would retain Measure OO which sets aside a percentage of the City's "total revenues" for children's and youth programs.

s/JOHN RUSSO
City Attorney

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE D

BALLOT TITLE

"An Amendment To The Oakland City Charter Section 1300 to Provide Funding For the Kids First! Oakland Fund For Children And Youth In The Amount Of Three Percent (3.0%) Of The Actual Unrestricted General Purpose Fund (Fund 1010) City Revenue"

BALLOT SUMMARY

This measure would amend City Charter Section 1300 (commonly referred to as Measure OO) to require that the City set aside 3% of the City's annual, actual unrestricted general purpose fund revenue for the Kids First! Oakland Fund for Children and Youth; the Fund gives grants to organizations that provide children's and youth services and programs. The unrestricted general purpose fund includes revenue that the City can use for any lawful, municipal purpose. The proposed Charter amendment requires the 3% set aside each year for twelve years beginning July 1, 2009; at the end of this initial 12 year period, and at the end of each subsequent twelve year period, the City Council either must extend the measure for an additional 12 years or submit the measure to the voters until such time as the voters reject the extension of the measure.

If the voters do not pass the proposed Charter amendment, Measure OO would remain in effect, requiring that beginning July 1, 2009 the City set aside 1.5% each year for two years, and thereafter 2.5% per year of the City's "total revenues." Measure OO was adopted by the voters in November 2008; it replaced the original measure that the voters approved in 1996, which set aside 2.5% of the actual unrestricted general purpose fund revenue each year.

Both the proposed Charter amendment and Measure OO require that the City continue base spending for children's and youth programs in addition to the mandated set aside. The base spending amount under existing law (Measure OO) would be greater than the base spending amount under the proposed Charter amendment because Measure OO's base spending amount would be based on total audited actual City expenditures instead of the City's actual unrestricted general purpose fund revenue.

Both the proposed Charter amendment and Measure OO continue the Planning and Oversight Committee which is tasked with developing strategic investment plans

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CITY ATTORNEY'S IMPARTIAL LEGAL ANALYSIS OF MEASURE D

This proposed Charter amendment would change the funding provisions of City Charter Section 1300 (commonly referred to as Measure OO), entitled "Kids First! The Oakland Fund for Children and Youth Act", by allocating 3% of the City's actual unrestricted general purpose fund revenues each year for children's and youth programs. Since 1996 when the voters amended the City Charter to provide a set aside for children's and youth programs, the City has set aside 2.5% of the City's actual, unrestricted general purpose fund each year for such programs. In November 2008, the voters passed Measure OO which replaced the 1996 measure. Beginning on July 1, 2009, Measure OO allocates 1.5% of the City's "total revenues" for two years and 2.5% of the City's total revenues each year thereafter to programs for children and youth.

If the proposed Charter amendment does not pass, the City will be required to set aside funds for children's and youth programs in accordance with Measure OO. Measure OO's set aside is substantially higher than the set aside provided by the proposed Charter amendment because Measure OO sets aside a percentage of the City's "total revenues" and the proposed Charter amendment sets aside only a percentage of the actual unrestricted general purpose fund revenue. "Total revenues" is a much larger amount than unrestricted general purpose fund revenue. The unrestricted general purpose fund revenue includes funds that the City can spend for any lawful purpose. On the other hand, the City's "total revenues" includes revenues that the City is legally prohibited from spending on anything other than the purposes authorized by law or the funding source. (For example, government grants for programs such as Head Start can be used only for the purposes authorized by the granting agency.) The increase in the set aside under Measure OO would reduce the amount that otherwise would be available to pay for other municipal programs, services and operations.

Both the proposed Charter amendment and Measure OO require that the City continue base spending for children's and youth programs in addition to the mandated set aside. The base spending amount under Measure OO would be greater than the base spending amount under the proposed Charter amendment because Measure OO's base spending amount would be based on total audited actual City expenditures instead of the actual unrestricted general fund.

The proposed Charter amendment could be further amended or deleted only by Oakland voters at a special or general election.

s/JOHN RUSSO
City Attorney

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CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF MEASURE D

SUMMARY

In 1996, Measure K established a separate City fund (Kids First Fund) dedicated to providing additional services for children and youth. The Kids First Fund received a set-aside amount equal to 2.5% of annual unrestricted General Purpose Fund (GPF) revenues through June 30, 2009.

Measure K was amended in 2008 by Measure OO. Effective July 1, 2009, the Kids First Fund receives 1.5% of annual total revenues for the first two years and then 2.5% of annual total revenues for the third year and thereafter.

Voter approval of Measure D would amend Measure OO. Under Measure D, the Kids First Fund would receive 3% of annual unrestricted GPF revenues for twelve years effective July 1, 2009. Annual unrestricted GPF revenues are a lower amount compared to the annual total revenues that are used to calculate the set-aside amount under Measure OO.

The set-aside amount under either Measure OO or Measure D will be higher than the set-aside amount under Measure K.

FINANCIAL IMPACT

In FY 2008-09, the Measure K budgeted set-aside amount was \$9,977,103. The projected set-aside amounts in FY 2009-10 for Measure OO and Measure D are \$15,107,403 and \$11,451,578 respectively as shown in the following table.

FY 2008-09	ENACTED FY 2009-10	PROPOSED FY 2009-10
Measure K	Measure OO	Measure D
Annual Unrestricted GPF Revenue x 2.5%	Annual Total Revenues x 1.5%	Annual Unrestricted GPF Revenues x 3.0%
\$399,084,121 x 2.5% = \$9,977,103	\$1,007,160,189 x 1.5% = \$15,107,403	\$381,719,265 x 3.0% = \$11,451,578
Difference between Measure OO and Measure D: \$3,655,825		

The set-aside amount in FY 2009-10 is projected to be \$3,655,825 less under Measure D compared to Measure OO. The set-aside monies under either Measure OO or Measure D would come from the GPF. The difference of \$3,655,825 would remain in the GPF for spending priorities of the Mayor and City Council.

Under Measure OO, the set-aside percentage increases to 2.5% for the third year and thereafter. The projected difference between Measure OO and Measure D increases to \$13,727,427 in the third year using the same revenue amounts used for calculating the FY 2009-10 set-aside amounts as shown in the table below.

FY 2011-12	FY 2011-12
Measure OO	Measure D
Annual Total Revenues x 2.5%	Annual Unrestricted GPF Revenues x 3.0%
\$1,007,160,189 x 2.5% = \$25,179,005	\$381,719,265 x 3.0% = \$11,451,578
Difference between Measure OO and Measure D: \$13,727,427	

Approval of Measure D would increase the flexibility of the Mayor and City Council over spending priorities as a larger share of discretionary GPF monies would be available. Rejection of Measure D would likely decrease the flexibility of the Mayor and City Council over spending priorities as a smaller share of discretionary GPF monies would be available.

Measure D does not impose any new City tax or remove any existing tax. Measure D also does not increase or decrease any existing City tax rates.

Our estimates are based upon currently available data. Actual results may vary from our estimates.

s/COURTNEY A. RUBY, CPA
City Auditor

ARGUMENT IN FAVOR OF MEASURE D

Measure D was placed on the ballot with support from the Kids First Coalition that wrote and passed Measure OO last November.

Measure D adjusts the City's budget priorities to make sure all services affecting children, including public safety, libraries and recreation, get their fair share of funding – and it makes sure we don't have to make drastic cuts in basic city services, such as police, fire and senior programs, that we just cannot afford to lose.

Measure D is balanced. It provides a fair share of city funds for kids programs as well as other vital services for families and seniors. Without Measure D, Oakland would actually be forced to cut safety, library and recreation services that now help children.

Measure D will restore \$4 million in essential services – police, fire, libraries, parks and recreation, senior services, and many others – and still provide for increases in children's programs beyond those called for in the original Kids First program.

A "YES" vote on Measure D WILL NOT increase taxes for any Oakland resident or business.

A "YES" vote on Measure D WILL guarantee more funding for children's programs.

A "YES" vote on Measure D WILL preserve funding for other crucial services including police, fire, libraries and senior programs.

Please join public safety, senior and park advocates and the Kids First Coalition in voting "Yes" on Measure D to save vital city services for children, families and seniors.

s/Nicholas J. Vigilante

Public Safety Advocate

s/Wade W. Sherwood

Member, Oakland Commission On Aging

s/Susan Montauk

Parks & Recreation Commissioner

s/Ronile Lahti

Library Advocate

s/David Kakishiba

Member, Kids First Coalition

NO ARGUMENT AGAINST MEASURE D WAS SUBMITTED.

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FULL TEXT OF MEASURE D

An Amendment To The Oakland City Charter Section 1300 to Provide Funding For the Kids First! Oakland Fund For Children And Youth In The Amount Of Three Percent (3.0%) Of The Actual Unrestricted General Purpose Fund (Fund 1010) City Revenue

WHEREAS, The Kids First! Oakland Fund for Children and Youth was established by voter approved ballot Measure K in 1996 to set money aside for programs and services benefiting children and youth, such as after-school programs, mentoring programs, recreational programs, pre-school and job training programs; and

WHEREAS, it is critical to continue funding to services and programs that benefit Oakland's children and youth at a level that is fiscally responsible; and

WHEREAS, in 2008 the voters repealed Measure K and replaced it with Measure OO; and

WHEREAS, the Council wishes to amend City Charter section 1300, Measure OO; now therefore be it

RESOLVED: That the City Council of the city of Oakland does hereby submit to the voters at the next municipal election the following:

AN AMENDMENT TO THE OAKLAND CITY CHARTER TO PROVIDE FUNDING FOR THE KIDS FIRST! OAKLAND FUND FOR CHILDREN AND YOUTH IN THE AMOUNT OF THREE PERCENT (3.0%) OF THE ACTUAL UNRESTRICTED GENERAL PURPOSE FUND (FUND 1010) CITY REVENUE

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

Section 1. Title.

This Act shall be known and may be cited as "Kids First! – The Oakland Fund for Children and Youth Act."

Section 2. Findings and Purpose.

The people of the City of Oakland hereby make the following findings and declare their purpose in enacting the Act is as follows:

(a) Teens and young adults comprise too many of Oakland's homicide victims every year. Many of these deaths are due to gun violence.

(b) Many students in Oakland public schools do not graduate from high school. The percentage of Oakland students who do not graduate high school is much higher than the statewide average.

(c) It is critical to address root problems before they start by providing support services for children and youth and their families, like after-school and community based programs that keep children and youth out of trouble, encourage parent involvement and teach non-violent conflict resolution.

(d) The Kids First! – Oakland Fund for Children and Youth was established by a voter approved ballot measure in 1996. The measure set aside two and one-half percent (2.5%) ~~a portion~~ of the City's actual unrestricted general purpose fund (Fund 1010) revenues every year for services benefiting children and youth, such as after-school programs, mentoring, recreational programs, job training

and pre-school programs. The set aside supplemented a base line amount that the City already provided to fund programs for children and youth.

(e) Kids First! The Oakland Fund for Children and Youth puts money into programs that work. The Center on Juvenile and Criminal Justice reported that Oakland has a 69 percent drop in juvenile crime from 1995 to 2005, making Oakland the city with the lowest juvenile crime rate out of the eight largest cities in California. This is because of programs funded through measures like Kids First!

~~(f) In order to This Act will provide increase~~ funding for after-school programs, sports and recreation programs, youth gang prevention and other programs for children and youth, the City of Oakland shall set aside three percent (3.0%) of the City's actual unrestricted General Purpose fund (Fund 1010) revenues for the Oakland Fund for Children and Youth. ~~to two and a half percent of all City revenue.~~

(g) This Act will protect and expand the services that help keep Oakland children and youth on the right track. Programs funded by this measure will provide after-school programs that give children and youth positive alternatives and safe places away from the negative influences of the streets.

~~(h) This Act makes the Oakland Fund for Children and Youth a permanent part of the Oakland City budget.~~

Section 3. Amendment to Article XIII of the City Charter of the City of Oakland.

Article XIII of the City Charter of the City of Oakland is hereby amended to read as follows:

ARTICLE XIII KIDS FIRST! OAKLAND CHILDREN'S FUND Fund Revenue

Section 1300. Notwithstanding any other provision of law, effective July 1, 2009 and continuing through June 30, ~~2014~~2021, the KIDS First! The Oakland Fund for Children and Youth ("Fund") shall receive revenues in an amount equal to ~~1.5%~~ three percent (3.0%) of the City of Oakland's annual ~~total~~ actual unrestricted General Purpose Fund (Fund 1010) revenues and appropriated as specified in this Act each year, together with any interest earned on the Fund and any amounts unspent or uncommitted by the Fund at the end of any fiscal year. The actual funds deposited in the Fund pursuant to this Act shall only come from actual unrestricted General Purpose Fund (Fund 1010) revenues of the City of Oakland. For purposes of this Act, Fund shall mean the fund established pursuant to Measure K which was approved by the voters of Oakland in 1996 and which shall continue in existence.

The annual amount of actual unrestricted General Purpose Fund (Fund 1010) revenues shall be estimated by the City Administrator and verified by the City Auditor. Errors in calculation for a fiscal year shall be corrected by an adjustment in the set aside depending upon whether the actual unrestricted General Purpose Fund (Fund 1010) revenues are greater or less than the estimate. Actual unrestricted General Purpose Fund (Fund 1010) revenues shall not include funds granted to the City by private agencies or by

other public agencies and accepted and appropriated by the City.

~~Notwithstanding any other provision of law, effective July 1, 2011, the Fund shall receive revenues in an amount equal to 2.5% of the City of Oakland's annual total revenues and appropriated as specified in this Act each year, together with any interest earned on the Fund and any amounts unspent or uncommitted by the Fund at the end of any fiscal year. The actual funds deposited in the Fund pursuant to this Act shall only come from unrestricted revenues of the City of Oakland.~~

No less than 90% of the monies in the Fund shall be used to pay for eligible services for children and youth. No more than 10% of the monies in the Fund may be used for independent third-party evaluation, strategic planning, grant-making, grants management, training and technical assistance, and communications and outreach to ensure effective public participation.

~~Not later than 90 days after the end of each fiscal year, beginning with fiscal year 2009-2010, the City Auditor shall complete a financial audit, and verify that the City of Oakland set aside for the Fund the correct amount of monies for that fiscal year, together with any interest earned on the Fund and any amounts unspent by the Fund at the end of that fiscal year. If the City Auditor finds that in any fiscal year the amount of funds set aside for the Fund is less than the prescribed percentage of all City of Oakland revenues, the City of Oakland shall provide monies to the Fund so that the correct amount is received by the Fund within the next two fiscal years.~~

Eligible Services

Section 1301. Monies in the Fund shall be used exclusively to:

1. support the healthy development of young children through pre-school education, school-readiness programs, physical and behavioral health services, parent education, and case management;
2. help children and youth succeed in school and graduate high school through after-school academic support and college readiness programs, arts, music, sports, outdoor education, internships, work experience, parent education, and leadership development, including civic engagement, service-learning, and arts expression;
3. prevent and reduce violence, crime, and gang involvement among children and youth through case management, physical and behavioral health services, internships, work experience, outdoor education, and leadership development, including civic engagement, service-learning, and arts expression;
4. help youth transition to productive adulthood through case management, physical and behavioral health services, hard-skills training and job placement in high-demand industries, internship, work experience, and leadership development, including civic engagement, service-learning, and arts expression.

Excluded Services

Section 1302. Monies in the Fund shall not be appropriated or expended for:

1. any service which merely benefits children and youth incidentally;
2. acquisition of any capital item or real property not for primary and direct use by children and youth;
3. maintenance, utilities or any similar operating cost of any facility not used primarily and directly by children and youth;
4. any service for which a fixed or minimum level of expenditure is mandated by state or federal law, to the extent of the fixed or minimum level of expenditure.

Strategic Investment Plan

Section 1303. Appropriations from the Fund shall be made pursuant to a Three-Year Strategic Investment Plan, with the first Plan beginning July 1, 2010.

~~Grants Appropriations~~ made by the Fund for fiscal year 2008-2009 shall be carried forward to fiscal year 2009-2010 subject to ~~including~~ modifications recommended by the Planning & Oversight Committee, pursuant to performance review, and adjusted as needed to conform with the actual amount of the set-aside in fiscal year 2009-2010 based on the 3.0% of actual unrestricted General Purpose Fund (Fund 1010) formula set forth in this Act.

Each Three-Year Strategic Investment Plan shall be developed with the involvement of young people, parents, and service providers throughout the city, and the Oakland Unified School District, the County of Alameda, and the City of Oakland. Each Three-Year Strategic Investment Plan shall take into consideration the results and findings of the independent third-party evaluation.

Each Three-Year Strategic Investment Plan shall:

1. identify current service needs and gaps relative to addressing this measure's four outcome goals:
 - a. support the healthy development of young children;
 - b. help children and youth succeed in school and graduate high school;
 - c. prevent and reduce violence, crime, and gang involvement among young people;
 - d. prepare young people for healthy and productive adulthood.
2. describe specific three-year program initiatives that address the needs and gaps relative to each outcome goal, including:
 - a. target population
 - b. performance and impact objectives
 - c. intervention strategy
 - d. evaluation plan
 - e. funding allocations
3. describe how each three-year program initiative is aligned and coordinated with other public and private resources to achieve maximum service performance and youth impacts.

Each Three-Year Strategic Investment Plan shall be evaluated for its service performance and youth impact results by an independent third-party evaluator.

Open and Fair Application Process

Section 1304. All monies in the Fund shall be appropriat-

ed, pursuant to a Three-Year Strategic Investment Plan, to private non-profit and public agencies through an open and fair application process.

Planning & Oversight Committee

Section 1305. The Children's Fund Planning and Oversight Committee ("Planning and Oversight Committee") established pursuant to Measure K which was approved by the voters of Oakland in 1996 shall continue to operate. Each City Councilmember shall appoint two Oakland residents, one of whom shall be a resident not older than 21 years, to serve as members of the Planning & Oversight Committee. The appointees shall demonstrate a strong interest in children and youth issues; and possess sound knowledge of, and expertise in, children and youth policy development and program implementation. Effective July 1, 2009, the Mayor shall only be permitted to appoint one (1) Oakland resident and shall therefore remove two of his previous appointments no later than June 30, 2009.

The Planning & Oversight Committee shall be responsible for:

1. preparing Three-Year Strategic Investment Plans;
2. soliciting funding applications from private non-profit and public agencies through an open and fair application process;
3. submitting to the Oakland City Council for its adoption Three-Year Strategic Investment Plans and funding recommendations;
4. submitting to the Oakland City Council for its adoption annual independent evaluation reports;
5. receiving City Auditor annual reports on the Fund's Financial Statement and the Base Spending Requirement.

Base Spending Requirement

Section 1306. ~~Monies in the Fund shall be used exclusively to increase the total amount of City of Oakland expenditures for services to children and youth that are eligible to be paid from the Fund as defined in this section.~~ The City of Oakland shall not reduce the amount of expenditures for eligible services in any fiscal year paid from sources other than the Fund below the Base Spending Requirement.

The Base Spending Requirement is the amount required based on the application of the base year percentage to the total audited actual City unrestricted General Purpose Fund (Fund 1010) expenditures in a fiscal year.

The Base Year Percentage is defined ~~as~~ by the ratio of ~~audited-actual unrestricted General Purpose Fund (Fund 1010) expenditures~~ appropriations for eligible services for children and youth paid from sources other than the Fund to total City ~~audited-actual unrestricted General Purpose Fund (Fund 1010) appropriations~~ expenditures in a fiscal year 1995-1996.

~~The base year is defined as the fiscal year beginning July 1, 2008 and ending June 30, 2009.~~

~~Not later than October 1, 2009 the City Auditor shall calculate and publish the Base Year Percentage, and shall specify by City Department each eligible service, budget expenditure amount, and funding source included in the calculation of the base year eligible services.~~

~~Not later than 90 days after the end of each fiscal year beginning with fiscal year 2009-2010, the City Auditor shall verify that the City of Oakland expended funds each year for eligible services in an amount no less than the amount required under the Base Spending Requirement, except to the extent that the City of Oakland ceases to receive federal, state, county, or private foundation funds that the funding agency required to be spent only on those services.~~

If the City Auditor finds that in any fiscal year the amount of funds expended for eligible services is less than the Base Percentage Requirement, the City of Oakland shall increase expenditures for eligible services within the following two years so that the correct amount of funds is expended.

Monies from the Fund shall not be appropriated for services that substitute for or replace services included in the City Auditor's Base Spending Requirement, except to the extent that the City of Oakland ceases to receive federal, state, county, or private foundation funds that the funding agency required to be spent only on those services.

Within 180 days following the completion of each fiscal year's external audit through 2020-2021 the City Auditor shall calculate and publish the actual amount of City of Oakland spending for children and youth services (exclusive of expenditures mandated by state or federal law).

Section 4. Severability.

If any provision of this Act or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect any provision or application of this Act that can be given effect without the invalid provision or application. To this end, the provisions of this Act are severable.

Section 5 Reauthorization

Section 1307. This section may be extended for an additional twelve years beginning July 1 2021 by a simple majority vote of the City Council. If the City Council does not itself extend this section, then the City Council shall place the question of whether to extend this section on the November 2020 ballot for a vote of the electorate. This process will be repeated every twelve years or until reauthorization is rejected by a vote of the electorate.

1st correction
5/20

CITY OF OAKLAND MEASURE F

F Shall City of Oakland's business tax, which currently imposes a tax rate of \$1.20 per \$1,000 on "cannabis business" gross receipts, be amended to establish a new tax rate of \$18 per \$1,000 of gross receipts?	YES
	NO

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE F

BALLOT TITLE

ORDINANCE AMENDING THE CITY OF OAKLAND'S BUSINESS TAX TO ESTABLISH A NEW TAX RATE FOR "CANNABIS BUSINESSES"

BALLOT SUMMARY

The measure creates a new Business Tax rate for "Cannabis Businesses" of \$18 for each \$1,000 of gross receipts from business activity. Currently, Cannabis Businesses in Oakland are taxed at the rate for retail sales businesses, which is \$60.00 per year for the first \$50,000.00 of gross receipts, plus \$1.20 for each additional \$1,000.00. The City of Oakland may use the revenue from the tax for any legal municipal purpose, including but not limited to maintenance of vital services and facilities. The tax must be approved by a majority of Oakland voters who cast ballots.

s/JOHN RUSSO
City Attorney

CITY ATTORNEY'S IMPARTIAL LEGAL ANALYSIS OF MEASURE F

Under the City of Oakland's current Business Tax, "Cannabis Businesses" are taxed as retail sales businesses. The tax rate for Retail Sales businesses is \$60.00 per year for the first \$50,000.00 of gross receipts, plus \$1.20 for each additional \$1,000.00. "Gross receipts" are a business's total revenue without deducting expenses. This measure would amend Oakland's Business Tax which is found at Chapter 5.04 of the Oakland Municipal Code to establish a new tax rate for "Cannabis Businesses" of \$18 for every \$1,000.00 of gross receipts from the businesses' activity in Oakland. The amendment will tax gross receipts from the planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and retail sales of marijuana and its derivatives.

The Cannabis Business tax is a general tax because the City could use the tax revenue for any legal municipal purpose. The California Constitution, Article XIII(C), Section 2(b) requires that the electorate approve a general tax by a majority vote. Before the City can establish the new tax rate for "Cannabis Businesses," a majority of the electorate must approve the measure.

s/JOHN RUSSO
City Attorney

5-22-09

*157 correction
5/20*

**CITY AUDITOR'S IMPARTIAL FINANCIAL
ANALYSIS OF MEASURE F**

SUMMARY

Measure F authorizes the City of Oakland to modify the business tax, Chapter 5.04 of the Oakland Municipal Code by adding Section 5.04.480, which would create a new "Cannabis" business classification. Oakland's existing business tax category list does not contain a specific tax category for cannabis businesses, since permitted cannabis dispensaries did not exist at the time the business tax system was created.

Under the proposed cannabis business classification, cannabis businesses will be taxed at a rate of \$18 per \$1,000 of gross receipts. The amendment will tax cannabis business activity generating gross receipts from planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and retail sales of marijuana and its derivatives.

Since 1996, when California voters authorized the use of cannabis for medical purposes, cannabis businesses have been paying the general retail business tax rate of \$1.20 per \$1,000 of gross receipts, rather than under a specific category.

If Measure F is approved by a majority of voters, the new cannabis business classification and tax rate will be effective beginning January 1, 2010.

FINANCIAL IMPACT

In Calendar Year (CY) 2007 and CY 2008, there were four cannabis dispensaries licensed with the City of Oakland. Gross receipts from the dispensaries for each fiscal year were \$17,918,000 and \$19,673,000 respectively. Under the general retail business tax rate of \$1.20 per \$1,000, business tax revenues from the dispensaries for each calendar year were \$21,500 and \$23,608 respectively.

For CY 2010, the City projects the same number of licensed cannabis dispensaries and estimated gross receipts of \$17,500,000. As a result, the new business tax classification and tax rate for cannabis facilities is estimated to generate \$294,000 in additional annual revenue, as shown in the table below.

Calendar Year	Projected Cannabis Business Gross Receipts	Annual Revenue based on \$1.20 per \$1,000 (A)	Annual Revenue based on \$18 per \$1,000 (B)	Estimated Increase in Revenue under Proposed Ordinance (B-A)
2010	\$17,500,000	\$21,000	\$315,000	\$294,000

The estimated increase in revenue will be deposited into the general fund for general fund purposes. The ballot measure does not earmark the increased revenue for any specific purpose.

Based on our analysis of the data provided by City staff, the projected revenues appear reasonable. We relied on the

best data available at this time, however actual results may vary from our estimates.

s/COURTNEY A. RUBY, CPA
City Auditor

*5-23-09
V*

*1st connection
5/20*

ARGUMENT IN FAVOR OF MEASURE F

The voters of California authorized the use of medical cannabis in 1996 – in a ballot initiative which Oakland voters supported by over 79% of the vote. Therefore, the City of Oakland has worked to create regulations and a permitting system for medical cannabis dispensaries. Regulations are used to prevent nuisance while protecting patients, and keeping customers away from the criminal market. Oakland's business tax system does not yet have a category for medical cannabis dispensaries. As a result, they have been paying at the "general retail rate," of \$1.20 per \$1,000 of gross receipts. This ballot measure creates a new business tax classification and rate for cannabis dispensaries, with a new, increased rate of \$18.00 per \$1,000. This will provide revenue to help balance Oakland's budget and help with funding for essential public services. State law in California requires that any new business tax rate must be approved by the voters. Community organizations, city leaders and the medical cannabis dispensaries themselves all support this measure, which will help avoid cuts to services for the public. We ask for your yes vote. For more information, visit www.Yes4Oakland.org

s/Dr. Frank H. Lucido
Family Practice Physician

s/Rebecca Kaplan
Oakland City Councilmember At-Large

s/Jan S. Rodolfo, RN
California Nurses Association

s/Richard Lee
President – Oaksterdam University

s/Nate Miley
Alameda County Supervisor

**NO ARGUMENT AGAINST MEASURE F WAS
SUBMITTED.**

5-22-09
van

1st correction
5/20

FULL TEXT OF MEASURE F

ORDINANCE AMENDING THE CITY OF OAKLAND'S BUSINESS TAX TO ESTABLISH A NEW TAX RATE FOR "CANNABIS BUSINESSES"

WHEREAS, through the passage of Proposition 215, the voters of California authorized the use of cannabis for medical purposes in 1996; and

WHEREAS, by a 79% vote in favor of the proposition, the voters of Oakland overwhelmingly approved Proposition 215; and

WHEREAS, the City Council of the City of Oakland has adopted medical cannabis permitting regulations to prevent nuisance, provide for effective controls, enable medical cannabis patients to obtain cannabis from safe sources, and provide appropriate licensing and revenues for the City in a manner consistent with state law; and

WHEREAS, every person engaged in business activity in the City of Oakland is required to obtain a business tax certificate and to pay the City's business tax; and

WHEREAS, the City of Oakland has a business tax system which applies to all businesses in the City, and which contains a list of categories of types of businesses, and provides for the collection of business taxes at specified rates based on the classifications of the businesses operating in the City; and

WHEREAS, because permitted medical cannabis dispensaries did not exist at the time the business tax system was created, Oakland's current business tax category list does not contain a specific tax category for cannabis businesses; and

WHEREAS, cannabis businesses are currently taxed under the business classification of general retail at a business tax rate of \$1.20 per \$1,000 of gross receipts, rather than under a specific category; and

WHEREAS, under the newly created business classification cannabis businesses will be taxed at a rate of \$18 per \$1,000; and

WHEREAS, accordingly, the City Council of the City of Oakland desires to amend Chapter 5.04, adding section 5.04.480 to the Oakland Municipal; and

WHEREAS, all revenues received from the tax will be deposited in the general fund of the City to be expended for general fund purposes; now, therefore, be it

RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the Special Municipal election, consistent with the provisions of state law; and be it

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby submit to the voters at the special election, not more than 88 days and not more than 150 days from the date of passage of this resolution, the text of the proposed ordinance, which shall be as follows; and be it

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

*1st correction
5/20*

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO MODIFY THE BUSINESS TAX BY CREATING A NEW "CANNABIS" BUSINESS CLASSIFICATION

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

Section 1. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through~~ type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed).

Section 2. Code Amendment. Chapter 5.04 of the Oakland Municipal Code is hereby amended adding Section 5.04.480 to read as follows:

5.04.480 Cannabis.

A. Every person engaged in a cannabis business not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of eighteen dollars \$18 for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

B. For the purpose of this section, "cannabis business" means business activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and/or retail sales of marijuana, any part of the plant Cannabis sativa L, or its derivatives.

Section 3. 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 4. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation Public Resources Code section 21065, CEQA Guidelines 15378(b)(4) and 15061(b)(3), 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 5. Majority Approval; Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and after the vote is declared by the City Council. The effective date of this Ordinance shall be January 1, 2010.

Section 6. Council Amendments. The City Council of the City of Oakland is hereby authorized to amend Section 5.04.480 of the Oakland Municipal Code as adopted by this Ordinance in any manner that does not increase the tax rate, otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution or entirely dis-

pense with the requirement for independent audits stated in Section 4.28.190.

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby find and determine that pursuant to Article XIII C, section 2(b) of the California Constitution the City Council of the City of Oakland has adopted a resolution declaring the existence of a fiscal emergency in the City of Oakland that necessitates asking the voters to approve the proposed medical cannabis tax before the next regular election of the Oakland City Council;

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you

1st correction
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CITY OF OAKLAND MEASURE H

<p>H Shall City of Oakland's Real Property Transfer Tax be amended to clarify that the tax applies to transfers of real property caused by changes in the ownership or control of corporations and other legal entities, such as mergers and acquisitions?</p>	YES
	NO

CITY ATTORNEY'S IMPARTIAL LEGAL ANALYSIS OF MEASURE H

Oakland's existing Real Property Transfer Tax (RPTT) imposes a real property transfer tax of 1.5% on transfers of real property located within Oakland by deeds, instruments, writings, or any other document. (Oakland Municipal Code section 4.20.020.) This amendment will not change the rate of the transfer tax. The amendment will clarify that the RPTT applies to transfers of real property in Oakland that occur when there is a change in the ownership or control of a legal entity by merger, consolidation, acquisition or other method. The amendment will assure that the City of Oakland is able to collect the transfer tax for all transfers of real property located in Oakland whether the transfer occurs by deed or due to merger, consolidation, acquisition or other methods.

The RPTT can be found at Chapter 4.20 of the Oakland Municipal Code. The language of the existing RPPT is broad enough to apply to transfers of real property that result from corporate mergers, acquisitions, etc. However, this measure seeks voter approval to clarify and specifically state that the RPTT applies to changes in real property ownership resulting from corporate mergers, consolidations, acquisitions, or other methods.

The amendment provides that the RPTT is imposed on "changes in control and ownership of legal entities" – that transfer property located within Oakland. Also, the amendment defines the term "changes in control and ownership of legal entities" as "any direct or indirect acquisition or transfer of ownership interest or control in a legal entity that constitutes a change in ownership or transfer of the real property of the entity under California Revenue and Taxation Code section 64..." (Oakland Municipal Code section 4.20.030).

The City can use RPTT revenue for any legal municipal purpose, including but not limited to police, fire, street resurfacing, traffic lights, infrastructure maintenance, library and parks and recreation programs; therefore, the RPTT is a general tax. (California Constitution Article XIII (C), section 1(a).) General taxes must be approved by a majority of the Oakland voters who cast ballots. (California Constitution Article XIII(C), section 2(b).)

s/JOHN RUSSO
City Attorney

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE H

BALLOT TITLE

AMENDMENT TO THE CITY OF OAKLAND'S REAL PROPERTY TRANSFER TAX TO CLARIFY THAT THE TAX APPLIES TO CHANGES IN OWNERSHIP OR CONTROL OF CORPORATIONS AND OTHER LEGAL ENTITIES

BALLOT SUMMARY

This amendment will not change the current real property transfer tax (RPTT) rate of 1.5% on transfers of real property within the city limits of Oakland. The measure clarifies that the RPTT applies when changes in ownership or control of corporations and other legal entities transfer ownership of real property that is located in Oakland. "Changes in ownership or control of corporations and other legal entities" includes but is not limited to mergers, consolidations and acquisitions.

The City can use revenue from the RPTT for any legal municipal purpose, including but not limited to municipal services and other governmental purposes. This measure must be approved by a majority of the electorate.

s/JOHN RUSSO
City Attorney

*5-22-09
van
1st correction
5/20*

CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF MEASURE H

Summary

Measure H amends Municipal Code section 4.20, which governs the real property transfer tax (RPTT), to apply the City's RPTT rate of 1.5% to transfers of real property in Oakland that occur when there is a change in the ownership or control of a legal entity, by merger, consolidation or acquisition. The RPTT rate will not change under the proposed amendment.

Oakland's existing RPTT imposes a 1.5% real property transfer tax on all transfers by deeds, instruments, writings, or any other document by which interests in real property located within Oakland are granted, assigned, conveyed or transferred (Oakland Municipal Code section 4.20.020).

In addition to the application of the RPTT, the proposed amendment:

1. Removes the current requirement of conformity to statewide rules (2nd paragraph of section 4.20.020).
2. Adds definition of "person" and "persons" to the tax.

The ordinance will only be effective if Measure H is approved by the majority of the voters. If approved, the measure will go into effect ten (10) days after the vote is declared by the City Council.

Financial Impact

City staff estimates that from FY 2003 to FY 2007, approximately \$19.2 million in RPTT revenues from at least 92 Oakland properties was not realized. The amounts not collected were due to current ordinance restrictions that exclude an imposition of the RPTT on transfers of real estate resulting from changes in the ownership or control of a legal entity, by merger, consolidation, or acquisition.

If the voters approve Measure H, City staff state that the City will experience an increase in RPTT revenue. However, RPTT is sensitive to changes in overall economic conditions. Therefore, the exact amount of increased revenue cannot be determined because of the unpredictable nature of the transactions and uncertainties in the economy. Based solely on average annual historical data, \$4.4 million in additional RPTT revenue per fiscal year is estimated.

All additional revenue received from RPTT will be deposited in the general fund of the City to be expended for general fund purposes.

Based on our analysis of the data provided by City Staff, the assumed increase in revenue appears reasonable. We relied on the best data available at this time, however actual results may vary from our estimates.

s/COURTNEY A. RUBY, CPA
City Auditor

ARGUMENT IN FAVOR OF MEASURE H

Without raising the tax rate, Measure H will correct a loophole to ensure that corporations are treated the same as residential homeowners, as the City originally intended. The Real Property Transfer Tax funds vital municipal services, such as police, fire, senior services, storm drains, streets, parks and libraries.

Measure H is not a new tax, and the rate will not increase. Measure H simply clarifies the existing Real Property Transfer Tax ensuring fair and equitable treatment of the tax as it applies to corporate mergers, consolidations, and acquisitions.

The current Real Property Transfer Tax was adopted in 1974. The State requires voter approval of changes to any tax ordinance. This change will help balance our city budget and fund vital public services, such as police, infrastructure, building maintenance, youth programs, fire, paramedic and library services.

s/Wade W. Sherwood

Member, Oakland Commission On Aging

s/Douglas Wong

Retired Fire Fighter

s/Susan Montauk

Parks & Recreation Commissioner

s/Ronile Lahti

Library Advocate

s/Kenneth L. Katz

Chair, Splash Pad Neighborhood Forum

*1st connection
5/20*

**REBUTTAL TO ARGUMENT IN FAVOR
OF MEASURE H**

It is wishful thinking to assume that Measure H will help balance the City's budget. But it won't.

The City can not predict how much revenue will be generated because corporations rarely disclose their intention to buy another company.

Since 1974, Oakland has exempted companies which merge from paying property transfer taxes as a way to promote a business-friendly environment. This has worked successfully for 35 years even as voters approved other changes to property transfer tax requirements on two occasions. Only now that the City finds itself deep in debt do politicians seem intent on finding money any way possible.

Measure H is not a solution to Oakland's budget problems. Let's keep Oakland a good place for doing business. Vote NO on Measure H.

s/Patricia Scates, Chair
Board of Directors, Oakland
Metropolitan Chamber of Commerce

ARGUMENT AGAINST MEASURE H

Vote NO on Measure H. Protect Oakland jobs and promote a business-friendly environment.

Everyone understands the City's need for more revenue. But this measure offers no predictable source of income. That's no way to balance a budget.

Vote NO on Measure H.

In the longer term, the Chamber is concerned that it could harm Oakland's ability to attract new companies and keep the ones already located here. For instance, this reclassification could stop companies in emerging industries such as green technology and biotech from locating in Oakland. We can't afford to risk seeing these kinds of jobs go elsewhere.

Vote NO on Measure H.

In the midst of an economic downturn, we should be encouraging investment and economic growth. Passage of this measure could scare potential buyers from acquiring or merging with Oakland-based companies because of excess transaction costs. It's irresponsible to block companies from joining forces when they could produce more jobs for Oakland residents and more revenue for the City.

Vote NO on Measure H.

The City has not been collecting this tax and has no reliable indicators to project potential revenue. Oakland politicians should find better ways to balance the budget.

Please support local companies by voting NO on Measure H.

s/Patricia Scates
Chair, Board of Directors, Oakland
Metropolitan Chamber of Commerce

5-22-09
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1st connection
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REBUTTAL TO ARGUMENT AGAINST MEASURE H

Please join us in voting YES on Measure H.

Measure H is fair: It would apply the same Real Property Transfer Tax criteria to corporations as it now applies to homeowners.

Business leaders support Measure H because they know a level playing field is better for business. No company should get a competitive advantage over others just because it can take advantage of a loophole that isn't available to everyone.

Labor leaders and community advocates support Measure H because they know it will help preserve existing jobs and continue important city services for Oakland's working families and retirees.

Measure H is fiscally responsible: It is not a new tax, it simply ensures that corporate mergers, consolidations and acquisitions pay their fair share of the Real Property Transfer Tax as originally intended. Because the loophole Measure H closes doesn't apply to very many transactions, the revenue it produces will vary from year to year – but every bit of new revenue will help bring our budget back in balance.

Measure H is equitable: It will provide needed funds for vital public services that benefit local business and residents alike – such as police, fire, park and street maintenance and other essential city services.

Vote YES on Measure H.

s/Helen Hutchison, President

League of Women Voters of Oakland

s/Henry Chang, Jr.

Former Councilmember

At-Large

s/Susan Montauk

Parks Advocate

5-22-03
10-

1st correction
5/20

FULL TEXT OF MEASURE H

Amendment to the City of Oakland's Real Property Transfer Tax to clarify that the tax applies to changes in ownership or control of corporations and other legal entities

WHEREAS, pursuant to Chapter 4.20 of the Oakland Municipal Code, the City of Oakland imposes a real property transfer tax on transfers of real property located in Oakland; and

WHEREAS, the Council determines that although not expressly stated in the language of the ordinance, it was the intent of the Council to impose the tax on all transfers of real property unless expressly excepted from taxation; and

WHEREAS, transfers of real property occurring as a result of changes in the ownership of corporations, and other legal entities, through mergers, consolidations, and acquisitions escape taxation, while Oakland homeowners and small businesses pay the real estate transfer tax; and

WHEREAS, the Council determines that it is in the best interest of the City of Oakland to submit an amended real property transfer tax to the voters that will clarify the intent of the ordinance to fairly and equally tax all transfers of real property, including transfers of real property that result from changes in ownership and control of corporations and other legal entities; and

WHEREAS, the Council determines that statewide rules sometimes conflict with Oakland's interests as an independent charter city and that current requirement of conformity with statewide rules should be removed; and

WHEREAS, accordingly, without increasing the tax rate, the City Council of the City of Oakland desires to amend Chapter 4.20, sections 4.20.020 and 4.20.030 of the Oakland Municipal; and

WHEREAS, all revenues received from the tax will be deposited in the general fund of the City to be expended for general fund purposes; now, therefore, be it

RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the Special Municipal election consistent with the provisions of state law; and be it

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby submit to the voters at the special election not more than 88 days and not more than 150 days from the date of passage of this resolution the text of the proposed ordinance, which shall be as follows:

AN ORDINANCE AMENDING THE REAL PROPERTY TRANSFER TAX, CHAPTER 4.20 OF THE OAKLAND MUNICIPAL CODE, TO CLARIFY APPLICATION OF THE TAX TRANSFERS OF REAL ESTATE RESULTING FROM CHANGES OWNERSHIP AND CONTROL OF CORPORATIONS AND OTHER LEGAL ENTITIES.

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

Section 1. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through~~ type; portions of the regula-

tions not cited or not shown in underscoring or strike-through type are not changed).

Section 2. Code Amendment. Section 4.20.020 of the Oakland Municipal Code is hereby amended to read as follows:

4.20.020 Imposition of tax.

There is imposed a tax on all transfers by deeds, instruments, writings, or any other document, or changes in control and ownership of legal entities, by which any lands, tenements or other interests in real property located in the city, are or is granted, assigned, transferred, or otherwise conveyed to or invested in a transferee, or transferees thereof, which shall be levied at the rate of one and one-half (1.50) percent of the value of consideration.

~~Such tax shall be administered to the statewide rules governing the documentary transfer tax as stated in California Revenue and Taxation Code Sections 11911 through 11930, as codified on the date of passage of the ordinance codified in this section, including the exemptions from tax that are itemized therein, except where the exemptions appearing within this Chapter 4.20, provide greater protection to the taxpayer.~~

Section 3. Code Amendment. Section 4.20.030 of the Oakland Municipal Code is hereby amended to read as follows:

4.20.030 Definitions.

As used in this chapter:

"Changes in control and ownership of legal entities" means any direct or indirect acquisition or transfer of ownership interest or control in a legal entity that constitutes a change in ownership or transfer of the real property of the entity under California Revenue and Taxation Code section 64, as such statute reads and is interpreted by the California Board of Equalization on June 3, 2009.

"Person" and "persons" mean any natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, limited liability company, municipal corporation, political subdivision of the state of California, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof, and any natural person, who as an individual or with a spouse, owns fifty-one (51%) percent or more of the capital stock of a corporation obligated to file a declaration and pay tax pursuant to this chapter; and in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations under the provisions of this chapter. A person as defined herein, who is also an officer or director of a corporation obligated to file declarations and pay tax pursuant to this chapter, shall be

presumed to be a person with the power to control the fiscal decision-making process. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to association shall mean the owners or part owners thereof, and as applied to corporation, the officers thereof.

"Real property" and "realty" mean real property as defined by and under the laws of the state of California.

"Value of consideration" means the total consideration, valued in money of the United States, paid or delivered, or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness existing immediately prior to the transfer which is secured by a lien, deed or trust or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust or encumbrances after such transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of transfer.

"Value of the consideration" also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where such special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after such transfer, shall not be included in determining the value of the consideration. If the "value of the consideration" cannot be definitely determined, or is left open to be fixed by future contingencies, "value of the consideration" shall be deemed to mean the fair market value of the property at the time of transfer, after deducting the amount of any lien or encumbrance, if any, of a type which would be excluded in determining the "value of the consideration" pursuant to the above provisions of this section.

Unless a transfer is a "gift", i.e., "free and clear" of liens or encumbrances, it is presumed that the value of consideration of a given property being transferred is the fair market value of that property, unless circumstances supporting a departure therefrom can be furnished to the sole satisfaction of the Director or his or her designee(s).

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. Majority Approval; Effective Date.

This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

Section 6. Council Amendments.

The City Council of the City of Oakland is hereby authorized to amend Sections 4.20.020 and 4.20.030 of the Oakland Municipal Code as adopted by this Ordinance in any manner that does not increase the rate of the real estate transfer tax, otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution or entirely dispense with the requirement for independent audits stated in Section 4.28.190.

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby find and determine that pursuant to Article XIII C, section 2(b) of the California Constitution the City Council of the City of Oakland has adopted a resolution declaring the existence of a fiscal emergency in the City of Oakland that necessitates asking the voters to approve the amendment to the real estate transfer tax before the next regular election of the Oakland City Council.

5/22/00
L. Gamm

1st connection
5/20