



# CITY COUNCIL STAFF REPORT



**March 28, 2023**

## **ITEM TITLE**

State Ballot Measure: Oppose Statewide Initiative No. 21-0042A1, “Limits the Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment”

**Report Number:** 23-0080

**Location:** No specific geographic location

**Department:** City Manager

**Environmental Notice:** The activity is not a “Project” as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

## **Recommended Action**

Adopt a resolution opposing Initiative 21-0042A1, “Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment.”

## **SUMMARY**

In February 2023, the “Taxpayer Protection and Government Accountability Act,” or Initiative No. 21-0042A1, sponsored primarily by the California Business Roundtable qualified for the November 5, 2024 General Election ballot. This measure would amend the California Constitution with provisions that limit voters’ authority and input, adopt new and stricter rules for raising taxes and fees, and may make it more difficult to impose fines and penalties for violation of state and local laws.

If approved, this measure puts billions of local government tax and fee revenues at risk statewide with related core public service impacts. The League of California Cities, along with a broad coalition of local governments, labor and public safety leaders, infrastructure advocates, and businesses, strongly opposes this initiative.

Additionally, the initiative conflicts with the City Legislative Platform’s guiding principles of “Promoting Fiscal Responsibility” and “Maintaining Local Control.”

For these reasons, staff recommends adopting a resolution to oppose Initiative 21-0042A1.

## ENVIRONMENTAL REVIEW

The Director of Development Services has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Thus, no environmental review is required.

## BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

## DISCUSSION

In February 2023, the “Taxpayer Protection and Government Accountability Act,” or Initiative No. 21-0042A1, sponsored primarily by the California Business Roundtable qualified for the November 5, 2024 General Election ballot. In order to become eligible for the ballot, the initiative needed 997,139 valid petition signatures, which is equal to eight percent of the total votes cast for governor in the November 2018 General Election. The initiative has exceeded that threshold.

Proponents now have until June 27, 2024 to consider withdrawing the initiative before it is officially certified for the ballot.

Local government revenue-raising authority is currently substantially restricted by state statute and constitutional provisions, including the voter approved provisions of Proposition 13 of 1978, Proposition 218 of 1996, and Proposition 26 of 2010. If approved, this initiative would impose onerous and undemocratic restrictions on voters and local government tax and fee authority.

### Major Provisions

#### *Effective Date*

- Any new or increased tax or fee adopted by the Legislature, a city council, or the local voters after January 1, 2022, must comply with the measure’s new rules.

#### *State and Local Government Taxes*

- Amends the State Constitution to expand and define all state and local levies, charges, and fees as a tax or exempt charges.
- Increases the requirements for voter approval of new or increased state and local taxes:
  - Legislature proposed taxes must be approved by a two-thirds of each house and a majority vote of the statewide electorate. The increased vote requirements would not apply to citizen-initiated state ballot measures.
  - Local taxes, whether sought by the local governing body or the electorate, must be approved by two-thirds vote of the local electorate.
- New or increased taxes adopted after January 1, 2022, must include a sunset date.

- Local governments that have adopted charters would be barred from including charter amendments that provide for the imposition, extension, or increase of a tax or exempt charge.
- Local advisory measures would be prohibited. No measure may appear on the ballot asking for approval for a general tax that would indicate that the revenue from the general tax will, could, or should be used for a specific purpose.
- Requires voter approval to expand existing taxes (e.g., Utility, Transient Occupancy) to new territory (e.g., annexations) or to expand the tax base (e.g., new utility service)

#### *State and Local Government Fees and Charges*

- Fees and charges may not exceed the “actual cost” of providing the product or service for which the fee is charged. “Actual cost” is the “minimum amount necessary.” The burden to prove the fee or charge does not exceed “actual cost” is changed to “clear and convincing” evidence. Current law requires that these charges not exceed the “reasonable cost” of providing the related service or activity, to be proven “by a preponderance of the evidence”.
- Fees and charges paid for the use of local and state government property and the amount paid to purchase or rent government property must be “reasonable.” These fees and charges are currently allowed to be market-based. Whether the amount is “reasonable” (introducing a new legal standard aiming to force below market fee and charge amounts) must be proved by “clear and convincing evidence.” The new standard may significantly reduce the amount large companies (e.g., oil, utilities, gas, railroads, garbage/refuse, cable, and other corporations) will pay for the use of local public property.
- No fee or charge or exaction regulating vehicle miles traveled (“VMT”) can be imposed as a condition of property development or occupancy. This would mean that VMT, the official measure for evaluating greenhouse gas emissions under CEQA, could no longer be mitigated via payment of a fee. This would likely impact the ability for new development projects to move forward, as VMT would either be mitigated solely through improvements and programs or declared unmitigable. Because of the impracticability of mitigation solely through improvements and programs, permitting jurisdictions would likely be forced to declare these impacts unmitigable and issue a CEQA Statement of Overriding Considerations. This introduces additional risk and uncertainty to the development process, potentially creating barriers to new development, including critical housing.
- May require voter approval of fines, penalties, and levies for corporations and property owners that violate state and local laws unless a new, undefined adjudicatory process is used to impose the fines and penalties.

### **Local Government Impacts**

#### *Fees and Taxes*

Local governments levy a variety of fees and other charges to provide core public services.

Major examples of affected fees and charges are:

- Nuisance abatement charges, such as for weed, rubbish, and general nuisance abatement to fund community safety, code enforcement, and neighborhood cleanup programs.
- Commercial franchise fees.
- Emergency response fees, such as in connection with DUI.
- Advanced Life Support (ALS) transport charges.
- Document processing and duplication fees.
- Facility use charges, fees for parks and recreation services, classes, or activities.

Virtually every city, county, and special district must regularly (e.g., annually) adopt increases to fee rates and charges and revise rate schedules to accommodate new users and activities. Most of these would be subject to new standards and limitations under threat of legal challenge. Based on the current volume of fees and charges imposed by local agencies, including council-adopted increases to simply accommodate inflation, League of California Cities estimates the amount of local government fee and charge revenue at risk is approximately \$2 billion per year including those adopted since Jan. 1, 2022. Over ten years, \$20 billion of local government fee and charge revenues will be at heightened legal peril.

Hundreds of local tax measures were approved in 2022 that likely do not comply with the provisions of the initiative. Nearly \$2 billion of annual revenues from these voter-approved measures will cease a year after the effective date of the measure, reducing the local public services funded by these measures, unless the tax is re-submitted for voter approval.

Reductions on local government tax revenues have impacts on core services and infrastructure including fire and emergency response, law enforcement, streets and roads, drinking water, sewer sanitation, parks, libraries, public schools, affordable housing, homelessness prevention, and mental health services.

For example, in 2018 Chula Vista voters approved Measure A, a half-cent sales tax increase to fund public safety personnel increases. Measure A passed with a 52.8 percent of voters saying yes. Under the proposed initiative, Measure A would not have passed. A sunset date for collecting these critical public safety funds would have also been required.

### *Fines and Penalties*

Under existing law, cities are required to provide due process before imposing a penalty or fine for violation of its municipal code:

1. A local agency must adopt administrative procedures that govern imposing fines and penalties, including providing a reasonable period of time for a person responsible for a violation to correct or remedy the violation [Gov't Code 53069.4].
2. The fine may not be "excessive" [U.S. Constitution amendments VIII and XIV].

The initiative converts administratively imposed fines and penalties into taxes unless a new, undefined, and ambiguous "adjudicatory due process" is followed. This provision jeopardizes the City's current authority to impose fines and penalties for violations of state and local law.

As discussed, if approved, this measure could lead to lower annual state and local revenues, potentially substantially lower, by making it more difficult to recover costs through fees and generate revenue for critical government services through voter-approved tax measures. The League of California Cities, along with a

broad coalition of local governments, labor and public safety leaders, infrastructure advocates, and businesses, strongly opposes this initiative.

Additionally, the initiative conflicts with the City Legislative Platform’s guiding principles of “Promoting Fiscal Responsibility” and “Maintaining Local Control.”

For these reasons, staff recommends adopting a resolution to oppose Initiative 21-0042A1.

### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the real property holdings of the City Council members do not create a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov’t Code § 87100, et seq.).

Staff is not independently aware and has not been informed by any Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

### **CURRENT-YEAR FISCAL IMPACT**

There is no current-year fiscal impact as a result of taking this action.

### **ONGOING FISCAL IMPACT**

If approved by the voters, the initiative would significantly limit the City’s ability to recover costs incurred providing necessary and in-demand public services. The ability to offset these program expenses through fees and charges allows the City to allocate general discretionary funds to Council. Reduced cost recovery would, in turn, lead directly to a reduction in services levels in areas that are currently revenues offset (e.g., gazebo rentals, recreational programming, development permitting and inspections, ambulance transport, etc.). Likely results are reduced community services and programs, reduced development services staffing resulting in additional permitting and inspection delays, and a return to contracting out medical transport services, to name a few. As relates to medical transport fees in particular, the City would be placed at a competitive disadvantage in attempting to recover the costs incurred providing these services, as private providers would not be subject to the same fee setting limitations. This is particularly troubling, given the City’s success in reducing the transport fees charged to customers since taking on this program, while improving response times.

Limiting rent and lease charges to a “reasonable charge” instead of allowing for market rate charges would create uncertainty (reasonable in this context is undefined) and limit the City’s ability to generate lease revenues, which means the loss of additional discretionary dollars that could be funding Council priorities.

In addition to severely limiting the City’s ability to continue its current model of effective and appropriate cost recovery, any future tax measures put forward by the City would be subject to increased approval thresholds and reduced transparency for voters. Any tax measure approved would be subject to new sunset requirements, severely limiting the ability of the City to rely on those dollars for ongoing personnel costs. Further, any tax measure approved by the voters subsequent to January 1, 2022 (but prior to the effective date of the initiative) that does not comply with the requirements of the initiative would have to be readopted in compliance. Failure to readopt a tax measure in compliance with the initiative would result in voiding of the original tax measure, one year after the effective date of the initiative. Given that these tax measures were

approved by the voters under then applicable laws, forcing an additional vote under new standards does not enhance democracy, it undermines it.

## **ATTACHMENTS**

1. Initiative No. 21-0042A1
2. Fiscal Analysis of Initiative No. 21-0042A1

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