



City Council Staff Report

From: City Manager

Report Type: CONSENT CALENDAR

Lead Department: Administrative Services

Meeting Date: April 17, 2023

Report #:2302-1018

TITLE

Resolution to Oppose the Taxpayer Protection and Government Accountability Act (Initiative 21-0042A1)

RECOMMENDATION

Staff recommends that the City Council adopt a resolution to oppose the Taxpayer Projection and Government Accountability Act (Initiative 21-0042A1) (Attachment A)

EXECUTIVE SUMMARY

The Taxpayer Protection and Government Accountability Act 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. Staff recommends that the City Council adopt a resolution supporting opposition for this initiative.

BACKGROUND

The City's 2023 Federal and State Legislative Guidelines¹ reflect the City's priorities and guides staff and the City's legislative advocates on issues that are important to the City Council. Protecting local government revenue sources is one of the Foundational Principles of the guidelines and represents the core of the City's policy agenda.

The Taxpayer and Government Accountability Act (Initiative 21-0042A1) was filed with the California Attorney General's Office (AGO) on November 30, 2021. On May 12, 2022, the initiative sponsors announced their intention to forego the November 2022 election and instead target the November 2024 election. On February 1, 2023, the initiative qualified for the

¹ <https://www.cityofpaloalto.org/files/assets/public/city-manager/legislation/2023-legislative-guidelines-final.pdf>

November 5, 2024 election. The full text of the initiative can be found on the California Office of the Attorney General website².

The authority for local government to raise revenue through fees and taxes is restricted by State law, including the voter-approved provisions of Proposition 13 of 1978, Proposition 218 of 1996, and Proposition 26 of 2010. The Taxpayer Protection and Government Accountability Act would amend the California Constitution to further restrict the ability of the state, counties, other local agencies, and the electorate to approve or collect taxes, fees, and other revenues. The initiative also has a retroactive effect as any tax or fee adopted after January 1, 2022 that was not adopted in compliance with the initiative is void within 12 months of the initiative's effective date unless reenacted to comply.

On January 19, 2022, the Legislative Analyst's Office (LAO)³ summarized the current requirements to approve taxes and fees compared to the proposed amendments to the State Constitution and outlined the amendments to the Constitution, should the initiative pass in the November 2024 election. The table below summarizes the LAO's analysis of the components of the ballot initiative:

TABLE 1: Major Provisions of the Taxpayer Protection and Government Accountability Act		
Taxes	1. Expands the definition of tax	Expands definition of tax and may result in the reclassification of several fees and charges that are used to support specific service delivery as taxes subject to voter approval.
	2. Requires voter approval for state taxes	Require that new or increased taxes must be passed by two-thirds vote in each legislative chamber and approved by simple majority of voters. Applies to any state tax approved between January 1, 2022 and the effective date of the measure, unless the tax fulfills certain requirements.
	3. Requirements for approving local taxes	Require that new or increased taxes must be passed by two-thirds vote of the electorate. Prohibits local advisory measures where local voters express a preference for how local general tax dollars should be spent.
	4. Allowable uses and duration of state and local tax revenues must be specified	Requires that state and local tax measures identify the type and amount (or rate) of the

²California Office of Attorney General, Ballot Initiatives, Active Measures, #21-0041A1, Full Text of Amended Ballot Initiative: <https://oag.ca.gov/system/files/initiatives/pdfs/21-0042A1%20%28Taxes%29.pdf>

³ California Office of Attorney General, Ballot Initiatives, Active Measures, #21-0041A1, Legislative Analyst's Office letter dated January 19, 2022: <https://oag.ca.gov/system/files/initiatives/pdfs/fiscal-impact-estimate-report%2821-0042A1%29.pdf>

TABLE 1: Major Provisions of the Taxpayer Protection and Government Accountability Act		
		tax and duration of the tax; must state that the revenue can be used for general purposes.
Fees, Charges, Fines, and Penalties	5. Requires the legislature and local government bodies to impose state and local fees	Requires that fees be imposed by majority vote of the local governing body; restricts the ability of local governments to delegate fee changes to administrative entities. Any fee approved between January 1, 2022 and the effective date of the measure, if passed by voters, unless the tax fulfills requirements of the measure.
	6. Some new state and local fees cannot exceed actual costs	Except for licensing and other regulatory fees, fees and charges may not exceed “the minimum amount necessary.” Fees and charges paid for use of government property and the amount paid to purchase or rent property must be “reasonable.” These fees and charges are currently allowed to be market based.

ANALYSIS

The initiative would significantly restrict the flexibility of state and local governments to raise revenue for services and projects, and potentially jeopardizes billions in annual revenue across California. The City’s major tax revenues are property tax, sales tax, utility users tax, documentary transfer tax, and transient occupancy tax. Tax revenues are used to fund a variety of services such as public safety, emergency response, library, and repair and maintenance of streets and roads. Most proposed taxes require a two-thirds vote of Council before being presented to the voters. Special taxes require two-thirds vote by the electorate while general taxes require a majority vote of the electorate. The initiative expands the definition of a tax that may result in the reclassification of a fees and charges that are used to support specific service delivery as taxes subject to voter approval.

In addition to these taxes, a variety of fees and other charges are levied for a variety of services provided by the City. Cities, counties, and special districts must regularly (e.g., annually) adopt increases to fee rates and charges and revise rate schedules to adjust for changes in service delivery costs (“actual cost”) or level of service. “Actual cost” is defined as the “minimum amount necessary” to provide the service, however the initiative adds provisions that all fees must be “reasonable to the payor” and does not define what “reasonable” is. The initiative also increases the burden to show that a levy, charge or exaction is not a tax from a preponderance of the evidence to a clear and convincing standard.

Finally, the initiative's retroactive application is problematic as hundreds of local measures were approved by the voters in 2022 which may not comply with the initiative's requirements. The City's own Business Tax (Measure K) and Measure to Affirm the Natural Gas Utility Transfer (Measure L) were approved by voters in November 2022. While we believe the two measures comply with the requirements of the Initiative, they, like many other local tax measures across the State, are subject to additional, unexpected scrutiny despite voter-approval.

FISCAL/RESOURCE IMPACT

Staff recommends the Council adopt an oppose position on this ballot initiative, as it restricts the City's local control and diminish the ability of voters and taxpayers to weigh in on local spending decisions. The measure would significantly restrict the City's flexibility to recover cost for specific services and raise revenue for City services, projects and identified unfunded needs. The City has been in close coordination with the League of California Cities as this process develops.

STAKEHOLDER ENGAGEMENT

This report transmits a proposed resolution for Council adoption opposing the Taxpayer Protection and Government Accountability Act (#21-0042A1).

This ballot initiative is supported by:

- California Business Roundtable
- California National Association for Industrial and Office Parks
- Howard Jarvis Taxpayers Association

This ballot initiative is opposed by:

- League of California Cities
- California State Association of Counties
- California Special Districts Association
- California Contract Cities Association

ENVIRONMENTAL REVIEW

This report is not a project under California Environmental Quality Act (CEQA) as defined in CEQA Guidelines, section 15378, because it has no potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS

Attachment A: Resolution to Oppose the Taxpayer Protection and Government Accountability Act (Initiative 21-0042A1)

Attachment B: Fiscal and Program Effects of Initiative 21-0042A1 on Local Governments

APPROVED BY:

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