

MEMO

To: City of Cupertino
Legislative Review Committee

From: Townsend Public Affairs, Inc.

Date: December 10, 2021

Subject: Discuss Taxpayer Protection and Government Accountability Act

Initiative Information

The official text of the Taxpayer Protection and Government Accountability constitutional amendment can be found [here](#)¹.

Summary

The Taxpayer Protection and Government Accountability Act is a proposed initiative that has been put forward by taxpayer association advocates for possible inclusion on the November 2022 General Election ballot. This initiative would require that the imposition of a tax at the state or local level be defined as either a “tax,” or a clearly defined fee associated with a defined service or program. Specifically, “taxes” would be defined as every levy, charge, or exaction imposed by state law that is not an *exempt charge*. An exempt charge is defined as a charge or fee imposed by a state or local government that results in a direct exchange of service, licensure, penalty, or fee for the entrance or use of state property. Under this proposal, “taxes” and “exempt charges” would be subject to different specified criteria for their enactment.

The proposed initiative increases the vote requirements for increasing state taxes. Current law requires legislatively proposed tax increases to receive approval by two-thirds of each house. Additionally, this measure would also require a majority vote of the statewide electorate. However, voters would still be able to increase taxes by majority vote of the electorate, without legislative action. Any state tax approved between October 1, 2021 and the effective date of this measure would be nullified unless it fulfills the requirements of the measure.

Further, this initiative would require any tax measure placed on a state or local ballot to include specific criteria, including whether the tax is for general purposes or a specified use, how long it will be in effect, and the estimated cost of the tax.

Existing law authorizes local governments to impose special and general taxes with two thirds voter approval. Under this measure, any locally imposed “tax” would be subject to two-thirds voter approval and a supermajority of the local governing body. Additionally, any proposed tax submitted to the electorate must be consolidated with a regularly scheduled general election and submitted in the form of an ordinance, except in cases of emergency declared by a *unanimous*

¹ [https://oag.ca.gov/system/files/initiatives/pdfs/21-0026A1 %28%26quot%3BThe Taxpayer Protection and Government Accountability Act%26quot%3B%29.pdf](https://oag.ca.gov/system/files/initiatives/pdfs/21-0026A1%20%26quot%3BThe%20Taxpayer%20Protection%20and%20Government%20Accountability%20Act%26quot%3B%29.pdf)

vote of the governing body. The tax must include details regarding its specified use, longevity, and estimated cost to the electorate.

“Exempt charges,” unlike “taxes” are to be approved by no less than two thirds of a governing body. All exempt charges would be subject to referendum. 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. Any tax or exempt charge adopted after October 1, 2021, but prior to the effective date of the measure, that was not adopted in compliance with the requirements of the measure, would be void 12 months after the effective date of this act unless the tax or exempt charge is reenacted in compliance.

Increase in Public Entity/Official Liability

In addition to the changes to tax definitions, vote requirements, and explanatory criteria for the passage of new taxes or exempt charges, the measure would significantly increase liability for public officials that could result in significant damages in two ways:

- (1) The measure provides that local governments bear the burden of proving, by clear and convincing evidence, that a levy, charge or exaction is an exempt charge and not a tax. In addition, local governments bear the burden of proving, by clear and convincing evidence, that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor.

In the event a private citizen or entity determines that the passage of an exempt charge was unclear or that the charge amount is unreasonable, a local government could be subject to long and costly litigation.

- (2) The measure states that once a tax or exempt charge measure pursuant to the initiative’s requirements is placed on the ballot, it is illegal for public funds or public communication (even referencing the name of the measure) to be used to oppose or pass the measure. Any public official who approves an expenditure of funds and violates these terms is *personally* liable for the amount unlawfully expended in an action brought by the Attorney General, District Attorney, or a taxpayer.

A private citizen or entity would be authorized to bring forth litigation against a public official instrumental in the passage of a tax or exempt charge if their public communications or expenditures were put into question.

Status

Initiative proponents submitted language to the Office of the Attorney General, for purposes of issuing Title and Summary, on October 1, 2021. The official Title and Summary has not yet been published by the Attorney General. Once the Title and Summary has been published, the initiative proponents will have 180 days to circulate petitions, gather signatures, and file petitions with county elections officials.

Legislative Platform

The City’s Legislative Platform contains a guiding principle of Fiscal Responsibility (page 1). This guiding principle indicates that the city supports “the protection of existing federal, state, and local funding sources and the authorities that provide revenues to the City.” This proposed initiative would restrict the authority of the state and the city to impose revenue measures, therefore the proposed initiative is in conflict with the City’s guiding principle. If enacted by voters, and

depending upon future actions of the Legislature, local governments, and voters, this proposed initiative could substantially lower annual state and local revenues.

Recommended Action

Adopt an oppose position on the Taxpayer Protection and Government Accountability Act and authorize the Mayor to send letters to the state legislature