



CITY COUNCIL ACTION REQUEST

Department(s):	Date:	Coordination:	Dept. Approval:
Office of the City Manager	5/2/18	City Attorney Finance	/s/ Lee Wilcox
			CMO Approval: <i>D-OSyl</i>

SUBJECT: Tax Fairness, Transparency and Accountability Act of 2018

RECOMMENDED POSITION: Oppose

RECOMMENDED ACTION:

1. Adopt an oppose position for the Tax Fairness, Transparency and Accountability Act of 2018 and recommend Council adopt a resolution opposing the initiative.
2. Recommend a one-week turnaround to the May 22, 2018 City Council so that the City’s legislative advocates can advocate the City’s oppose position on Tax Fairness, Transparency and Accountability Act of 2018.

BILL SYNOPSIS:

The Tax Fairness, Transparency, and Accountability Act of 2018 (the initiative), sponsored by the California Business Roundtable, is currently in circulation for signatures.

If the initiative were to qualify for the November 2018 ballot and pass by a majority vote, it would amend the State Constitution’s provisions related to both State and local taxes and fees. The significant provisions of the initiative are summarized below.

Local Taxes

Vote requirement. The initiative would require a 2/3rds vote of the City Council to put any tax on the ballot. Under current law, except for sales tax measures, a majority of the City Council may vote to put a tax on the ballot. The initiative would also change the voting threshold for general purpose taxes to a 2/3rds supermajority of the electorate instead of the simple majority that is required today. This means that all taxes would require 2/3rds voter approval to pass.

The initiative would require a 2/3rds vote to extend a tax to a new territory or a new class of payor. The consequence is that before applying existing City taxes to residents of an area annexed into the City, the City Council by a 2/3rds vote would need to place a measure on the ballot for the new residents to approve these taxes by a 2/3rds vote.

Retroactive Application. The initiative, if passed by majority vote at the November election, would be retroactive to January 1, 2018 for local government taxes. Any June or November 2018 general taxes that were approved by majority vote, but less than a two-thirds margin, could be invalid.

Ballot Measure Language. A tax measure for general revenue purposes would be required to state that the revenue is intended for “unrestricted revenue purposes.” This specific wording is not required under current law.

Election Timing. Under current law, a tax measure for general revenue purposes must be consolidated with a general election at which members of the City Council are up for election, unless the City Council by a unanimous vote declares an emergency. The initiative would extend this requirement to all taxes.

Initiatives Proposing Taxes. The requirements described above would also apply to citizen initiatives proposing a new or increased tax.

Local Fees

Vote Requirement. Currently, fees can be adopted by the Council by a majority vote. The initiative would require a 2/3rds vote of the City Council to enact new fees or to increase or extend existing fees, other than the fees subject to Proposition 218 (e.g. water, sewer, and garbage) and developer impact fees (e.g. park impact fees).

Initiatives Proposing Fees. Fees proposed by initiative would be subject to 2/3rds voter approval threshold.

Referendum. The initiative would allow a petition signed by 5% of affected voters to qualify a referendum on a Council decision to impose, increase or extend a fee. The City's Charter specifies a higher threshold of 8%.

Legal Challenges. Under current law, in lawsuits challenging a City fee, the City has the burden of proving by a preponderance of the evidence that the fee is (1) no more than necessary to cover the City's costs of the activity and (2) that the allocation of the City's costs bear a fair or reasonable relationship to the fee payor's burdens on, or benefits received from the activity. The initiative would increase the City's burden of proof from preponderance of the evidence (*more likely than not*) to clear and convincing evidence (*highly probable*). Additionally, the initiative would raise the legal threshold from "reasonable" to "actual" costs and would change the standard that fees and charges bear a "fair and reasonable relationship" to the payor to a potentially higher "proportional to the costs created by the payor" standard. As a practical matter, if the initiative qualifies for the November ballot and passes, the application and meaning of these standards will be determined by the courts.

State Taxes and Fees

At the State level, the initiative would not apply retroactively to State taxes as it does to local taxes. It would require a supermajority vote of the Legislature for taxes that are passed within a regulation (e.g. Cap and Trade). Fees in a regulation adopted by a State agency would require a majority vote of the Legislature. The initiative would impose the same burden of proof in defending State fees as required for local fees.

IMPACTS TO CITY OF SAN JOSE:

According to the Legislative Analyst's Office, roughly half of recently enacted sales, business, and utility general tax measures in California would have failed if the measure's increased vote threshold requirements were in effect. If the initiative qualifies and passes, the City may have a harder time passing revenue measures for city services and capital projects.

For example, recently enacted City tax measures requiring a majority vote that would not have passed by the initiative's a 2/3rds vote requirement include:

2016 June Measure B Quarter-cent General Purpose Sales Tax: The measure passed with 61.4% of the vote. Measure B raises roughly \$38 million a year for the City General Fund.

2016 November Measure G Business Tax: The measure passed with 65.5% of the vote. Measure G raises approximately \$12 million a year for City services.

Earlier tax measures requiring only a majority vote but that passed by over a 2/3rds margin include the Marijuana Business Tax (Measure U in November 2010) with 78.4% of the vote and the Cardroom Business Tax (Measure K June 2010) with 76.0% of the vote. In fiscal year 2016-17, the Marijuana Business Tax revenues were approximately \$10.5 million and the Cardroom Business Tax revenues were approximately \$18.5 million.

California's fragmented fiscal structure and past voter initiative policies such as Propositions 13 and 218, make it challenging for local jurisdictions to secure revenue for public services and improvements that residents expect and demand. Under Proposition 218, all new or increased taxes require voter approval. However, the ability under current law for a majority of voters to approve tax measures that increase revenues for general City purposes enables a majority to decide whether to increase revenues for City services and capital improvements.

By changing the voter threshold for general purposes measures, this initiative allows a minority to block the preference of the majority and eliminates our local control. As an example, in the cases of the 2016 June Measure B General Purpose Sales Tax and the 2016 Measure G Business Tax, a clear majority of voters supported both taxes to increase for revenues for general City services. However, a much smaller percentage of the voters (38.6% and 34.5% respectively) in those elections could have blocked both of those measures if this initiative had been in place during those elections.

POLICY ALIGNMENT:

An oppose position on the 2/3 Initiative aligns with the Legislative Guiding Principle to "Protect and Increase Local Funding".

SUPPORTERS/OPPONENTS:

Supporters

California Business Roundtable (membership includes Wells Fargo, KB Homes, Chevron, Granite Construction, Kaiser, among others)
American Beverage Association (ABA)

Opponents

League of California Cities
American Federation of State, County and Municipal Employees, California (AFSCME)
California Professional Firefighters (CPF)
Peace Officers Research Association of California (PORAC)
Service Employees International Union California (SEIU)
City of Palo Alto

STATUS OF INITIATIVE:

The initiative is currently cleared for circulation by the California Secretary of State, and has gathered a quarter of the signatures. The initiative needs to gather 585,407 verified signatures by June 28, 2018 in order to qualify for the November 2018 ballot.

FOR QUESTIONS CONTACT: Bena Chang, City Manager's Office, at 408-975-3240.

Attachment – Draft Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE OPPOSING THE
TAX FAIRNESS, TRANSPARENCY, AND ACCOUNTABILITY ACT OF 2018**

WHEREAS, California's cities, counties and special districts follow strict guidelines and existing state law regarding the establishment of reasonable fees and the required voter approval of all local taxes; and

WHEREAS, there is a signature-gathering campaign for a state ballot measure currently sponsored by the California Business Roundtable that would severely harm the ability of local governments to continue to provide quality services by imposing onerous roadblocks to raising local revenue to address community needs, services and infrastructure improvements; and

WHEREAS, it is important for local community members, in concert with their duly-elected officials to determine the services and funding levels appropriate for their own cities; and

WHEREAS, the proposed ballot measure would then shift the burden of these uncovered costs from business interests to local general funds supported by taxpayers, and thereby reduce general funds available to support police, fire, park, planning, and other community services;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The City of San José hereby opposes the Tax Fairness, Transparency, and Accountability Act of 2018 sponsored by the California Business Roundtable on the grounds that this measure would harm the ability of local communities to adequately fund services.

SECTION 2. The City Manager is hereby directed to email a copy of this adopted resolution to the League of California Cities at cityletters@cacities.org.

RD:DMK:DMK
5/11/2018

ADOPTED this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk