



CITY OF COMMERCE AGENDA REPORT

TO: Honorable City Council

FROM: City Administrator

SUBJECT: Opposition of the Tax Fairness, Transparency and Accountability Act of 2018.

MEETING DATE: May 1, 2018

RECOMMENDATION

Staff recommends that the City Council adopt Resolution opposing the Tax Fairness, Transparency and Accountability Act of 2018.

BACKGROUND

The “Tax Fairness, Transparency and Accountability Act of 2018” is currently circulating petitions to qualify for the November ballot. This initiative would drastically limit local revenue authority, while making comparatively minor modifications to state authority. For cities and other local agencies, it applies retroactively and may void some local measures approved by local voters on or after January 1, 2018, but prior to the effective date of this act, that does not comply with the provisions of the act.

This initiative is sponsored by the American Beverage Association the trade association of soda companies and the California Business Roundtable, an organization that claims membership from some of the state’s largest companies including, Wells Fargo, Albertsons, KB Home, Blackstone Group, Chevron, Farmers Insurance, Granite Construction, among others.

One paragraph among the three pages declares one of the purposes of the measure is to overturn “loopholes” created by *Cannabis Coalition v. City of Upland* (concern that voters could enact special taxes via initiative by majority vote); *Chamber of Commerce v. Air Resources Board* (a recent case lost by the Chamber which alleged that the state cap and atrade program was an illegal tax) and *Schmeer v. Los Angeles* (which held that a locally imposed-grocer retained bag fee was not a tax).

This measure, however, has much broader impacts than such fixes.

SUMMARY:

This initiative would drastically limit local revenue authority and for cities and other local agencies, it applies retroactively and may void some local measures approved by local voters on or after January 1, 2018, but prior to the effective date of this act, that does not comply with the provisions of the act, and:

Restricting Local Tax Authority:

- a) Eliminates local authority to impose a tax for general purposes by majority vote and instead requires all local proposed tax increases subject to a two-thirds vote. This proposal also requires two-thirds approval of all members of the local legislative body before a tax can be placed on the ballot.
- b) Requires a two-thirds vote to “extend” a tax to new territory, a new class of payor, or expanded base. For cities, this would limit all future annexations by requiring a separate two-thirds vote of the affected residents prior to applying any existing city tax. Other limitations may apply to a local interpretation that an existing local tax applies to a business or product.
- c) Expands the definition of a tax to include payments voluntarily made in exchange for a benefit received, which may cover local franchise fees.
- d) Prohibits any tax to be placed on the ballot unless it either specifically identifies by binding and enforceable limitation how it can be spent, with any change requiring reapproval by the electorate, or states in a separate stand-alone segment of the ballot that the tax revenue is intended for “unrestricted revenue purposes.”
- e) Requires tax measures to be consolidated with the regularly scheduled general election for members of the governing body, unless an emergency is declared by a unanimous vote of the governing body.
- f) Expands the application of this act to include actions and “legal authority” that may be “enforced” or “implemented” by a local government.
- g) Requires a tax imposed by initiative to also be subject to a two-thirds vote, to address concerns over the *Upland* decision.
- h) Clarifies a levy, charge, or exaction retained by and payable to a non-governmental entity is a tax, if the local agency limits in any way the use of the proceeds, to address concerns over the *Schmeer* decision.
- i) Exempts existing school bond (55% vote) construction authority from the application of the bill.

Restricting Local Fee Authority:

Restricts the ability of a local government to impose fees or charges, other than those subject to Prop. 218, by:

- a) Prohibiting a fee or charge from being imposed, increased or extended unless approved by two-thirds vote of the legislative body.
- b) Authorizing a referendum on decisions of a legislative body to impose, increase or extend a fee or charge triggered by petitions signed by 5% of affected voters.
- c) Requiring a fee or charge proposed by initiative to be subject to a two-thirds vote of the electorate.
- d) Narrows the legal threshold from “reasonable” to “actual” costs for fees applied to local services, permits, licenses, etc. Further, the measure authorizes new avenues to challenge “actual” costs by enabling a payor to also second-guess in court whether they are “reasonable.” Opens up further litigation and debate by replacing the existing standard that fees and charges bear a “fair and reasonable

relationship to the payors burdens and benefits” with a more rigorous “proportional to the costs created by the payor” standard.

- e) Increases the legal burden of proof for local agencies from “preponderance of evidence” (more likely than not) to “clear and convincing evidence” (high probability) to establish that a levy, charge or other exaction is: (1) not a tax, (2) the amount is no more than necessary to cover the actual costs, and (3) the revenue is not being used for other than its stated purpose.

Provisions Applicable to State Actions:

- a) Requires a tax contained in a regulation adopted by a state agency must be approved by two-third vote of the Legislature (unless the Legislature adopted a state tax that authorized the action of the state agency). This change is responsive to the recent *Chamber of Commerce* decision on cap and trade revenues.
- b) Unlike the retroactive provisions that apply to local government, the application of this Act to the state is only prospective.
- c) Requires a fee contained in a regulation adopted by a state agency to be approved by majority vote of the Legislature.
- d) Imposes the same burden of proof changes applied to local governments.

FISCAL IMPACT

Potential future impact for the community if this measure passed by the voters.

Respectfully submitted by: Edgar P. Cisneros, City Administrator

Prepared by: Lena Shumway, Administrative Services Director & City Clerk

Reviewed by: Norma Copado, Assistant City Attorney

Attachments

1. Resolution

