



DATE: April 11, 2023

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Adopt a Resolution Opposing Initiative 21-0042A1 on the November 2024 General Election Ballot, entitled the “Taxpayer Protection and Government Accountability Act” and Authorizing the Mayor to Sign a Letter of Opposition to the Ballot Measure

RECOMMENDATION

That the Council 1) adopts a resolution (Attachment II) opposing Initiative 21-0042A1 on the November 2024 General Election Ballot, entitled by its proponents the “Taxpayer Protection and Government Accountability Act”; and 2) authorizes the Mayor to sign a letter of opposition to the ballot measure to be delivered to the League of California Cities (CalCities).

SUMMARY

The Taxpayer Protection and Government Accountability Act (“the measure”), if approved by a simple majority of voters in the November 2024 general election, would amend the California Constitution with provisions restricting the enactment of taxes by state legislators, local boards, or voter-initiated ballot measures. It would also invalidate any local taxes enacted after January 1, 2022; impose mandatory sunset dates on all taxes; put restrictions on local fees and charges; and limit government’s ability to impose fines on businesses that violate state or local law.

The Constitutional amendments proposed by the measure are in opposition to the General Legislative Principles of Enhancing Revenue Sources and Maintaining Home Rule Authority as outlined in the City’s Legislative Program. The measure would significantly impact the City’s future ability to fund services and operations, including those funded by the City’s local Measure C sales tax, the Utility Users Tax, the Real Property Transfer Tax, the Transient Occupancy Tax, as well as transportation and street improvements funded by Alameda County Measure BB.

BACKGROUND

On January 4, 2022, the political action committee (PAC) Californians for Taxpayer Protection and Government Accountability filed AG#21-0042A1, officially titled the

“Taxpayer Protection and Government Accountability Act”.¹ The PAC and its ballot measure campaign have raised over \$16 million, primarily funded by the California Business Roundtable, with additional contributions from real estate investment companies including Douglas Emmett Properties, Kilroy Realty LP, and Western National Group, as well as emergency medical services provider AMR Holdco, Inc.²

On February 1, 2023, the California Secretary of State announced the initiative had qualified for the November 2024 ballot with just over one million valid signatures.³ The measure has since been supported by the California National Association for Industrial Office Parks, also known as the Commercial Real Estate Development Association, and the Howard Jarvis Taxpayers Association, founded in 1978 to protect Proposition 13 and oppose taxation in California.⁴

In 2017, the City adopted a formal Legislative Program, which serves as a guide to Hayward’s legislative priorities and positions. Under the program, the City has two General Legislative Principles: 1) Enhancing Revenue Sources and 2) Maintaining Home Rule Authority.⁵ These principles were re-affirmed when the Council adopted an update to the Legislative Program in January 2022.⁶ Based on these stances, the City has opposed legislation and ballot measures limiting its ability to raise revenue or enact legislation. Most recently, in September 2022, the City opposed AB 1951, which proposed exempting manufacturers from paying full sales taxes on equipment purchases for a five-year period.

DISCUSSION

Taxpayer Protection and Government Accountability Act Provisions

The proposed language of the Taxpayer Protection and Government Accountability Act includes changes to the California Constitution: 1) classifying all levies, fees, and charges imposed by state and local government as either taxes or what the initiative defines as “exempt charges;” and 2) imposing new vote requirements and limitations on new or increased taxes. The full text of the measure can be found in Attachment IV.

¹ Initiative 21-0042, California Attorney General <https://oag.ca.gov/system/files/initiatives/pdfs/21-0042A1%20%28Taxes%29.pdf>

² Campaign Finance: Californians for Taxpayer Protection and Government Accountability, Sponsored by California Homeowners, Taxpayers, and Businesses, Cal-Access <https://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1442599&session=2021&view=received>

³ RE: Initiative: #1935 Related to Taxes – Eligibility for Ballot, California Secretary of State <https://elections.cdn.sos.ca.gov/ccrov/2023/february/23017jh.pdf>

⁴ California Two-Thirds Legislative Vote and Voter Approval for New or Increased Taxes Initiative (2024) – Support, Ballotpedia [https://ballotpedia.org/California_Two-Thirds_Legislative_Vote_and_Voter_Approval_for_New_or_Increased_Taxes_Initiative_\(2024\)#cite_note-finance-6](https://ballotpedia.org/California_Two-Thirds_Legislative_Vote_and_Voter_Approval_for_New_or_Increased_Taxes_Initiative_(2024)#cite_note-finance-6)

⁵ Adoption of Federal and State Legislative Priorities Program, Hayward City Council Report July 17, 2017 <https://hayward.legistar.com/View.ashx?M=F&ID=5300265&GUID=DBE4601B-D0BF-44E8-9EAB-AFF7E45BD3FC>

⁶ Legislative Program: Adopt a Resolution Updating the City’s Legislative Program, Hayward City Council Report January 18, 2022 <https://hayward.legistar.com/LegislationDetail.aspx?ID=5382570&GUID=5F2027E2-FB7B-43AA-8DFE-01D398587443>

The measure dictates that all charges imposed by state and local governments be considered taxes for the purposes of enactment or amendment unless they are “exempt charges” as described below:

- Reasonable charges that do not exceed the cost of providing associated services,
- Charges collected to fund the non-federal portion of Medi-Cal,
- Charges collected for admission, use, rental, purchase or lease of government property,
- Fines imposed as a result of a violation of law, or
- Charges for the promotion of California tourism.

State and local governments would bear the burden of providing evidence that fines, fees, or other levies are “exempt charges.” Proposed exempt charges may be subject to legal challenge. Levies that cannot prove their status as “exempt charges” would be considered taxes.

The measure proposes the following limitations on when and how new or increased taxes may be enacted:

- All new taxes and tax increases would require approval by both the governing body and voters. General taxes would require a simple majority in addition to governing body approval. Special taxes would require a two-thirds majority as well as governing body approval.
- For local taxes, the requirements for governing body and voter approval would apply to both taxes proposed by the governing body as well as taxes placed on the ballot by voters. Statewide voter-initiated ballot measures would be exempt from the two-thirds majority requirement.
- Voter approval would be required for any expansion of existing taxes, including expansions through annexations or new applications of existing taxes, such as imposing a utility users’ tax on a new utility service.
- General tax ballot measures must include specific language designating the tax as being “for general government use.” Advisory measures indicating specific potential uses for a general tax’s revenue would or should be used would be prohibited.
- All new taxes must include a sunset date.
- City charters may not be amended to include taxes or fees.
- Any tax or fee imposed after January 1, 2022, that does not comply with the language of the measure would be voided.

Impact of Proposed Measure

According to the ballot summary provided by the Secretary of State, if passed, the Taxpayer Protection and Government Accountability Act would significantly curtail the ability of voters and state and local governments to raise revenues for government services.⁷ Under existing law, local governments’ revenue-raising authority is already substantially

⁷ Eligible Statewide Initiative Measures, California Secretary of State
<https://www.sos.ca.gov/elections/ballot-measures/initiative-and-referendum-status/eligible-statewide-initiative-measures>

restricted by statute and constitutional provisions. Examples of existing restrictions include: Proposition 13 (1978) limiting property tax changes; Proposition 218 (1996) requiring voter approval for all new local taxes; and Proposition 26 (2010) expanding the definition of a “tax” to include any levy, charge or exaction imposed by a local government that does not fall within one of seven specific exemptions. .

The Taxpayer Protection and Government Accountability Act would further limit local governments’ ability to raise revenue by redefining existing fees and charges as taxes, such as:

- 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;
- Document processing and duplication fees;
- Transit fees, tolls, parking fees, and public airport and harbor use fees; and
- Fees for parks and recreation services; and
- Garbage disposal tipping fees.

Currently, the City regularly adopts increases to fee rates and charges and has the ability to revise rate schedules to accommodate new users and activities. The City’s Master Fee Schedule, which identifies the fees for various City services, is based on recovery for the cost of delivering services. Certain services deemed to provide community benefits may have fees that are lower than cost recovery at Council’s discretion. Unlike most revenue sources, the City currently has significant control over use fees, allowing it the flexibility to balance service levels, demand, and community benefit. Under the provisions of the measure, the City’s ability to adjust fees would be severely restricted.

Table 1 provides a summary of revenues generated by fees. Some fees may be considered exempt charges under the measure and not impacted, but determining the nature of the fee would require evaluation on a case-by-case basis.

Table 1: Three-Year Actuals of Fee Revenue (All Funds)

| Fee Revenues | FY 2020 Actuals | FY 2021 Actuals | FY 2022 Actuals |
|---------------------------------------|----------------------|----------------------|----------------------|
| Utility Fees | \$92,658,381 | \$92,617,319 | \$93,549,968 |
| Franchise Fees | \$11,435,862 | \$11,444,929 | \$11,333,075 |
| Other Fees | \$7,098,893 | \$5,440,311 | \$6,708,071 |
| Fees and Charges for Services | \$3,915,313 | \$5,142,957 | \$5,247,379 |
| Fines & Forfeitures | \$2,486,851 | \$2,401,632 | \$3,075,079 |
| Permits | \$5,095,304 | \$4,264,388 | \$1,972,575 |
| Licenses | \$156,641 | \$146,864 | \$180,369 |
| Total Charges and Fees Revenue | \$122,847,245 | \$121,458,400 | \$122,066,516 |

The City of Hayward also has several key revenue sources that are currently considered taxes and would be affected by the measure. These revenue streams make up a significant portion of the City’s annual revenue. General use taxes that fund City operations include Property Tax, Sales Tax, Utility User Tax (UUT), Real Property Transfer Tax (RPTT), Transit Occupancy Tax (TOT), Cannabis Tax, and Measure C Sales Tax. City operations are also supported by the Alameda County Measure B/BB transportation sales tax, a special tax which helps fund transportation and paratransit programs.

Over the years, the City has taken several tax ballot measures to its voters and received support for tax measures that provide community support and programmatic services to the Hayward community. Under the Taxpayer Protection and Government Accountability Act, future tax measures would face steeper approval requirements and would need to include explicit sunset dates. Table 2 provides an overview of City taxes that have been passed by voters.

Table 2: Voter Approved Tax Ballot Measures

| Tax | Voter-Approved Ballot Measures | Sunset Date |
|-------------------------------------|--------------------------------|---------------|
| Sales Tax (1/2 Cent) | Measure C – City of Hayward | December 2034 |
| Utility User Tax (UUT) | Measure A – City of Hayward | June 2019 |
| Utility User Tax Renewal (UUT) | Measure D – City of Hayward | June 2039 |
| Real Property Transfer Tax (RPTT) | Measure T – City of Hayward | N/A |
| Cannabis Tax | Measure EE – City of Hayward | N/A |
| Transient Occupancy Tax (TOT) | Measure NN – City of Hayward | N/A |
| Transportation Sales Tax (1/2 Cent) | Measure B – County of Alameda | March 2022 |
| Transportation Sales Tax (1/2 Cent) | Measure BB – County of Alameda | March 2045 |

Table 3 below provides a summary of revenues generated by each of the above taxes. Any future efforts to extend or increase these revenue sources would be subject to the provisions of the measure.

Table 3: Three-Year Actuals of Tax Generating Revenue (All Funds)

| Tax Revenues | FY 2020 Actuals | FY 2021 Actuals | FY 2022 Actuals |
|-----------------------------------|-----------------|-----------------|-----------------|
| Property Tax | \$58,431,803 | \$61,196,409 | \$63,524,226 |
| Sales & Use Tax (General Fund) | \$39,679,957 | \$40,074,819 | \$44,027,645 |
| Sales & Use Tax (Measure C) | \$16,886,500 | \$18,577,214 | \$20,638,713 |
| Utility Users Tax (UUT) | \$16,065,943 | \$17,267,592 | \$17,308,117 |
| Real Property Transfer Tax (RPTT) | \$12,150,286 | \$17,120,032 | \$21,226,290 |
| Transient Occupancy Tax (TOT) | \$2,186,927 | \$1,552,148 | \$1,978,906 |
| Cannabis Tax | \$2,985 | \$441,877 | \$842,860 |

| Tax Revenues | FY 2020 Actuals | FY 2021 Actuals | FY 2022 Actuals |
|--------------------------|----------------------|----------------------|----------------------|
| Measure B | \$993,532 | \$1,037,806 | \$850,580 |
| Measure BB | \$903,523 | \$898,232 | \$1,210,250 |
| Total Tax Revenue | \$147,301,456 | \$158,166,129 | \$171,607,587 |

FISCAL IMPACT

The resolution and position letter opposing the Taxpayer Protection and Government Accountability Act will have no immediate fiscal impact on the City of Hayward. According to an analysis by the California Legislative Analyst's Office (LAO), if the measure succeeds, the exact extent to which revenues would be lower is unknown, but existing fee revenue is likely to suffer greater impacts than general tax revenues.⁸ Actual impacts would likely be substantial, depending on future decisions by the courts, the City Council, and voters.

STRATEGIC ROADMAP

This agenda item supports the policies outlined in the City's Legislative Program, as well as the following specific strategic priority and objective:

Strategic Priority: Strengthen Organizational Health

Objective: Strengthen Fiscal Sustainability – Maintain and expand fiscal sustainability

NEXT STEPS

If Council adopts the attached resolution, staff will transmit copies of the resolution along with letters conveying the City of Hayward's opposition to the Taxpayer Protection and Government Accountability Act Ballot Measure (AG# 21-0042A1) to the League of California Cities/CalCities, as well as to appropriate legislative representatives. The full text of the draft letter can be found in Attachment III.

Prepared by: Rick Rivera, Management Analyst

Recommended by: Dustin Claussen, Assistant City Manager

Approved by:



Kelly McAdoo, City Manager

⁸ A.G. File No. 2021-042, Legislative Analyst's Office <https://lao.ca.gov/BallotAnalysis/Initiative/2021-042>