



# AR-1 Initiative No. 21-0042A1 The Taxpayer and Government Accountability Act

Dylan Feik, City Manager

April 4, 2023



# Key Details

- On January 4, 2022, the California Business Roundtable filed the “Taxpayer Protection and Government Accountability Act” or AG#21-0042A1
- On February 1, 2023, the California Secretary of State determined the measure qualified for the November 2024 ballot
- Cal Cities has requested member cities consider the Initiative and provide letters **in opposition**
- City Councils may not spend public funds to advocate for the passage or defeat of a measure but may go on record to support or oppose a particular ballot measure

# According to the CA Attorney General

- Expands the definition of a tax
- Requires voter approval for State taxes
- Establishes the same approval requirements for any local tax approved between January 1, 2022 and the effective date of the Initiative
- Allowable uses and duration must be included
- Fees must be imposed by majority vote of governing body
- The measure generally would require the charge be both “reasonable” and “reflect the actual cost” not to exceed “the minimum amount necessary”
- Lower local government tax and fee revenue
- Increased administrative costs to set fees, respond to challenges, etc

# With regard to taxes...

- Prohibits advisory, non-binding measures as to use of tax proceeds on the same ballot
- Eliminates the ability of special tax measures proposed by citizen initiative to be enacted by majority voter approval
- Requires that tax measures include a specific duration of time the tax will be imposed. This seems to require that all tax increases or extensions contain a sunset (end date).
  - This would require additional tax measures to extend previously approved taxes
- Requires that a tax measure adopted after January 1, 2022 and before the effective date of the initiative that was not adopted in accordance with the measure be readopted in compliance with the measure or will be void 12 months after the effective date
- Requires voter approval to expand an existing tax to new territory

# Overview of tax-related concerns

- Over \$20 billion of local government fee and charge revenues over 10 years placed at heightened legal risk, resulting in anticipated public service reductions across virtually every aspect of city, county, special district, and school services especially for drinking water, sewer sanitation, and public health and safety
- About \$2 billion of revenues each year from fees and charges adopted after January 1, 2021 subject to legal challenge
- Over \$2 billion dollars of annual revenues from dozens of tax measures approved by voters between January 1, 2022 and the effective date of the act subject to additional voter approval if not in compliance with the initiative
- Indeterminable legal and administrative cost/burdens from new and more empowered legal challenges
- Service and infrastructure declines including in fire and emergency response, law enforcement, public health, drinking water, sewer sanitation, parks, libraries, public schools, affordable housing, homelessness prevention and mental health services

# Concerns continued...

According to California City Finance –

- Over 120 local measures were approved in 2022 that may not comply with the provisions of Initiative 21-0042A1. Over \$2 billion of annual revenues from these voter approved measures will cease a year after the effective date of the measure, reducing the local public services funded by these measures. There will be more measures in 2024. So, a reasonable estimate of the combined total of annual local funding directly affected by Initiative 21-0042A1 due to its retroactivity provision is \$4 billion.
- Voters approved 250 local tax and bond measures in 2022, in addition to 7 citizen initiative special tax measures. Among these are 90 general obligation bond measures that are not affected by the provisions of Initiative 21-0042A1. Among the remaining 160 measures, just 40 clearly meet the ballot title content stipulations of the initiative. The 120 other measures might end in December 2025, a year after the effective date of the initiative unless they are redrafted in compliance with the initiative, placed back on the ballot, and approved by voters prior to that date. Taken together, these 120 measures authorized over \$600 million of new annual revenues for municipal services

# Concerns continued...

- Fees and charges for services and permits may not exceed the “actual cost” of providing the product or service for which the fee is charged. “Actual cost” is the “minimum amount necessary.” Examples include planning services, excavation and encroachment permits, preparation of candidate statement, and permit parking.
- The burden to prove the fee or charge does not exceed “actual cost” is changed to “clear and convincing” evidence that a fee/charge is not a tax, that the amount is reasonable, and that it does not exceed “actual cost.”
- Franchise fees — historically considered fees, not taxes — will more likely be considered taxes due to the elimination of an existing category of “fee” and the requirement that charges to entrance, purchase, rental, or lease of government property be “reasonable.” The state and cities issue franchises to oil companies, utilities, gas companies, railroads, garbage companies, cable companies, and other corporations.
- No fee or charge or exaction regulating vehicle miles traveled can be imposed as a condition of property development or occupancy.

# With regard to “exempt charges”

- Subjects new and increased fees and charges for a product or service to new “actual cost” and “reasonableness” tests
- Subjects fees and charges for entrance to local government property; and rental and sale of local government property to a new, undefined, “reasonable” test
- Allows legal challenge to any fee or charge adopted before the effective date of the initiative and after January 1, 2022. Such a lawsuit could enjoin (stop) the collection or use of the fee or charge pending the outcome of the legal challenge
- Subjects a challenged fee to new, higher burdens of proof if legally challenged



# Overview of “exempt charges” concerns

- Virtually every city, county, and special district must regularly (e.g., annually) adopt increases to fee rates and charges and revise rate schedules to accommodate new users and activities. Most of these would be subject to new standards and limitations under threat of legal challenge. Based on the current volume of fees and charges imposed by local agencies and increases in those fees simply to accommodate inflation, the amount of local government fee and charge revenue placed at risk is about \$2 billion per year including those adopted since January 1, 2022. Of \$2 billion, about \$900 million (45 percent) is for special districts, \$800 million (40 percent) is cities, and \$300 million (15 percent) is counties.

# Concerns continued...

Major examples of affected fees and charges are:

- Certain water, sanitary sewer, wastewater, garbage, electric, gas service fees. Property related fees and assessments adopted under Proposition 218 (California Constitution Article XIII D) **are not affected.**
- Nuisance abatement charges - such as for weed, rubbish and general nuisance abatement to fund community safety, code enforcement, and neighborhood cleanup programs.
- Advanced Life Support (ALS) transport charges.
- Business improvement district charges.
- Fees for processing of land use and development applications such as plan check fees, use permits, design review, environmental assessment, plan amendment, subdivision map changes.
- Document processing and duplication fees.
- Facility use charges, parking fees, tolls.
- Fines, penalties.
- Fees for parks and recreation services.

# Sources of Information

- [Link to Initiative Language](#)
- League of California Cities, [Overview](#)
- California Business Roundtable
- Legislative Analyst's Office, [Overview](#)

# Next steps...

- Determine if the Council should oppose, support, or watch this measure
- Cal Cities is organizing a statewide effort to oppose the measure and is working with groups representing
  - Local government - Over 80 local governments have already opposed the measure
  - Infrastructure advocates
  - Labor unions
  - Special districts
- City staff will monitor other cities as they discuss their respective position on this measure
  - Expected to be a very expensive measure in November 2024

# Questions?



**Dylan Feik**  
**801-821-1734**  
[dfeik@ci.monrovia.ca.us](mailto:dfeik@ci.monrovia.ca.us)