



## CITY COUNCIL AGENDA REPORT

### City of Anaheim OFFICE OF THE CITY ATTORNEY

**DATE:** MARCH 3, 2015

**FROM:** OFFICE OF THE CITY ATTORNEY

**SUBJECT:** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION ON TUESDAY NOVEMBER 8, 2016 AND ORDERING THE SUBMISSION OF PROPOSED AMENDMENTS TO THE CITY CHARTER TO THE ELECTORS OF SAID CITY AT SAID ELECTION (MEASURE NO. \_\_\_ – REQUIRE 2/3 VOTE OF THE CITY COUNCIL TO PROPOSE TAXES, AKA "THE ANAHEIM TAXPAYER PROTECTION ACT")

**ATTACHMENT (Y/N):** YES

**ITEM # 11**

#### **RECOMMENDATION:**

That the City Council consider, discuss and take action on the Resolution described above, aka the Anaheim Taxpayer Protection Act.

#### **BACKGROUND:**

On December 9, 2014, then Mayor Pro Tem Murray requested the City Attorney prepare a Charter amendment to require that taxes proposed by the City Council obtain a 2/3 vote of the full City Council in order to place such matters before the City's voters.

The attached Resolution, if adopted, would call a general election for November 8, 2016 and order on the ballot a Charter Amendment to add Charter Section 1208.1, entitled "City Council Sponsored Tax Proposals – 2/3 Vote Requirement." This amendment is also known as and self-titled the Anaheim Taxpayer Protection Act. ([Attachment 1.](#))

#### **DISCUSSION**

As a charter city, the City of Anaheim has the power to make and enforce all ordinances and regulations with respect to municipal affairs, subject only to restrictions and limitations provided in the City Charter or the state Constitution. Section 5(b) of Article XI of the California Constitution states that "it shall be competent in all city charters to provide . . . for . . . conduct of city elections."

Further, the City Council generally may establish procedural rules, including rules to identify the necessary vote requirement for the legislative body to take certain actions. For instance, while the City Charter (as well as general law) states that a majority of members of the City Council shall be required for the enactment of any ordinance or resolution, the Charter presently specifies that certain actions require more than a bare majority to take action. Examples of supermajority vote requirements presently in the Anaheim Charter include the adoption of urgency ordinances pursuant to Section 511

and the waiving of certain bid requirements for public works contracts pursuant to Section 1211.

Thus, establishing the vote requirement for City Council action to place a local measure, especially one drafted and sponsored by the City Council (as opposed to a measure submitted by citizen petition), on the ballot is a “core” area of municipal concern. And, importantly, such a provision does not conflict with any applicable state law of statewide concern or the California Constitution.

Statutory law applicable to general law cities, but not charter cities, prohibits any proposed *general tax* from being presented at an election unless the tax proposal is approved by a two-third vote of all members of the city's city council. *See* Govt. Code § 53724(b). Under established case law, this statutory supermajority vote requirement is not applicable to Anaheim as a charter city. General law also does not impose any specialized vote requirements on a city council presenting a *special tax* to the voters (i.e., state law only requires a majority vote of a city council to present special taxes).

Thus, as it presently stands, the Anaheim City Council need only obtain a majority vote to place taxes (whether special or general) before the voters (with the potential exception of transaction and use taxes, which require a 2/3 vote pursuant to Cal. Rev. & Tax Code § 7285.9).

The proposed Charter Amendment would:

- Apply only to City Council sponsored tax proposals (not to the Council's action to place citizen sponsored initiative measures on a ballot).
- Apply to both general and special tax proposals, not just general tax proposals.
- Apply to tax proposals that impose, extend or increase a tax, which under the California Constitution are deemed to be "taxes".
- Require a 2/3 vote of the full City Council to present a Council-sponsored tax measure to the voters.

The proposed Charter Amendment does not alter constitutional requirements for voter approval. Presently, the constitution requires a majority vote to impose general taxes, a 2/3 vote to impose special taxes and a 55% vote to impose *ad valorem* property taxes to fund school facility bonds. This amendment does not alter the constitutional timing requirement for placing general taxes on a ballot (such taxes may only be placed on a ballot during an election where members of the governing body are on the ballot, unless by unanimous vote a council determines that there is an emergency need). Finally, this amendment does not alter the constitutional and statutory processes, including the requirements for hearings and notice.

This attached Resolution calls a general election on November 8, 2016, which the City will be calling regardless for the election of members of the City Council, and orders on the ballot at that election a proposed Charter Amendment. Pursuant to the Elections Code, charter amendments of this nature may only be placed on statewide general or primary election ballots. This ballot measure satisfies those requirements.

At a later date, the City Clerk will bring forward resolutions relating to (1) consolidating this election with the County-run general election, (2) authorizing any member of the

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City Council to author ballot arguments, (3) authorizing rebuttal arguments and (4) directing the City Attorney prepare an impartial analysis of the measure.

**IMPACT ON THE BUDGET:**

The estimated cost of placing this measure on the November 8, 2016 general election ballot is \$8,500.

Respectfully submitted,

Concurred by,

Michael R.W. Houston  
City Attorney

Linda Andal, CMC  
City Clerk

**Attachment:**

1. Resolution (including proposed Charter Amendment)

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