



TOWN OF FAIRFAX

STAFF REPORT

March 1, 2023

TO: Mayor and Town Council

FROM: Heather Abrams, Town Manager

SUBJECT: Adopt a Resolution opposing Initiative No. 21-0042A1, the Taxpayer Protection and Government Accountability Act

RECOMMENDATION

Adopt a Resolution opposing Initiative No. 21-0042A1, the Taxpayer Protection and Government Accountability Act.

DISCUSSION

The Taxpayer Protection and Government Accountability Act would amend the California Constitution with provisions that limit voters' authority and input, adopt new and stricter rules for raising taxes and fees, and may make it more difficult to impose fines and penalties for violation of state and local laws.

The measure puts billions of local government tax and fee revenues at risk statewide with related core public service impacts.

The measure would have significant negative impacts on Town of Fairfax operations and core service delivery.

The proposed constitutional initiative is sponsored by the California Business Roundtable.

[Full text of Ballot Initiative](#)

I. MAJOR PROVISIONS

Fees and Charges¹:

- Except for licensing and other regulatory fees, fees and charges 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." The burden to prove the fee or charge does not exceed "actual cost" is changed to "clear and convincing" evidence.
- Requires fees and charges paid for the use of local and state government property and the amount paid to purchase or rent government property to be "reasonable." These

¹ Initiative No. 21-0042A1 (pgs.4-6; Section 1 (a)-(j))

fees and charges are currently allowed to be market-based. Whether the amount is “reasonable” (introducing a new legal standard aiming to force below market fee and charge amounts) must be proved by “clear and convincing evidence.”² The standard may significantly reduce the amount large companies (e.g., oil, utilities, gas, railroads, garbage/refuse, cable, and other corporations) will pay for the use of local public property.

- Prohibits fees on new development based on vehicle miles traveled.

Taxes³:

- Taxes and fees adopted after Jan. 1, 2022, that do not comply with the new rules, are void unless reenacted⁴.
- Invalidates *Upland* decision that allows a majority of local voters to pass special taxes. The measure specifies that taxes proposed by the initiative are subject to the same rules as taxes placed on the ballot by a city council.
- Expressly prohibits local advisory measures which allow local voters to express a preference for how local general tax dollars should be spent.⁵
- Requires voter approval to expand existing taxes (e.g., Utility, Transient Occupancy) to new territory (e.g., annexations) or to expand the tax base (e.g., new utility service)
- New taxes can only be imposed for a specific time period.
- City charters may not be amended to include a tax or fee.
- All state taxes require majority voter approval.

Fines and Penalties⁶:

- May require voter approval of fines, penalties, and levies for corporations and property owners that violate state and local laws unless a new, undefined adjudicatory process is used to impose the fines and penalties.

² Initiative No. 21-0042A1 (pg.5; (3))

³ Initiative No. 21-0042A1 (pgs.4-6; Section 1 (a)-(j))

⁴ Initiative No. 21-0042A1 (pg.7; Section 6 (Sec. 2)(g))

⁵ Initiative No. 21-0042A1 (pg.6 (3))

⁶ Initiative No. 21-0042A1 (pg. 5 (4))

II. DISCUSSION/ADDITIONAL BACKGROUND

On Jan. 4, 2022, the California Business Roundtable filed the “Taxpayer Protection and Government Accountability Act” or AG# 21-0042A1. On Feb. 1, 2023, the measure qualified for the November 2024 ballot.

The League of California Cities, along with a broad coalition of local governments, labor and public safety leaders, infrastructure advocates, and businesses, strongly opposes this initiative.

Local government revenue-raising authority is currently substantially restricted by state statute and constitutional provisions, including the voter approved provisions of Proposition 13 of 1978, Proposition 218 of 1996, and Proposition 26 of 2010. The Taxpayer Protection and Government Accountability Act adds and expands restrictions on voters and local government tax and fee authority.

Fees and Taxes

Local governments levy a variety of fees and other charges to provide core public services.

Major examples of affected fees and charges are:

- 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.
- Advanced Life Support (ALS) transport charges.
- Document processing and duplication fees.
- Transit fees, tolls, parking fees, and public airport and harbor use fees.
- Facility use charges, fees for parks and recreation services, garbage disposal tipping fees.

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, including council-adopted increases to simply accommodate inflation, Cal Cities estimates the amount of local government fee and charge revenue at risk is approximately \$2 billion per year including those adopted since Jan. 1, 2022. Over ten years, \$20 billion of local government fee and charge revenues will be at heightened legal peril.

Examples of Fairfax affected fees and charges include: recreation class and facility fees, solid waste franchise fees, and document fees.

Hundreds of local tax measures were approved in 2022⁷ that likely do not comply with the provisions of the initiative. Nearly \$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, unless the tax is re-submitted for voter approval.

Reductions of local government tax revenues have impacts on core services and infrastructure including fire and emergency response, law enforcement, streets and roads, drinking water, sewer sanitation, parks, libraries, public schools, affordable housing, homelessness prevention, and mental health services.

Examples of Fairfax's affected revenue measures and service impacts include: Parametric service, Measure F funded services, and storm water services.

Fines and Penalties

Under existing law, cities are required to provide due process before imposing a penalty or fine for violation of its municipal code:

1. A local agency must adopt administrative procedures that govern imposing fines and penalties, including providing a reasonable period of time for a person responsible for a continuing violation to correct or remedy the violation [Gov't Code 53069.4].
2. Notice must be given to the violating party before imposing the penalty; and give the party an opportunity to be heard and present any facts or arguments [*Merco Construction Engineers v. Los Angeles Unified School District* (1969) 274 CA 2d 154, 166].
3. The fine may not be "excessive" [U.S. Constitution amendments VIII and XIV].

The initiative converts administratively-imposed fines and penalties into taxes unless a new, undefined, and ambiguous "adjudicatory due process" is followed. This provision may put at risk authority to impose fines and penalties for violations of state and local law.

Town of Fairfax affected fines and penalties include penalties for Town Code violations.

III. FISCAL IMPACT

The Taxpayer Protection and Government Accountability Act will take billions of dollars away from local government services statewide.

Town of Fairfax Financial Impact

If passed at a Statewide level, the California Business Roundtable's initiative will further reduce and limit Fairfax's already scarce public resources. It will put at risk fee revenues, increase the

⁷ <http://www.californiacityfinance.com/Votes2211final.pdf>

Town's legal defense costs, and could invalidate current taxes approved by voters and reduce tax revenues needed to maintain public infrastructure and public services.

ATTACHMENT

Resolution

RESOLUTION 23-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
TO OPPOSE INITIATIVE 21-0042A1**

WHEREAS, an association representing California's wealthiest corporations and developers is spending millions to push a deceptive proposition aimed for the November 2024 statewide ballot; and

WHEREAS, the measure includes undemocratic provisions that would make it more difficult for local voters to pass measures needed to fund local services and infrastructure, and would limit voter input by prohibiting local advisory measures where voters provide direction on how they want their local tax dollars spent; and

WHEREAS, the measure creates new constitutional loopholes that allow corporations to pay far less than their fair share for the impacts they have on our communities, including local infrastructure and our environment; and

WHEREAS, the measure may make it much more difficult for state and local regulators to issue fines and levies on corporations that violate laws intended to protect our environment, public health and safety, and our neighborhoods; and

WHEREAS, the measure puts billions of dollars currently dedicated to local services at risk and could force cuts to fire and emergency response, law enforcement, public health, parks, libraries, affordable housing, services to support homeless residents, mental health services, and more; and

THEREFORE, BE IT RESOLVED that the Town Council of the Town of Fairfax opposes Initiative 21-0042A1;

AND BE IT FURTHER RESOLVED that the Town Council of the Town of Fairfax will join the No on Initiative 21-0042A1 coalition, a growing coalition of public safety, education, labor, local government, and infrastructure groups throughout the state;

AND BE IT FURTHER RESOLVED that staff shall email a copy of this adopted resolution to the League of California Cities at BallotMeasures@calcities.org.

PASSED, APPROVED, AND ADOPTED by the Town Council of the Town of Fairfax at a regular meeting of the Town Council held on the 1st day of March 2023, by the following vote:

AYES:
NOES:
ABSENT:

Chance Cutrano, Mayor

ATTEST: _____
Michele Gardner, Town Clerk