



CITY OF POMONA COUNCIL REPORT

December 17, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Marie Michel Macias, Interim City Clerk
Onyx Jones, Finance Director/City Treasurer

Subject: **Certification of Citizen Sponsored Initiative Measure (The “Initiative”) to Enact a Three Quarter Percent (0.75%) Increase in the City’s Utility Users Tax; Receive and File the Impact Analysis of the Initiative Prepared Pursuant to Section 9212 of the California Elections Code; and Consider Whether to Adopt the Proposed Ordinance or Direct Staff to Prepare said Ordinance/Initiative for Placement on the Ballot of the Next General Election**

OVERVIEW

Recommendations - That the City Council:

1. Receive and file the certification of the sufficiency of the Initiative to enact a three quarter percent (0.75%) increase in the City’s Utility Users Tax for a period of ten years unless extended by the City Council and establish an exemption of the User Utility Tax for legally handicapped residential rate payers;
2. Receive and file the Impact Analysis Report (The “Impact Report”) (see Attachment No. 3) a report on financial and other related impacts, to be completed and brought back to the City Council within thirty (30) days, prior to accepting certification of sufficiency of the petition; and
3. Direct staff to prepare said Ordinance/initiative without alteration for placement on the ballot of the next General Election.

Fiscal Impact – There are unknown costs associated with holding a consolidated election in 2020. The impact report was prepared jointly by Michael Colantuono from law firm, Colantuono, Highsmith, Whatley, PC (CHW) and Finance State. The invoice from CHW’s services was \$600.00 and will be paid from the General Fund Acct. No. 101-0600-52323-XXXXX. The estimated revenues and the financial impact of the exemptions for legally handicapped residential rate payers are subject to a variety of variables and are included in the Impact Report (See Attachment No. 3).

Previous Council Action – On November 19, 2018, Council was presented with the Certification of Sufficiency of the Initiative Petition with the following options: 1) to accept the certification of the sufficiency of the petition and direct staff to prepare the required ordinance and resolutions in order to place the measure on the ballot for the 2020 General Municipal Election; 2) to request a report on financial and other related impacts, to be completed and brought back to Council within thirty days, prior to accepting certification of sufficiency of the petition; or 3) to adopt the ordinance without alteration.¹ Council chose to give staff direction to prepare the Impact Report.

EXECUTIVE SUMMARY

In this report, Council is being requested to accept the certification of the Initiative Petition to enact a three quarter percent (0.75%) increase in the City's Utility Users Tax; receive and file the Impact Report that has been prepared pursuant to Section 9212 of the California Elections Code; and Direct staff to prepare said Ordinance/Initiative for placement on the ballot of the next General Election.

DISCUSSION

Review of Petition Signatures

In March 2018, the proponent, John Mendoza, submitted a request for ballot title and summary for a petition entitled "An Initiative Measure to Enact a Three Quarter Percent (0.75%) Increase in the City's Utility User Tax (UUT) for a Period of Ten Years Unless Extended by the City Council, and Establish an Exemption of the User Utility Tax for Legally Handicapped Residential Rate Payers." (See text of Petition, Attachment 2.)

In general, the signature requirements for local initiative petitions are set forth in Elections Code Section 9214 and 9215. However, for initiative petitions affecting local taxes, Article 13C, Section 3, of the California Constitution provides that the signature requirement for initiatives affecting local taxes cannot be higher than statewide statutory initiatives. Article 2, Section 8, of the California Constitution establishes the signature requirement for statewide initiatives at "five percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election."

According to the Los Angeles County Clerk Registrar Recorder's Office, there were 54,398 registered voters in Pomona for the 2014 Gubernatorial Election, of which 14,997 voted. Therefore, a total of 750 valid signatures are required for the initiative petition to be deemed sufficient.

On August 28, 2018, the proponent submitted 1,113 signatures for verification.

¹ Under ordinary circumstances, when the City Council is presented with a qualified voter initiative, it has the option of adopting the proposed ordinance that is the subject of the initiative instead of submitting it to the voters. That is not a viable option in this situation because the initiative proposes an increase in the UUT tax. The California Constitution requires that any new or increased tax be approved by the voters. Although the California courts have not directly addressed the argument that the City Council may use its authority under the Elections Code to adopt an initiative as a substitute for actually submitting the measure to the voters in compliance with the laws governing tax measures, the cases that have been decided in this area point to the conclusion that courts are unlikely to adopt that point of view. The less legally risky course is to submit the measure to the voters.

State law requires that no later than 30 days thereafter (Saturdays, Sundays and holidays excluded) the Elections Official review a sample of 500 signatures to determine through a statistical sampling process whether a sufficient number of valid signatures exist to qualify for the ballot. In this instance, the random sample of 500 signatures resulted in a sufficient number of signatures to directly qualify for the ballot (122.97%). This report of sufficiency has been prepared in accordance with California Elections code Section 9114 (**Attachment 1**).

Impact Report

Legal Analysis

This impact report was prepared jointly by Colantuono, Highsmith, Whatley, PC (CHW) and the Finance Department. The City requested CHW's assistance in preparing the legal analysis of this report and the Finance Department completed the fiscal analysis of a (0.75%) increase to the UUT and the potential impact of the UUT exemption for legally handicapped residential rate payers.

CHW reviewed the Initiative and made seven observations that were detailed in the Impact Report. In conclusion Michal Colantuono indicated, "Whether the ordinance is a good idea is a policy matter for the Council and voters. As to legal issues, the measure is — in my professional opinion — lawful and can be enforced if voters approve it".

Financial Analysis

The FY 2018-2019 UUT budget estimates included in the City Budget were used as a baseline to calculate the estimated increase in UUT revenues. Passage of the Initiative herein discussed is expected to generate approximately \$14,500,000 in total new UUT revenue over ten years or \$1.45M annually. This represents an increase to the UUT during the ten-year period from 9% to 9.75%. It should be noted that this estimate does not consider reduced amounts resulting from low income or legally handicap exemptions to the UUT, future fluctuations in utility usage levels due to either climate or conservation, nor does it attempt to forecast any changes by individual utilities, some of which have been extremely volatile in recent years.

There were numerous assumptions that had to be made to estimate the impact of the exemption proposed in this Initiative and they are discussed in more detail in the Financial Analysis of the Impact Report (See Attachment No. 3). Table 1 on the next page, shows the estimated financial impact of the legally handicap exemption could be between \$1.4M - \$844K or a much lower amount based on numerous variables outlined in the Impact Report.

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FY 2018-2019 UUT Budget @ 9%	17,350,000.00
UUT Estimate at 9.75%	18,795,833.33
Projected Financial Impact of Initiative	1,445,833.33
If 100% of disabled households applied for exemption	
Estimated exemptions based on statistics provided on www.DisabledWorld.com*	1,407,560.83
Estimated exemptions based on statistics provided on United State Census Bureau**	844,536.50
*10% of Pomona Households are disabled per DisabledWorld.com	
**6% of Pomona Households are disabled per US Census Bureau	

Table 1

In summary there are many factors to consider when reviewing the impact of the Initiative on the City:

- The Ordinance is lawful and can be enforced if the voters approve it.
- The estimated increase to UUT revenues is \$1.45M as a result of increasing the current UUT revenue from 9% to 9.75%.
- There is the possibility that residents view this Initiative as a tactic of the City to propose an additional tax on its residents in addition to the recent Measure PG and PC Ballot Measures.
- The increase in UUT will affect a broad base of businesses and residents but the Initiative allows for an exemption for certain households. The exemption amount could equal the amount of the proposed increase. This could be viewed as taxing one group of residents just to offer exemptions for another group of residents.
- If the UUT rate increases, the number of low income households that apply for the exemption could drastically increase with the publicity generated by the ballot measure. In the past, up to 10% of low income households have actually come in to apply for the UUT exemption.
- The wording in the ordinance indicates that the UUT will remain at 9.75% for a period of ten years; however, the exemption for legally handicap rate payers is expected to continue, even after the increased revenues have expired.
- The real financial outcome is immeasurable because there is no way of determining the number of households that will apply for an exemption and to account for possible fluctuations in future UUT revenues.
 - Factors that have caused UUT to fluctuate in the past include: State mandated conservation efforts, decrease usage of telephone landlines, lower and more competitive cell phone packages, any rate structure changes by the utility companies, and residents the increased use of Solar.

Council Action Required

The City Council is required to accept the results of the Interim City Clerk's review and verification of the petition and to receive and file the Impact Report. At this point, the City Council is required by law to direct staff to prepare said Ordinance/Initiative for placement on the ballot of the next General Election.

Attachments:

1. Certificate of Sufficiency by Interim City Clerk
2. Petition Text
3. Impact Report