



COUNCIL AGENDA: 02-23-10  
ITEM: 2.22

# Memorandum

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**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Lee Price, MMC  
City Clerk

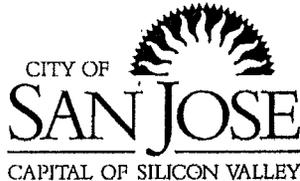
**SUBJECT: LOCAL TAXPAYER, PUBLIC  
SAFETY AND TRANSPORTATION  
ACT OF 2010**

**DATE:** 02-18-10

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## RECOMMENDATION

As recommended by the Rules and Open Government Committee on February 17, 2010 and outlined in the attached memo previously submitted to the Rules and Open Government Committee, adopt a resolution in support of the proposed measure known as the Local Taxpayer, Public Safety and Transportation Act of 2010 targeted for the November 2010 Statewide General Election.



# Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE      **FROM:** Betsy Shotwell

**SUBJECT:** SEE BELOW

**DATE:** February 10, 2010

Approved

Date

2/11/10

**SUBJECT: RECOMMENDATION TO SUPPORT THE LOCAL TAXPAYER, PUBLIC SAFETY AND TRANSPORTATION ACT OF 2010**

## RECOMMENDATION

1. Adopt a resolution in support of the proposed measure known as the Local Taxpayer, Public Safety and Transportation Act of 2010 targeted for the November 2010 Statewide General Election. .
2. Accept staff report on additional proposed measures targeted for the November 2010 Statewide General Election concerning the calling for a Constitutional Convention, and state and local budgetary reforms.
3. Consistent with Resolution No. 75246, (Rules for the Conduct of Meetings), Rule 6.5(b)(5)(a)(viii)(3), waive the open government requirements and agendaize the item for a one-week turnaround for Mayor and City Council review.

## BACKGROUND

The Local Taxpayer, Public Safety and Transportation Protection Act of 2010 is supported by a coalition which includes the League of California Cities (LOCC), California Alliance for Jobs, and the California Transit Association with input from the California State Association of Counties, California School Boards Association, California Special District Association and others. The coalition is working to have this measure placed on the state ballot for November 2010.<sup>1</sup>

The measure, if passed by voters, would close loopholes and prevent the state from borrowing, raiding or otherwise redirecting local government (local taxes, property taxes,

<sup>1</sup> The title of the Act, if approved by the voters, is the Local Taxpayer, Public Safety and Transportation Act of 2010. The Attorney General title for the measure is "Prohibits the State from Taking Funds Used for Transportation or Local Government Projects and Services," and this is the title the voters will see on the November ballot.

redevelopment), transportation (Highway Users Tax Account (HUTA) and Proposition 42 gasoline sales tax funds) and public transit funds. In addition, the measure if passed would protect existing revenues for local governments and services, including billions in current funding for local fire, police and public works departments.

More than 300 city officials and 200 county and school board officials participated in a historic summit in July 2009 on the need for state governance and fiscal reform. Summit participants selected "Local Revenue Protection" as the highest reform priority. Many city officials also attended the League's annual conference in September in San Jose where voting delegates unanimously voted to support the League's co-sponsorship of a ballot measure for November 2010 to tighten protections of city and transportation revenues.

The state came very close to taking \$1 billion in local gas tax revenues in 2009 and then actually borrowed \$2 billion in local property taxes -- for San Jose: \$20.4 million. In addition, the state seized \$2.07 billion in redevelopment agency funds over two-years and took \$697 million of transit funds. The hit to the San Jose Redevelopment Agency for FY 2009-10 was \$62 million and for FY 2010-11, \$12.8 million. A lawsuit has been filed in opposition to the State's action against redevelopment agencies although the timing for the outcome is unknown at this time.

## ANALYSIS

According to the Legislative Analyst's Office, the ballot initiative that was filed by the growing coalition working to protect local revenues and local services would "amend the Constitution to constrain the State's authority to redirect or make changes to state and local resources and their allocation after October 21, 2009. Under the measure, the State Controller would reimburse affected local governments or accounts within 30 days if the state were found to have violated any of its provisions. Any statute enacted between October 21, 2009 and the effective date of this measure that would have been prohibited under this measure would be repealed."

Specifically, this measure, if passed by the voters would:

- Prohibit the state from taking, borrowing or redirecting local taxpayer funds dedicated to public safety, emergency response and other vital local government services (including redevelopment). The measure would close loopholes to prevent the taking of local taxpayer funds currently dedicated to cities, counties and special districts. It would also revoke the state's authority to borrow local government property tax funds or divert local redevelopment funds.
- Protect vital, dedicated transportation and public transit funds from state raids. The measure would prevent state borrowing, taking or redirecting of the state sales tax on gasoline (Prop.42 funds) and Highway User Tax on gasoline (HUTA) funds that are dedicated to transportation maintenance and improvements. It would also prevent the state from redirecting or taking public transit funds.

Here are the key provisions of the measure:

<i>Key Provisions</i>	<i>Local Taxpayer, Public Safety and Transportation Act of 2010. Initiative. Constitutional Amendment</i>
<b>Protects Locally Imposed Taxes (e.g., parcel UUT, TOT, sales, etc.?)</b>	<b>Yes.</b> Legislature may not take or borrow or direct how <u>local taxes</u> may be spent. Property tax treated under Art. XIII, Sec. 25.5.
<b>Prohibits Property Tax Borrowing?</b>	<b>Yes.</b> Repeals state authority to borrow under Art. XIII, Sec. 25.5 after 2009-10.
<b>Prohibits Reallocation of Prop. Tax or VLF to Pay for State Mandates?</b>	<b>Yes.</b>
<b>Prohibits Borrowing or Stealing of the HUTA Gas Tax?</b>	<b>Yes,</b> and provides same protections to any replacement revenues and requires hearings and study before state and local shares changed.
<b>Prohibits Borrowing or Stealing of Prop. 42 Gas Tax?</b>	<b>Yes,</b> and provides same protections to any replacement revenues and requires hearings and study before state and local shares changed.
<b>Prohibits Borrowing or Stealing of Public Transit Account (PTA) funds?</b>	<b>Yes.</b> Also restricts use of PTA revenues for transportation planning and mass transportation purposes only and requires "Spillover" sales tax to be deposited into the PTA and split evenly between State and local transportation agencies.
<b>Prohibits Taking, Borrowing or Directing Spending of RDA Funds?</b>	<b>Yes.</b> Prohibits state from requiring RDAs to pay tax increment to a state or another local agency or require an agency to use its tax increment for any State purpose, except affordable housing and pass-through payments.
<b>Remedy if State Violates Constitution and Repayment Due?</b>	<b>Yes.</b> If court finds state has taken funds illegally, repayment is continuously appropriated to repay amount taken illegally.
<b>Repeal of Conflicting Statutes?</b>	<b>Yes.</b> Any conflicting statute enacted between Oct. 21, 2009 and November 2, 2010 is automatically repealed.

**Status of the measure:**

Following the Attorney General's issuance of the measure's title and summary in December, the process to obtain the necessary 694,354 signatures has begun and will conclude mid-April with the required due date May 17, 2010.

**Other Reform Measures Pending:**

**California Forward**

*California Forward* is a government reform organization that has filed ballot measures with the Secretary of State's Office concerning:

(1) State Budget Reform. The first measure, entitled the "**Best Practices Budget Accountability Act**" includes state fiscal reforms, such as lowering the vote threshold to a simple majority to approve a state budget, performance based budgeting and restrictions on use of one-time spikes in revenues. The Attorney General's summary and revised title follows with a signature gathering deadline of June 7, 2010:

**The Best Practices Budget Accountability Act Changes State Budget Process in Several Ways. Initiative, Constitutional Amendment and Statute.**

*Summary Date: 01/08/10 | Circulation Deadline: 06/07/10 Signatures Required: 694,354*

Changes legislative vote requirement necessary to pass state budget from two-thirds to a simple majority. Retains two-thirds vote requirement to raise taxes. Prohibits Legislature from creating expenditures of more than \$25 million unless offsetting revenues or spending cuts are identified. Limits use of onetime revenues to onetime expenditures. Requires Legislators to forfeit salary and expense reimbursement each day budget is late. Requires Governor to prepare two-year budgets. Permits Governor to cut budget unilaterally during fiscal emergencies if Legislature fails to act. Requires performance reviews of all state programs. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Direct increases in state spending—potentially tens of millions of dollars per year—to administer new budgeting process requirements. Potentially significant, but unknown, indirect fiscal effects for the state. Over time, these could include lower annual spending for ongoing state-funded programs and higher one-time expenditures (such as for infrastructure projects, debt reduction, or temporary tax relief). (09-0070.)

(2) Local Revenue Protections: The second measure, entitled the "**Community Funding Protection and Accountability Act of 2010**" would bar the state from taking certain tax revenue from local government after November 2010, while the LOCC ballot measure would repeal any related measures enacted after October 21, 2009. It would also create a new

countywide funding structure with a complex local spending plan funded with a voter approved 1 cent sales tax.

Specifically, with this measure there is:

1. **No Protection of HUTA and Public Transit Revenues.** Over the last three years the Legislature has diverted \$3.5 billion of funding for public transit systems and last year nearly diverted \$1 billion of the local share of the Highway Users Tax Account (HUTA) revenues. These important revenues are extremely vulnerable to legislative diversion or borrowing, and our measure provides protection for them.
2. **No Protection of Successor Transportation Revenues.** The measure fails to anticipate what the Legislature has done once already and is under discussion again in order to circumvent the existing and future protections of Prop. 42 and HUTA revenues: reduce or eliminate a tax intended for local use and replace it with an alternative source of revenue that does not enjoy constitutional protection. Unlike the LOCC's measure, this measure fails to protect any successor revenues to Prop. 42 and HUTA revenues. Although the LOCC measure does not require the Legislature to adopt successor revenues, if such revenues are adopted the revenues would enjoy the same protections as the existing revenue sources.
3. **No Protection Against State Mandates.** There is no provision in this measure to prevent the Legislature from reallocating property taxes and the local share of the VLF to carry out a state mandated function and the LOCC measure prohibits such acts.
4. **No Requirement of Repayment for Unconstitutional Acts by the State.** There is no provision in the measure that repays amounts that are unconstitutionally seized or diverted. The LOCC measure contains such a provision to prevent the State from avoiding its repayment obligations that the state courts cannot currently enforce.

The revised title and summary from the Attorney Generals Office is as follows:

**The Community Funding Protection and Accountability Act of 2010 Changes Law to Prohibit State in Fiscal Emergencies from Using Local-Government and Transportation Funds for Other Purposes. Allows Local Sales and Use Tax Increases by Majority Vote for Countywide Strategic Plans. Initiative Constitutional Amendment and Statute.**

*Summary Date: 01/13/10 | Circulation Deadline: 06/14/10 Signatures Required: 694,354*

Amends Constitution to prohibit the State from borrowing or appropriating tax revenues allocated to local government entities, redevelopment agencies and transportation projects, even in times of fiscal hardship. Allows local government entities to submit local ballot measures increasing sales and use taxes up to one cent for approval by majority vote to

implement countywide strategic plans. Requires 50% allocation of such taxes to schools. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Major increases—probably over \$1 billion—in annual city, county, and school revenues and spending, depending on local voter approval of future tax proposals. Significant constraints on state authority over city, county, special district, and redevelopment agency funds. As a result, higher and more stable local government resources, potentially affecting billions of dollars in some years. Commensurate reductions in state resources, resulting in major decreases in state spending and/or increases in state revenues. (09-0071.)

### **Repair California**

*Repair California*, the group advocating for calling a Constitutional Convention, led by the Bay Area Council, has filed two ballot measures as follows from the Secretary of State's website with the Attorney General's summaries and titles below:

#### **Allows Voters to Place Question of Calling a Constitutional Convention on the Ballot. Initiative Constitutional Amendment.**

*Summary Date: 12/22/09 | Circulation Deadline: 05/21/10 | Signatures Required: 694,354*

Amends the Constitution to permit voters to place on the ballot the question of whether to call a convention to revise the state Constitution. Permits any ballot measure calling a convention to specify the parts of the Constitution that the convention can or cannot revise. Requires any ballot measure calling a convention to specify the process for selection of convention delegates. Repeals requirement that convention delegates be elected by voters. Permits voters to call a convention no more than once every ten years. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: No direct fiscal impact, as any effect would depend on whether and how voters used the power to call and accept the recommendations of a constitutional convention in the future. Potentially major fiscal changes in state and local governments could result. (09-0066.)

#### **Calls a Limited Convention to Propose Changes to State Constitution. Initiative Statute.**

*Summary Date: 12/22/09 | Circulation Deadline: 05/21/10 | Signatures Required: 433,971*

Calls convention to propose changes to state Constitution related to government, state spending and budgeting, elections and lobbying. Provides that proposed changes to constitution or laws become effective only after approved by voters in statewide election. Forbids changes to taxes or fees, marriage, abortion, gambling, affirmative action, freedom of the press or religion, immigration rights, and the death penalty. Establishes rules for selecting convention delegates to reflect a diverse range of citizens. Requires selection of delegates and conduct of convention to be open and public. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: One-time increase of

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state government spending up to \$95 million to administer a constitutional convention. Potentially major changes in state and local governments if voters approve the convention's recommendations, including higher or lower revenues or greater or less spending on particular public programs. (09-0067.)

*How Delegates Will Be Chosen.* Approximately half would be chosen at the county level by committees made up of county supervisors (2), city officials in counties with cities (mayors who are chair and vice chair of city selection committee), and school districts (1). The other half would consist of three delegates elected from each Assembly district from a group of 50 potential delegates in each Assembly district that was randomly chosen by the State Auditor from a pool of 400 possible delegates randomly chosen by the State Auditor in each Assembly district. Delegates are not required to be registered voters. The appointed Fair Political Practices Commission (FPPC) that currently enforces the Political Reform Act would serve as the Constitutional Convention Commission.

**PUBLIC OUTREACH**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

By providing this document to the Rules and Open Government Committee in February, this document will be posted on the City's website with the February 17 meeting agenda and interested public will have the opportunity to review the document prior to the full Council acceptance.

**POLICY ALIGNMENT**

The recommendation to support the ballot measure known as the Local Taxpayer, Public Safety and Transportation Act of 2010 reflects the City's 2010 legislative policy goals and priorities to protect local revenues.

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**COORDINATION**

This memorandum was coordinated with the City Attorney's Office, and the City's Legislative Representative in Sacramento



BETSY SHOTWELL

Director, Intergovernmental Relations

For more information contact: Betsy Shotwell, Director of IGR at 408.535.8270

Attachment: A Resolution of the Council of the city of San Jose in Support of the Local Taxpayer, Public Safety and Transportation Protection Act of 2010

RESOLUTION NO.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE IN SUPPORT OF THE LOCAL TAXPAYER, PUBLIC SAFETY AND TRANSPORTATION PROTECTION ACT OF 2010**

**WHEREAS**, California voters have repeatedly and overwhelmingly passed separate ballot measures to stop State raids of local government funds, and to dedicate the taxes on gasoline to fund local and state transportation improvement projects; and

**WHEREAS**, these local government funds are critical to provide the police and fire, emergency response, parks, libraries, and other vital local services that residents rely upon every day, and gas tax funds are vital to maintain and improve local streets and roads, to make road safety improvements, relieve traffic congestion, and provide mass transit; and

**WHEREAS**, despite the fact that voters have repeatedly passed measures to prevent the State from taking these revenues dedicated to funding local government services and transportation improvement projects, the State Legislature has seized and borrowed billions of dollars in local government and transportation funds in the past few years; and

**WHEREAS**, this year's borrowing and raids of local government, redevelopment and transit funds, as well as previous, ongoing raids of local government and transportation funds have lead to severe consequences, such as layoffs of police, fire and paramedic first responders, fire station closures, stalled economic development, healthcare cutbacks, delays in road safety improvements, public transit fare increases and cutbacks in public transit services; and

**WHEREAS**, State politicians in Sacramento have continued to ignore the will of the voters, and current law provides no penalties when state politicians take or borrow these locally-dedicated funds; and

**WHEREAS**, a coalition of local government, transportation and transit advocates recently filed a constitutional amendment with the California Attorney General, called the Local Taxpayer, Public Safety, and Transportation Protection Act of 2010, for potential placement on California's November 2010 statewide ballot; and

**WHEREAS**, approval of this ballot initiative would close loopholes and change the constitution to further prevent State politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending or otherwise taking or interfering with tax revenues dedicated to funding local government services, including redevelopment, or dedicated to transportation improvement projects and mass transit.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

The City of San José formally endorses the Local Taxpayer, Public Safety and Transportation Protection Act of 2010, a proposed constitutional amendment.

RD:KMM:NGA  
2/4/2010

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk