



# Memorandum

**To:** Mayor and City Council

**From:** Councilmember Pete Constant

**Subject:** DISCUSSION REGARDING  
JUNE/NOVEMBER 2012 TAX  
MEASURES

**Date:** February 10, 2012

**Approved:**

## Recommendation

Drop consideration of placing a tax measure on the June ballot given constitutional questions that arise from such an action.

## Background

Article 13C of the California Constitution, as added by Proposition 218 (1996), sets forth specific guidelines for voter approval for local tax levies. Specifically, subdivision (b) of Section 2 states:

*...The election required by this subdivision shall be consolidated with a regularly scheduled **general election for members of the governing body of the local government**, except in cases of emergency declared by a unanimous vote of the governing body.*

This means that any election to increase a general tax<sup>1</sup> must take place at a general election.

A recent law signed by Governor Brown modified the Elections Code to clarify the definition of a general election to mean *only* the first Tuesday after the first Monday in November of each even-numbered year.<sup>2</sup>

The San José City Charter defines general elections as well as regular municipal elections.<sup>3</sup> Specifically, the charter references primary elections in the definition of a regular election, not in the definition of a general election. The next general election, based on these definitions, will be in November. The election taking place in June is a statewide Presidential Primary Election and a citywide Primary Municipal Election. Members of San José's governing body will not be elected until the Run-Off Municipal Election in November.

## Conclusion

Given the legal and constitutional questions raised above, I believe we should drop consideration of placing a tax measure on the June ballot. It is foreseeable that any attempt to hold an election to raise a general tax in June may invite legal challenge.

<sup>1</sup> "General Tax" as defined by the California Constitution in Section 1 of Article 13C means "any tax imposed for general government purposes. Under Article 13C all local taxes imposed by a local government are deemed either a general tax or a special tax. A "special tax" means "any tax imposed for specific purposes..." and requires a two-thirds vote.

<sup>2</sup> SB202 (2011)

<sup>3</sup> Article XVI. Section 1600.