



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: JULY 20, 2021

FROM: CITY MANAGER'S OFFICE WARDS: ALL
CITY CLERK'S OFFICE
CITY ATTORNEY'S OFFICE

SUBJECT: ADOPTION OF RESOLUTION TO BE SUBMITTED FOR VOTER
CONSIDERATION OF A BALLOT MEASURE TO AMEND THE CITY CHARTER
ADDING SECTION 1204.2 ON ELECTRIC UTILITY REVENUE

ISSUE:

Consider adopting resolutions to submit a ballot measure for voter consideration on November 2, 2021 to amend the City Charter by adding a new Section 1204.2 on Electric Utility Revenue.

RECOMMENDATIONS:

That the City Council:

1. Adopt the attached Resolution proposing an amendment to the City Charter, with the option of selecting the:
 - a. "The Fiscal Responsibility Act of 2021" as proposed by the Charter Review Committee;
OR
 - b. "The Riverside Services Protection Measure" as referred by the City Council to the Charter Review Committee on April 27, 2021; OR
 - c. Both; OR
 - d. Consider other options as stated in this report;

2. Adopt the attached Resolution calling a special municipal election to be held on November 2, 2021, for the purpose of submitting to the qualified electors of the City of Riverside an amendment to the City Charter with the option of selecting either:
 - a. "The Fiscal Responsibility Act of 2021" as proposed by the Charter Review Committee;
OR
 - b. "The Riverside Services Protection Measure" as referred by the City Council to the Charter Review Committee on April 27, 2021; OR
 - c. Both; OR
 - d. Consider other options as stated in this report.

3. Determine if the Mayor or Members of the City Council wish to author ballot arguments.

BACKGROUND

The City's Charter has called for transfers from its electric utility to the General Fund since voters first approved the Charter in 1907. That original Charter provided that utility rates “should preferably, but not necessarily, yield a reasonable profit and interest on the investment to the city ...” (1907 City Charter, section 162) and it further stated that, on an annual basis, any funds remaining after the utilities have paid their specified expenses must be transferred to the general fund (1907 City Charter, section 172).

Over a half-century ago, in 1968, the City's voters adopted a version of the Charter that specifically called for a general fund transfer (“GFT”) from utilities in “an amount equal to 11.5% of the utilities' gross operating revenues.” City Charter § 1204, subd. (f), currently allows a GFT in “an amount not to exceed 11.5%” of the utilities' gross operating revenues for the prior fiscal year. This language was approved by 74% of City voters in 1977. The City's voters have therefore approved the GFT at three separate elections.

This General Fund Transfer provides a locally controlled revenue source to the General Fund. Combined with other sources of revenue (sales tax, property tax, utility users' tax, etc.), the General Fund funds vital governmental services including, but not limited to, fire, paramedic, police, street repairs, parks, senior services, homelessness and other general services. As an important source of City revenue, the General Fund Transfer is critical to advancing all general services provided to the public as well as the City Council's *Envision Riverside 2025 Strategic Plan* priorities of: Arts, Culture and Recreation; Community Well-Being, Economic Opportunity; Environmental Stewardship; High Performing Government; and Infrastructure, Mobility and Connectivity.

Subsequent to these approvals, Proposition 218 was adopted by California voters in 1996 and Proposition 26 was adopted in 2010. Both of those propositions amended the California Constitution to provide that certain fees and charges imposed by public agencies must be approved by voters. In general, if a fee or charge for a service exceeds the cost to provide that service, voters must approve the fee or charge. For utilities, Proposition 218 applies to water service and Proposition 26 applies to electric service. Neither of these propositions apply to an investor-owned, private utility like Southern California Edison.

City Charter section 1404 – “Charter; amending” provides the following: “This Charter, and any of its provisions, may be amended in accordance with the Constitution and laws of the State of California. The City Council must submit any proposed Charter amendment, except for those proposed by voter initiative, to a Charter Review Committee for recommendation before the City Council places the Charter amendment proposal on a ballot.”

DISCUSSION:

The electric utility portion of the General Fund Transfer currently provides approximately \$40 million annually, or roughly 14%, of the total General Fund operating budget. Losing this revenue source would require significant reductions in the services mentioned above. In addition to this potential loss of General Fund revenue, the City is also dealing with the recovery from the COVID-19 pandemic, an ongoing structural deficit of approximately \$10 million annually, and the economic impacts of the pandemic such as business closures and unemployment that could further impact the City budget. Notwithstanding new replacement revenue from Measure Z or other sources, the impact would be absorbed through a reduction of personnel and non-personnel

expenditures.

For a point of reference, based on the Fiscal Year 2021/22 budget, the estimated structural deficit of \$10 million was bridged in large measure by holding the non-personnel expenditure budget flat and keeping an estimated 82 positions vacant to benefit from the temporary salary savings. The impacts of losing \$40 million in General Fund revenue would be similar to the measures taken to address the structural deficit, but on a larger scale to proportionately reflect the increased dollar amount of lost revenue.

City Council referral to Charter Review Committee: “Riverside Services Protection Measure”

Riverside has a responsibility to maintain its local funding and financial stability to continue providing the range of public services that residents rely on the most. To maintain this critical General Fund revenue source, which has funded public services in the City of Riverside for at least 50 years (if not from the City’s founding as a charter city), on April 27, 2021, the City Council formally referred the following Charter amendment to the Charter Review Committee for a recommendation. This proposal would amend the Charter to add a section confirming the electric utility transfer, limited to 11.5% of gross revenue. The proposed language for that Charter amendment is as follows:

Sec. 1204.2. – Electric utility revenue.

The revenue of the electric public utility for each fiscal year shall be kept separate and apart from all other moneys of the City by deposit in the appropriate revenue fund and shall be used for the purposes and in the order set forth in Section 1204 and for the annual payment by the electric utility into the general fund in twelve equal monthly installments during each fiscal year, an amount not to exceed 11.5 percent of the gross operating revenues, exclusive of surcharges, of the electric utility for the last fiscal year ended and reported upon by independent public auditors. The proceeds shall be used to maintain local general purposes as the City Council may by budget or other appropriation direct such as 9-1-1 response, fire, paramedic, police, street repairs, parks, senior services, homelessness and other general services.

The proposed ballot measure for this Charter amendment is as follows:

City of Riverside Services Protection Measure.

To maintain such general city services as 911 response, fire, paramedic, police, street repairs, parks, senior services; address homelessness; shall the measure amending City of Riverside’s Charter to continue collecting in electric rates and maintain the voter-approved fund transfer (established 1968), limited to 11.5% of gross revenue, providing approximately \$40,000,000 annually to City of Riverside’s General Fund not increasing tax or utility rates, until ended by voters, requiring audits/ all funds controlled locally, be adopted?

Community Engagement

In January 2021, the City launched a community engagement effort to identify residents’ priorities and service needs that could be impacted by the loss of the electric utility transfer. This engagement effort began with the Community Issues Survey, which was conducted by California-based research firm Fairbank, Maslin, Maulin, Metz & Associates (FM3), to examine the funding priorities of Riverside residents and the community’s opinion on the Riverside Services Protection Measure. The survey was conducted online and by telephone between January 7-14, 2021

among a random sample of over 700 residents. The study found that a strong majority of respondents support amending the City Charter to maintain local funding by continuing the existing practice of transferring utility revenue to the City's General Fund for use on services such as police, fire, homelessness, and maintaining city streets and parks.

Key findings from the survey are summarized in the attached executive summary (Attachment 1) and include the following:

- 71% of respondents rated Riverside Public Utilities as doing an excellent/good job.
- 65% of respondents rated the Police Department as doing an excellent/good job.
- 88% of respondents rated the Fire Department as doing an excellent/good job.
- More than two-thirds of all respondents indicated they support a voter reauthorization of a budget measure that transfers utility revenue to the general fund for use on services such as 911 response, police/fire, homeless needs, and parks.
- Respondents prioritized ensuring local funding is maintained for public safety services such as 911 response, fire and paramedic services, keeping public areas and parks clean and safe, and addressing homelessness, among other priorities.

In March 2021, the City continued this community engagement effort with the launch of The Riverside Discussion to expand on the input received from the Community Issues Survey and reach a broader community audience to obtain feedback on services that residents rely on the most. The Riverside Discussion included a wide variety of communication methods to engage the community, including citywide mailers, utility bill inserts, website content, social media posts, and presentations to community groups. The engagement effort was designed to inform the community about this important issue and encourage residents to complete a brief survey to identify their City service needs and priorities.

From March through July 2021, approximately 260,000 residents were reached through The Riverside Discussion and roughly 1,800 surveys were completed. Based on the feedback received through The Riverside Discussion survey, the service needs and priorities identified as most important are ranked below in order of priority:

1. Addressing homelessness
2. Maintaining Police and Fire/Paramedic services
3. Investigating and preventing property crimes
4. Keeping public areas and parks clean and safe
5. Retaining local businesses
6. Preparing for and recovering from public health emergencies
7. Preventing and preparing for wildfires
8. Maintaining street repairs

In addition, the City has been learning about a range of other important needs and priorities of the Riverside community.

Charter Review Committee Proposal – “The Fiscal Responsibility Act of 2021”

Under Charter section 1404, a Charter amendment requires a review and recommendation, but not approval, by the Charter Review Committee (Committee) before the City Council can consider placing a measure on the ballot. That section provides: “This Charter, and any of its provisions, may be amended in accordance with the Constitution and laws of the State of California. The City Council must submit any proposed Charter amendment, except for those proposed by voter

initiative, to a Charter Review Committee for recommendation before the City Council places the Charter amendment proposal on a ballot.”

On February 16, 2021 and April 27, 2021, the City Council referred the proposed Charter amendment for the Riverside Services Protection Measure to the Committee for its review and consideration to place on the November 2, 2021 ballot. The City Council recommended the Committee provide its recommendation on the Charter amendment by June 16, 2021 in order for the City Council to have enough time to consider that recommendation prior to the August 6, 2021 deadline to place a measure on the November 2021 ballot.

Since the City Council’s February 16, 2021 and April 27, 2021 referral, the Committee met five times to review and consider the proposed Charter amendment for the Riverside Services Protection Measure and several alternative Charter amendment options pertaining to the General Fund Transfer. During the course of these public meetings, the Committee recommended a Charter amendment that would provide a maximum General Fund Transfer of \$38 million beginning in 2022, decreased by \$1 million annually, until the maximum General Fund Transfer decreased to \$30 million, whereupon the maximum General Fund Transfer would remain at \$30 million without adjustment for inflation.

On June 9, 2021, the Committee reviewed, modified, and approved adding a new Section 1204.2 – Electric utility revenue to the City Charter based on the Committee’s proposed Charter amendment. On June 16, 2021, the Committee reviewed, modified, and approved the proposed ballot measure question. Due to technical difficulties and the possibility that all Committee members were not able to participate in the vote during this meeting, the Committee voted to meet again on June 30, 2021 and confirmed its review, revisions to, and approval of the proposed ballot measure question. The Committee’s proposed Charter amendment language and ballot measure question are provided below.

Proposed City Charter Amendment Language from Charter Review Committee (new section):

Sec. 1204.2 – Electric utility revenue

The revenue of the electric public utility for each fiscal year shall be kept separate and apart from all other moneys of the City by deposit in the appropriate revenue fund and shall be used for purposes and in the order set forth in Section 1204 and for the annual payment by the electric utility into the general fund as set forth in Section 1204(f), except as set forth in this section. For the electric utility, the annual payment required under Section 1204(f), beginning on January 1, 2022, shall not exceed \$38,000,000. The amount of the annual maximum payment shall then decrease by \$1,000,000 in each subsequent calendar year, until the amount of the maximum annual payment does not exceed \$30,000,000. The proceeds of the annual payment shall be used to maintain local general purposes as the City Council may by budget or other appropriation direct including but not limited to 911 response, fire, paramedic, police, street repairs, parks, senior and/or disabled services, homelessness services, and other general services.

Proposed Ballot Measure Question:

The Fiscal Responsibility Act of 2021

Shall the measure, beginning January 2022, discontinuing the 11.5% tax on electricity, replacing it with a \$38 million fixed amount transferred from Riverside Public Utility to the unrestricted general fund which amount will be reduced annually by \$1 million until this

reduction reaches \$30 million and continuing until ended by the voters, be adopted?

Compliance with Settlement Agreement in Litigation on Electric Utility Transfer

In 2018, the City was served with a lawsuit entitled *Parada v. City of Riverside*, which sought a refund of the transferred monies and a court order preventing the City from continuing the electric transfer going forward, until and unless the City obtains voter approval.

On May 19, 2021, a settlement was announced by the City and Parada Plaintiffs. The mutually-agreed-upon settlement requires the City to place a measure on an upcoming ballot that allows voters to consider whether to authorize a utility fund budget transfer that maintains local funding for essential City services. The Settlement Agreement specifically requires that the City ask voters to approve the GFT as a general tax and approve that rate proceeds may fund that tax.

Should voters so approve, the City would then issue utility credits over a five-year period to local utility ratepayers, as required by the settlement. This settlement, reached with the assistance of a mediator, allows the parties to avoid unnecessary taxpayer-funded litigation and a lengthy appeal, while prioritizing the desire of both parties to honor voters' say and support local residents and businesses.

The Charter ballot measure proposed by the Charter Review Committee does not specifically reference the amendment to the City Charter, which specifies that the electric transfer annual payments can be made from electric rates. Therefore, the City Attorney recommended a non-substantive change to the Charter Review Commission's ballot question, adding the following seven words, if the City Council chooses to place it on the November 2, 2021 ballot:

Proposed Ballot Measure Question from the Charter Review Committee:

The Fiscal Responsibility Act of 2021

*Shall the measure, **adopting Section 1204.2 to the City Charter**, beginning January 2022, discontinuing the 11.5% tax on electricity, replacing it with a \$38 million fixed amount transferred from Riverside Public Utility to the unrestricted general fund which amount will be reduced annually by \$1 million until this reduction reaches \$30 million and continuing until ended by the voters, be adopted?*

Under the settlement agreement, the Paradas can challenge the Charter amendment and the ballot question that the City places on the ballot for approval by the voters at the November 2, 2021 election as not complying with the settlement agreement. The City, through its outside attorneys, contacted the Paradas' attorneys on July 2, 2021 and asked that they review both proposals – the one referred by the City Council to the Charter Review Committee on April 27, 2021 and the one proposed by the Charter Review Committee. On July 6, 2021, the Paradas' attorneys orally stated that the proposed Charter amendment and ballot measure referred by the City Council to the Charter Review Committee on April 27, 2021 does comply with the settlement agreement. The Paradas' attorneys orally stated that the Charter Review Committee's proposed Charter amendment and ballot measure does not comply with the settlement agreement because the proposed language suggested the City wanted to eliminate the tax, which is inconsistent with the settlement agreement – which requires the City to propose a tax to voters. The City's outside attorneys confirmed this oral conversation in an email and asked that the attorneys confirm their understanding. To date, the attorneys have not objected to the summary. On July 7, the City was informed of the objection.

Based upon that conversation with the Paradas' attorneys, the City Attorney recommends the following change to the ballot measure proposed by the Charter Review Committee, if selected by the City Council to be placed on the ballot:

Proposed City Charter Amendment Language from Charter Review Committee (new section):

Sec. 1204.2 – Electric utility revenue

The revenue of the electric public utility for each fiscal year shall be kept separate and apart from all other moneys of the City by deposit in the appropriate revenue fund and shall be used for purposes and in the order set forth in Section 1204 and for the annual payment by the electric utility into the general fund as set forth in Section 1204(f), except as set forth in this section. For the electric utility, the annual payment required under Section 1204(f), beginning on January 1, 2022, shall not exceed \$38,000,000. The amount of the annual maximum payment shall then decrease by \$1,000,000 in each subsequent calendar year, until the amount of the maximum annual payment does not exceed \$30,000,000. The proceeds of the annual payment shall be used to maintain local general purposes as the City Council may by budget or other appropriation direct including but not limited to 911 response, fire, paramedic, police, street repairs, parks, senior and/or disabled services, homelessness services, and other general services.

The Fiscal Responsibility Act of 2021

*Shall the measure, **adopting Section 1204.2 to the Charter**, beginning January 2022, **approving** the 11.5% tax on electricity, **not to exceed an annual** \$38 million fixed amount transferred from Riverside Public Utility to the unrestricted general fund which amount will be reduced annually by \$1 million until this reduction reaches **a not to exceed annual cap of** \$30 million and continuing until ended by the voters, be adopted?*

On July 8, 2021, the City Attorney contacted the Paradas' attorneys to determine if they any objections to this language. The Paradas' attorneys indicated that the proposed charter amendment and ballot question comply with the settlement agreement.

Options to Incorporate a Reduction or a Cap into the April 27, 2021 City Council referral to Charter Review Committee: "Riverside Services Protection Measure"

If the City Council wishes to adopt a cap or a fixed amount on the Electric General Fund Transfer, there are several options:

1. The proposed Charter section 1204.2 provides that the transfer shall be in an amount "not to exceed 11.5 percent of the gross operating revenues". The proposed section does not require that the entire amount be transferred. Historically, the City has transferred less than 11.5%. The City Council could adopt a resolution or an ordinance requiring that the City Council reduce the Electric General Fund Transfer by a certain amount each year until the \$30 million dollar cap recommended by the Charter Review Committee is reached.

Such a resolution or ordinance could be repealed by a future City Council, but such repeal would require a public process and hearing before the City Council. The proposal would allow a Council flexibility as to how much of the transfer would be transferred, while allowing the public to provide comments as to desire for a reduction.

2. The City Council could choose to amend its recommendation to reduce the amount of the

transfer by a certain percentage:

Sec. 1204.2. – Electric utility revenue.

The revenue of the electric public utility for each fiscal year shall be kept separate and apart from all other moneys of the City by deposit in the appropriate revenue fund and shall be used for the purposes and in the order set forth in Section 1204 and for the annual payment by the electric utility into the general fund in twelve equal monthly installments during each fiscal year, an amount not to exceed **XX** percent of the gross operating revenues, exclusive of surcharges, of the electric utility for the last fiscal year ended and reported upon by independent public auditors. The proceeds shall be used to maintain local general purposes as the City Council may by budget or other appropriation direct such as 9-1-1 response, fire, paramedic, police, street repairs, parks, senior services, homelessness and other general services.

The proposed ballot measure for this Charter amendment is as follows:

City of Riverside Services Protection Measure.

*To maintain such general city services as 911 response, fire, paramedic, police, street repairs, parks, senior services; address homelessness; shall the measure amending City of Riverside’s Charter to continue collecting in electric rates and maintain the voter-approved fund transfer (established 1968), limited to **XX**% of gross revenue providing approximately **\$XX** annually to City of Riverside’s General Fund not tax or utility rates, until ended by voters, requiring audits/ all funds controlled locally, be adopted?*

The amount to be collected (“providing approximately **\$XX**”) would depend upon the percentage selected by the City Council. For each percentage that is reduced from the 11.5%, the amount to be collected annually would also be reduced. For example, a reduction of the electric transfer from 11.5% to 11.25% would be \$38.6 million and a reduction from 11.5% to 11.0% would be \$37.8 million based on the most recently audited financial information.

This proposal would be binding on future City Councils.

3. Both measures could be placed on the ballot. To avoid a conflict, the two proposed Charter amendments should be designated as *Sec. 1204.2. – Electric utility revenue* and *Sec. 1204.3. – Electric utility revenue*, so that it is clear that there are two new sections to the City Charter. Initiatives are deemed to “conflict” if they present themselves as conflicting, or if each creates a comprehensive regulatory scheme related to the same subject. If there is an inconsistency, Elections Code section 9221 provides that the one receiving the highest number of affirmative votes controls. The two ballot measures, as revised to comply with the settlement agreement and referenced in this report, would not be in conflict.

Community Issues Survey

Given the Charter Review Committee’s proposed Charter amendment, and recognizing that many circumstances have changed since January 2021 (e.g. in January the state of the pandemic was very troublesome compared to now when the situation appears to be improving), the City retained FM3 to conduct a follow-up survey to the Community Issues Survey to understand voters’ current opinions on the electric utility transfer and identify any changes in funding priorities.

In June 2021, the City conducted a follow-up survey to assess the community’s response to the current atmosphere and shift given the possible state recall election and to also test the Charter

Review Commission's recommended ballot question along with the City's current recommended ballot question. The Commission's recommended ballot question received 30% less support than the City's recommended version.

Ballot Arguments

Elections Code Section 9282 provides that for measures placed on the ballot by the legislative body, the legislative body, or a member or members of the legislative body authorized by that body, or an individual voter who is eligible to vote on the measure, or bona fide association of citizens, or a combination of voters and associations, may file a written argument for or against any City measure. Arguments shall not exceed 300 words in length. Arguments are printed in the voter information guide mailed to voters.

Printed arguments submitted to voters in accordance with this section shall be titled either "Argument In Favor Of Measure ____" or "Argument Against Measure ____," accordingly, the blank spaces being filled in only with the letter or number, if any, designating the measure. Measure letters are assigned by the Registrar of Voters upon receipt of the resolution calling the election.

A ballot argument must be accompanied by the printed name and signature or printed names and signatures of the author or authors submitting it, or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. No more than five signatures shall appear with any argument.

When an argument in favor and an argument against a measure have been selected to be printed in the voter information guide, the City Clerk forwards a copy of the argument in favor of the measure to the authors of the argument against the measure and a copy of an argument against the measure to the authors of the argument in favor of the measure.

The author or a majority of the authors of an argument may prepare and submit a rebuttal argument or may authorize in writing another person or persons to prepare, submit, or sign the rebuttal argument. Rebuttal arguments are limited to 250 words and must be filed with the City Clerk no later than ten days after the final filing date for primary arguments. A rebuttal argument relating to a city measure shall not be signed by more than five persons, shall be printed in the same manner as a direct argument, and shall immediately follow the direct argument which it seeks to rebut.

More Than One Argument Submitted

If more than one argument for or against any measure is submitted to the City Clerk, one will be selected for printing in the ballot materials. Elections Code Section 9287 provides that preference and priority be given in the order below to the arguments of the following:

1. The City Council, or one or more Councilmembers authorized by the City Council.
2. An individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
3. Bona fide association of citizens.
4. Individual voters who are eligible to vote on the measure.

The City Council is not legally required to submit an argument for or against a measure and could choose to not designate one of their members to submit such argument.

FISCAL IMPACT:

The estimated cost to place a measure on the November 2, 2021 ballot is \$165,000. Sufficient funding is available in the City Clerk Election Services Account No. 120500-421000.

Prepared by: Al Zelinka, FAICP, City Manager
Donesia Gause, MMC, City Clerk
Susan Wilson, Assistant City Attorney
Elliot Min, Deputy City Attorney

Certified as to availability of funds: Edward Enriquez, Chief Financial Officer/City Treasurer

Approved by: Al Zelinka, FAICP, City Manager

Approved as to form: Kristi J. Smith, Interim City Attorney

Attachment:

1. Community Issues Survey Executive Summary
2. Charter Review Committee Report
3. Follow-up Survey Executive Summary
4. Resolution proposing an amendment to the City Charter from the Charter Review Committee
5. Resolution submitting City Charter amendment to voters for the Charter Review Committee proposed amendment
6. Resolution proposing an amendment to the City Charter for the proposed Charter amendment referred by the City Council to the Charter Review Committee on April 27, 2021
7. Resolution submitting City Charter amendment to voters for the proposed Charter amendment referred by the City Council to the Charter Review Committee on April 27, 2021
8. Presentation