



Charter Review Committee

City of Arts & Innovation

TO: CHARTER REVIEW COMMITTEE **DATE: JUNE 30, 2021**
FROM: CITY ATTORNEY'S OFFICE **WARDS: ALL**
**SUBJECT: DRAFT FINAL REPORT TO THE CITY COUNCIL SUMMARIZING THE
CHARTER REVIEW COMMITTEE'S FINAL RECOMMENDATION
REGARDING THE ELECTRIC UTILITY GENERAL FUND TRANSFER**

ISSUE:

To review and advise on the draft Final Report to be presented to the City Council in July summarizing the Charter Review Committee's ("Committee") recommendation regarding the electric utility general fund transfer.

RECOMMENDATIONS:

1. That the Committee receive, recommend any revisions to, and file this draft Final Report to be presented to the City Council in July.
2. That the Committee review, recommend any revisions to, and approve the Proposed Ballot Measure Question.
3. That the Committee select a Committee member(s) to make the Committee's final presentation to City Council in July.
4. That the Committee decide whether to recommend to the City Council that, in the event the City Council adopts the Committee's proposed City Charter amendment and places that amendment on the ballot, that the impartial analysis of the ballot measure be drafted by an attorney or law firm other than the City Attorney or the City Attorney's Office.

BACKGROUND:

At the June 9, 2021 Committee meeting, the Committee directed staff to draft a Final Report to City Council ("Final Report") which summarizes the Committee's City Charter amendment recommendation regarding the electric utility general fund transfer.

At the June 16, 2021 Committee meeting, the Committee moved to table discussion of the Final Report and to call a special meeting on June 30, 2021 to allow Committee Chair Ben Clymer, Jr., to review and edit the Final Report for discussion on that date. Chair Clymer, Jr.'s, revisions are found in red below. Upon the Committee's review and approval of the Final Report on June 30, 2021, the Committee will present the Final Report to the City Council in July.

The contents of this report will be published with the City Council meeting agenda materials for July 6, 2021. The agenda will be published on June 24, 2021.

Summary of Charter Review Committee Process

After the February 16, 2021 City Council meeting, the Committee became aware that the City Council would be referring to the Committee for review and consideration a proposed amendment to the City Charter based on the City of Riverside's Services Protection Measure. The proposal would add Section 1204.2 to the City Charter setting the "annual payment by the electric utility into the general fund" (i.e. "General Fund Transfer" or "GFT") at the amount not to exceed 11.5%.

On April 27, 2021, the City Council referred to the Committee the City of Riverside's Services Protection Measure. The City Council recommended the Committee review and make a recommendation as to the proposed City Charter amendment by June 16, 2021.

Since the City Council's April 27, 2021 referral, the 11-member Committee met five times (including at three special meetings), often late into the evening, to review and consider the proposed City Charter amendment based on the City of Riverside's Services Protection Measure, and to make a recommendation thereon. In addition to receiving input from the public, the Committee interviewed Councilmembers Edwards, Conder, and Melendrez regarding the General Fund Transfer.

On May 5, 2021, a sub-committee tasked with researching the General Fund Transfer presented to the full Committee its findings and three Charter amendment options:

1. To accept the City Council's referred proposed Charter amendment as-is without changes (i.e. GFT up to 11.5%).
2. To repeal both the GFT and the utility user tax ("UUT") and fix or cap the amount that can be transferred, with a reduction over time of the fixed or capped amount.
3. To reduce the 11.5% transfer incrementally over time.

A robust and lengthy discussion ensued. A motion to approve the Council-referred City of Riverside's Services Protection Measure without any changes, failed for a lack of second. No formal Committee decision was made at that meeting.

On May 19, 2021, the sub-committee presented to the full Committee six GFT Charter amendment options:

1. Agree with what Council recommends (i.e. no changes).
2. Recommend an incremental decrease over a certain period of time.
3. Recommend a fixed dollar amount rather than a percentage.
4. Eliminate the electric GFT altogether (i.e. hard stop).
5. Propose a "sliding scale" based on population not dollar amount (i.e. increase 0.5% based on 1,000 population increase).
6. Increase the GFT (fixed rate or percentage).

Members of the public brought to the Committee's attention the legality of the GFT as currently in place. Discussion took place of the current *Parada* lawsuit and the potential issue with the water GFT being in noncompliance with law and potential future suit. The potential legality of UUT was also raised. The Committee also discussed the fact that some citizens of Riverside are not required to pay the GFT because they receive water from Western Municipal Water District and questioned whether those revenues should be being transferred to the General Fund to protect services. The committee agreed that those two issues of the water portion of the GFT and the UUT were not in the current purview of current CRC, however could be a potential issue for a subsequent CRC or this Council to address before more litigation is filed.

A motion was once again made to approve the Council-referred City of Riverside's Services Protection Measure without any changes. The motion failed with 7 Noes and 2 Ayes (2 members were absent). Following a robust and lengthy discussion, the Committee approved in concept a proposed amendment to the annual payment by the electric utility into the general fund ("General Fund Transfer" or "GFT") in the City Charter. The Committee proposed 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. The Committee directed staff to return with proposed City Charter amendment language for the Committee's review.

On June 9, 2021, the Committee reviewed, modified, and approved adding a new Section 1204.2 – Electric utility revenue to the City Charter. In addition, the Committee reviewed and approved proposed ballot measure language for the proposed Charter amendment.

On June 16, 2021, based on recommendations from the City Attorney's Office, the Committee reviewed, modified, and approved the proposed Ballot Measure Question. Vice Chair Malissa Mckeith suggested that the Committee vote on the Ballot Measure Question again due to the possibility that all members were not able to participate in the vote due to technical difficulties. It is recommended that this vote occur at the June 30, 2021 special meeting. A member of the public also raised the issue, citing *Trask v. Nicol*, case no. RIC 1603840, of whether the impartial analysis for this ballot measure should be drafted by an attorney or law firm other than the City Attorney or the City Attorney's Office.

Both the charter amendment language and the ballot measure label language are provided in detail below.

Proposed City Charter Amendment Language (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.

Issues Raised by Committee in Support: A fixed amount “de-links” the GFT from electric rates, thereby removing the incentive to increase electric rates to raise general fund revenue. A fixed amount also avoids fluctuations and lends to budget predictability in the GFT when demand is reduced or customers do not pay. The fixed amount of \$38,000,000 and annual decrease would reduce the cost of electricity to Riverside residents. A gradual decrease to the GFT would require the City to gradually reduce reliance on the GFT, resulting in better fiscal management. (Oral Discussions and Documents presented at May 5, 2021 Meeting).

Issues Raised by Committee in Opposition: The City should consider raising the GFT, not decreasing it. As the needs of our community grow, and as the cost of City services increase, we need to be able to raise revenue every year to protect those City services in the future. (Oral Discussions at May 5, 2021 Meeting). The City budget already has a very thin margin of error, and a GFT decrease would be problematic. (Oral Discussions at June 9, 2021 Meeting).

Votes:

Proposal in concept: **7 ayes, 3 noes, 1 abstention, 1 member absent** (May 5, 2021).

Approval of Charter amendment and ballot measure language: **6 ayes, 2 noes, 1 abstention, 2 members absent** (June 9, 2021).

Approval of Proposed Ballot Measure Question (June 17, 2021): **6 ayes, 2 noes, 3 abstentions** (June 16, 2021).

Proposed Ballot Measure Question:

MEASURE ____

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?

FISCAL IMPACT:

The estimated cost for one ballot measure on the November 2, 2021, election is \$165,000.

Prepared by: Elliot Min, Deputy City Attorney
Approved as to form: Kristi J. Smith, Interim City Attorney

Attachment A: Charter Review Committee Member Biographies