



3051 Foothill Blvd., Suite B
La Crescenta, CA 91214
TEL: (213) 473-1900
FAX: (213) 473-1919

July 15, 2021

Riverside Charter Review Committee
City of Riverside
c/o Colantuono, Highsmith & Whately, PC
rdunn@chwlaw.us
mcolantuono@chwlaw.us

Via Email Only

Re: *Parada v. City of Riverside*

To the City of Riverside and the Riverside Charter Review Committee:

We are writing as part of our ongoing cooperation with respect to the Conditional Settlement Agreement and Release entered into as part of the litigation between our clients and Riverside in the case of *Parada et al. v. City of Riverside*, Riverside Superior Court case number RIC 1818642. We are providing this statement in a good faith effort to meet the requirements of the Settlement Agreement as outlined herein.

Pursuant to the Settlement Agreement, the Riverside City Council is to place a ballot measure on the November 2021 ballots that must “approve the City’s General Fund Transfer practices as a general tax.” (Settlement Agreement, “Recitals,” § D.) Specifically, the City’s obligation is to draft this ballot measure so that it states that the City’s General Fund Transfer policies subject to voter approval “are a general tax requiring voter approval” and that the revenues the City collects from electric ratepayers may fund those transfers. (Settlement Agreement, § 1.2.1.)

The City has agreed to provide the final language of the ballot measure to us, so that we can determine if we believe the City has complied with the obligations described above. Should we believe the City has not complied with the obligations outlined above, the parties are to engage a neutral party to resolve that dispute. (Settlement Agreement, § 1.2.1.1.)

We appreciate that the City has provided various proposed ballot measures to us and asked whether or not we believe the proposed language is sufficient under the Settlement Agreement. We have viewed this exercise as an attempt to avoid conflicts that could arise under section 1.2.1.1 of the Settlement Agreement. We have cooperated in good faith to this end.

On July 14, 2021, we were asked to comment on two alternative ballot measures. We copy them here for ease of reference:

Version 1:

<p style="text-align: center;">BALLOT MEASURE The Services Protection and Fiscal Responsibility Act Or The Fixed Amount Act of 2022</p> <p>To maintain general city services such as 911 response, fire, paramedic, police, disabled & homelessness support, shall the voters replace the existing 11.5 percent tax currently charged to electricity replacing it with an annual \$38 million fixed amount transferred from RiversidePublic Utility to the unrestricted general fund.</p> <p>SUPPORTING COMMENTS</p> <p>This is an alternative for consideration by the CRC. It includes compromise, and takes into account the rate payer, city services, and to ensure that the time and effort devoted by the Charter Review Committee will not be in vain.</p>
--

Version 2:

<p>Services Protection and Fiscal Responsibility Act</p> <p>To maintain city services like 911, fire, police, and homelessness support while gradually reducing utility taxes, shall the measure amending the Charter to replace the existing 11.5% tax charged to electricity customers with a \$38,000,000 fixed tax transferrable to unrestricted general funds and thereafter reduced by \$1,000,000 annually for eight years to \$30,000,000 and requiring the amount taxed appear on customer bills until ended by voters be adopted?</p>

We responded that we believed Version 1 did **not** comply with the Settlement Agreement, but that Version 2 did.

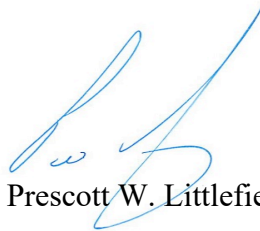
The reason we believe Version 1 does not comply with the Settlement Agreement is that Version 1 asks voters to “replace the existing 11.5 percent tax” with an annual transfer of \$38 million. As this reads, voters are not being told that the \$38 million is itself a tax, or could be funded by a tax in electricity rates. The tax is a function of the rates, not a function of a transfer.

The reason we believe Version 2 does comply is because it informs voters that electricity customers will be subject to a \$38,000,000 fixed tax as evidenced, in part, by the fact “the amount taxed [will] appear on customer bills.” This tells voters that they are voting to tax

electricity customers to pay for the General Fund Transfer, which is what is required under section 1.2.1 of the Settlement Agreement.

We decline the invitation to offer specific suggestions on how to cure Version 1. But we remain open to providing feedback on whether proposals the City or the Charter Review Committee offers are compliant with the terms of the Settlement Agreement.

Very Truly Yours,



Prescott W. Littlefield

Date: 7-20-21
Item No.: 23

From: Malissa Mckeith <malissacurepres@gmail.com>

Date: Sun, Jul 11, 2021 at 10:24

Subject: Charter Amendment

To: Al Zelinka <azelinka@riversideca.gov>, Ben Clymer Jr. <benjr@benclymers.com>

CC: Hemenway, Steve <shemenway@riversideca.gov>, Perry, Jim <jperry@riversideca.gov>

Ben and I are endeavoring to ensure that, on the 20th, the City has broad support for the proposed charter initiative resolving Parada. As you heard from some of the loudest opponents to the GFT on the 6th, they would stand down if some version of the Charter Committee Alternative is put forth. Given what is at stake, reaching a consensus and proceeding to ballot with the support of (let alone no opposition from) charter members means passage is more likely.

The staff report published late on the 8th arguably is yet another advocacy piece for the 11.5 percent version and is incredibly confusing in part because the Parada's attorney is being indirectly injected into the analysis. Regrettably, the CA knew but failed to mention those concerns before the 6th. Regardless, the changes made were slight and indicate we can reach agreement before the 20th including a revision to the Charter's Alternative.

In contrast, there is no modification to the 11.5 percent alternative that is acceptable, because it continues the status quo on an approach to the GFT transfer that is already subject to more litigation beyond Parada and ignores the underlying practical and legal criticisms.

Why does it matter that Council agrees with Charter's recommendation? There is a material and substantive difference between the two initiatives, and Council should not be able to reject the Charter's initiative unless it is legally flawed, deceptive or overwhelmingly damaging to the City's operations. Council has no evidence justifying Charter's position be rejected and here is why.

1. The survey does not support the 11.5 percent initiative over the Charter Alternative for all reasons previously stated. It merely concludes that most of the public likes receiving lots of services and generally likes RPU. Without having all of the information underlying how that survey was developed, there are probably more flaws in the methodology or manipulation in the questioning. Clearly the public always wants what it wants. Though a crude analogy, it is not unlike teenagers who want designer clothes and a new X-Box when the parents have maxed out the credit cards. It's doubtful they fully appreciate the consequences to the family budget. Charter, on the other hand, is

the ultimate focus group, because it allows informed decisions from citizens educated on the issues after a great deal of public comment including input from financial staff, RPU, and the council members themselves.

2. The Charter Alternative does reduce electrical rates, and we should say it in the initiative itself. (The City Attorney claimed it was "subjective"). Hopefully Jim Perry has spoken with Todd Corbin or Tom Evans to verify that fact. The Staff Report at page 12 acknowledges that: "Any reduction in the electric GFT could result in a very similar reduction to the currently approved electric rate." This is axiomatic. The GFT is part of the rate base as a charge from the City. If you reduce the amount of the GFT, the rate is similarly reduced. There are other really critical but nuanced issues about how RPU's business model and public resource usage are going to affect the City in the long-term. Delinking these two items is a first important step to having our city less dependant upon the RPU as time goes on. In many ways, a guaranteed fixed transfer amount may one day be viewed as a gift in disguise.

The immediate question is why can't we just add a sentence to the Charter Alternative that 'This initiative will result in a reduction in electrical rates' as an incentive for voters to say "yes"? Frankly, staff is so obviously biased at this point that their input on charter language is not seen as neutral.

3. The Charter's proposal does not threaten general fund services. Speaking personally, I know the draw down from \$38M to \$30M is a real concern for some council members because, overtime, the City receives \$8M less or 2.8 percent of the current general fund. Edward Enriquez is gone until the 20th, so we couldn't have a sit down with Steve to go over the numbers and why the hit is negligible. I don't even know whether that 2.8 percent matters in the overall scheme of things, because the City has other revenue sources that will increase. As for the argument we have a structural deficit so need all the money the City can tax, I would suggest that we are digging out from past poor fiscal management including the partnership compensation model which expanded the GFT by approximately \$15M a year. Many voters believe that staff salaries and vacation packages are too generous and no longer reflect what we can afford. Others don't trust that council members will actually do what's needed due to their own reliance on unions or staff. Fair or not, these perceptions abound.

Ben and I scheduled a Charter meeting for the 15th to discuss possible revisions that would bring council and us together, but we can't do that with a City Attorney's office who refuses to review any changes ostensibly because "the record is closed". Nor can Ben and I agree to changes without the committee voting. And, if we do arrive at a proposed revision, we need to have input from the Parada's lawyer before Charter votes - not after the fact. He has a \$2.5M incentive to cooperate.

So, putting it bluntly, we need to know whether we are "whistling" in the wind or if you are interested, consistent with the Brown Act, on developing a hybrid that works so that the Committee can vote on it this Thursday, and present it to council (consistent with

Recommendations 1(d) on page 16 of the staff report) -- all of which we can do without violating the Brown Act. I do not discuss these issues with other council members to avoid that concern nor has Ben. We simply reached out to the two of you because you actually raised questions on the 6th. I do know that all of the council do care about what happens in Riverside and are faced with difficult decisions beyond just the GFT, and we appreciate your efforts.

Have a good day.

Malissa Hathaway McKeith
Citizens United for Resources and the Environment, Inc. ("CURE")
www.curegroup.org
213-300-3550

--

Malissa Hathaway McKeith
Citizens United for Resources and the Environment, Inc. ("CURE")
www.curegroup.org
213-300-3550

cc Mayor
City Council
City Manager
City Attorney
ACMs

Date: 7-20-21
Item No.: 23

7/16/2021

Mayor and Council'

Re Item 23 on 7/20/2021 City Council Agenda

I am writing in support of the GFT recommendation from the Charter Review Committee and ask that you approve it for placement on the 11/2/2021 ballot. This is the Fiscal Responsibility Act of 2021.

The voters overwhelmingly approved the change to section 1404 of the Charter requiring that a Charter Review Committee review all proposed changes before being placed on the ballot. The City Council has the final authority on the approval/disapproval of proposed Charter changes. However, 1404 does not give the City Council the authority to change the recommendation from a Charter Review Committee and submit something different. That is essentially what the staff recommendation is. The staff wants you to approve a ballot measure that the Charter Review Committee rejected. This essentially negates the whole point of having a Charter Review Committee make a recommendation.

An analogous example relates to RPU rate recommendations. The RPU Board recommends rates to the City Council who then approves or rejects the recommendation. The Council cannot adopt different rates than recommended. If they don't approve the rates, the City Council must send the rate recommendation back to the RPU Board for revision.

In the case of the GFT, the Council has the option of rejecting the recommendation and sending it back to the Charter Review Committee for revision. Obviously, the lawsuit that brought this about is a complication factor.

Thus, I believe it is more important to comply with the letter and spirit of section 1404, than simply say Thank You to the Committee and ignore their recommendation.

Please approve the Fiscal Responsibility Act of 2021, and let the voters decide in Nov. 2021.

Thank You,
Tom Evans
Ward 5

cc Mayor
City Council
City Manager
City Attorney
ACMs