



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: FEBRUARY 16, 2021

FROM: CITY MANAGER'S OFFICE WARDS: ALL

SUBJECT: REFER CITY OF RIVERSIDE SERVICES PROTECTION MEASURE TO THE CHARTER REVIEW COMMITTEE FOR REVIEW AND CONSIDERATION

ISSUE:

Refer the City of Riverside Services Protection Measure to the Charter Review Committee for review and consideration to place on the June 8, 2021 ballot.

RECOMMENDATIONS:

That the City Council refer the City of Riverside Services Protection Measure to the Charter Review Committee for review and consideration to place on the June 8, 2021 ballot.

BACKGROUND:

The City Charter (Charter) has called for transfers from its electric utility to the General Fund since voters adopted the first Charter in 1907. The original Charter provided that utility rates “should preferably, but not necessarily, yield a reasonable profit and interest on the investment to the city...” 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. City voters approved that language again in 1952 when the City changed its form of government from a strong mayor form of government to City Council/City Manager form of government with an extensive change to the Charter.

In 1968, Riverside voters adopted a Charter amendment that specifically called for a general fund transfer from utilities in “an amount equal to 11.5% of the [utilities] gross operating revenues.” City Charter Section 1204, subdivision (f), currently allows a water transfer and a electric transfer in “an amount not to exceed 11.5%” of the utilities’ gross operating revenues for the prior fiscal year. This language was approved by 54% of Riverside voters in 1968. In 1981, voters again approved the electric transfer by 64.5%.

Subsequent to those approvals, Proposition 218 was adopted by voters of the state in 1996 and Proposition 26 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 the fee or charge for the service exceeded 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 or privately-owned utility.

On June 4, 2013, as required by Proposition 218, voters approved the water transfer by a vote of 68% to add Section 1204.1 to the City Charter authorizing the continued transfer of funds from the City water utility revenue to the General Fund in an amount not to exceed 11.5% of the gross operating revenues.

Pending Litigation

In 2018, the City was served with a lawsuit entitled *Parada v. City of Riverside*, challenging the validity of Charter-authorized transfers from the City's Electric Fund to the General Fund, alleging the transfer is a tax (requiring voter approval in addition to that granted in 1907, 1952, 1968 and 1981). The lawsuit seeks a refund of the transferred monies and is also seeking a court order preventing the City from continuing the electric transfer going forward, until and unless the City obtains voter approval.

The City is vigorously defending the lawsuit. An interim ruling by the trial court suggests that to comply with the Constitution, voters must expressly approve funding the transfers through electric rates. If this ruling is upheld, the court may require refunds of transferred monies and order that the transfers cease until the City obtains the necessary voter approval. The City expects that the trial on the issue of damages will be scheduled for this summer. If this Charter amendment is approved by voters, the lawsuit will be limited to transfers made before the effective date of the new measure, and voter approval will ratify the transfer from June 2021 forward.

DISCUSSION:

The Electric Transfer funds provide an unrestricted revenue source to the General Fund. Combined with other sources of General Fund revenue (sales tax, property tax, utility users' tax, etc.), the General Fund funds vital governmental services that the City provides its residents, business and property owners, and visitors. These services include, but are not limited to, 911 response, fire, paramedic, police, street repairs, parks, senior services, homelessness and other general services. The Electric Transfer funds are critical to advancing 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.

The Electric Transfer currently provides approximately \$40 million annually, or about 14% of the total General Fund operating budget. Losing this revenue source would require significant budget cuts from the services noted above. In addition to this potential loss of revenue, the City is also dealing with the uncertainty of the COVID-19 pandemic, an ongoing structural deficit that approaches approximately \$15 million annually, and the economic impacts of the pandemic such as business closures and rising unemployment that could further impact the City budget.

To maintain this critical General Fund revenue source, which has been a revenue source funding public services in the City of Riverside for at least over 50 years (if not from the City's founding as a charter city) staff is recommending that the voters consider a ballot measure at the June 8, 2021 election which would amend the Riverside City Charter to add a section confirming the Electric Transfer, limited to 11.5% of gross revenue. Under Charter section 1404, the Charter amendment requires a review and recommendation, but not approval, by the Charter Review Committee before the City Council's consideration to place the measure on the ballot. March 12, 2021 is the last day to place a measure on the ballot. Staff is recommending that the City Council refer this item to the Charter Review Committee for its review and recommendation at its February 17, 2021 meeting.

Charter Review Commission

The Charter Review Commission is tentatively scheduled to meet on February 17, 2021, and would review and consider this item on that date. The staff report for the Charter Review Committee will include a draft amendment to the City Charter ratifying the electric transfer.

FISCAL IMPACT:

The fiscal impact associated with the Electric Transfer totals approximately \$40 million in annual General Fund Revenue. The fiscal impact associated with placing the City of Riverside Services Protection Measure on the June 8, 2021 ballot is estimated to be \$165,000 and funding is available in the “City Clerk Election Services” Account No. 1205000-421000. An effort to inform the community about the reason for the ballot measure is also recommended, with the cost of this effort estimated at \$25,000. Funding is available in the “N/D-City Mgr-Sundry/Gen Gov’t” Account No. 7211200-450247.

Prepared by:	Moises Lopez, Deputy City Manager
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Approved by:	Al Zelinka, FAICP, City Manager
Approved as to form:	Kristi J. Smith, Interim City Attorney
Attachment:	Presentation