



*City of Arts & Innovation*

# Charter Review Committee

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**TO: HONORABLE MEMBERS** **DATE: FEBRUARY 17, 2021**  
**FROM: CITY MANAGER'S OFFICE** **WARDS: ALL**  
**SUBJECT: REVIEW AND MAKE A RECOMMENDATION AS TO CITY OF RIVERSIDE SERVICES PROTECTION MEASURE**

## **ISSUE:**

Review and make a recommendation as to City of Riverside Services Protection Measure to be placed on the June 8, 2021 ballot.

## **RECOMMENDATIONS:**

That the Charter Review Committee review and make a recommendation as to the City of Riverside Services Protection Measure to be placed on the June 8, 2021 ballot.

## **CITY COUNCIL REFERRAL:**

On February 16, 2021, the City Council will consider whether to refer the City of Riverside Services Protection Measure to the Charter Review Committee for its review and consideration to place it on the June 8, 2021 ballot. City staff will report on the City Council's action during the Charter Review Committee meeting.

## **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 an 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 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, 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 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 GFT, limited to 11.5% of gross revenue.

Under Charter Section 1404 (outlined below), 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.

Section 1404. – Charter, amending.

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 the ballot.

Staff has recommended that the City Council refer this item to the Charter Review Committee for its review and consideration at its February 17, 2021 meeting.

The Electric Transfer is outlined in City Charter Section 1204 (emphasis added):

Section 1204. - Use of revenue.

The revenue of each 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 as follows:

- (a) For the payment of the operating and maintenance expenses of such utility, including any necessary contribution to retirement of its employees.
- (b) For the payment of interest on the revenue bonded debt of such utility. As used in this section "revenue bonded debt of such utility" means the debt evidenced by revenue bonds, revenue notes or other evidences of indebtedness payable only out of the revenues pertaining to the utility involved, whether the same are issued under the provisions of this Charter or under the provisions of any general law of the State of California.
- (c) For the payment, or provision for the payment of the principal of said debt as it may become due, and of premiums, if any, due upon the redemption of any thereof prior to maturity.
- (d) For the establishment and maintenance of any reserves for B and C above.
- (e) For capital expenditures of such utility.
- (f) For the annual payment by each 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 each specific utility for the last fiscal year ended and reported upon by independent public auditors.

The proposed amendment (a new Section) to the City Charter:

## 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.

### **FISCAL IMPACT:**

The fiscal impact associated with the Electric GFT 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

Attachments:	Presentation
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