



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

#1

333 West Ocean Boulevard, 6th Floor • Long Beach, CA 90802 • (562) 570-6425 • Fax (562) 570-5836

January 10, 2018

HONORABLE MAYOR AND CITY COUNCIL
CHARTER AMENDMENT COMMITTEE
City of Long Beach
California

RECOMMENDATION:

Receive supporting documentation into the record, conclude the public hearing, deliberate and consider taking action regarding a Utility Revenue Transfer Charter Amendment. (Citywide)

DISCUSSION

Utility revenue transfers from the Gas, Water, and Sewer Funds to the General Fund have been made for more than 60 years. The City Charter and Long Beach Municipal Code authorize the transfers. These transfers have paid for utility related costs incurred by the General Fund, and have also helped support General Fund services, such as police, fire, 911 response, parks, libraries, and street services. The gas utility transfer mechanism has not materially changed since at least 1940. The water and sewer utility transfers have been made since 1956 and have most recently been implemented as pipeline permit fees, in 2003 and 2006, respectively.

In 2015, a lawsuit filed by a Long Beach resident alleged that the gas utility fund transfer violated Proposition 26 (adopted by the State in 2010). The litigation, if successful, could result in a significant ongoing revenue loss to the General Fund, and may require some one-time retroactive payments from the General Fund to the gas utility. The trial judge ruled in the City's favor and dismissed the lawsuit, but the decision is currently being appealed. If that appeal is successful, it could reduce gas utility fund transfers to the General Fund by \$10 million a year or more. Illustratively, this is equivalent to the General Fund net cost of citywide Public Works operations such as street sweeping, storm water maintenance, street tree maintenance, etc.

In 2016, another lawsuit, filed by a different Long Beach resident, alleged that the water and sewer utility fund transfers, implemented as City pipeline permit fees, violated Proposition 218 (adopted by the State in 1996). This case was recently settled. The settlement limits the water and sewer transfers to amounts supported by the costs of services provided to utilities by the General Fund and greatly reduces the amount of water/sewer utility funds that can be transferred to the General Fund. In addition, the settlement requires significant retroactive payments be made from the General Fund back to the water/sewer utility.

The water/sewer settlement will result in a major reduction (but not total elimination) in the effective water/sewer utility revenue transfer to the General Fund. Such a reduction would likely have a significant adverse impact on general City services because it reduces the resources available for services by approximately \$8.3 million annually. Illustratively, this equals over three fifths of the General Fund net cost of citywide library operations. The litigation settlement has also resulted in a reduction in the average customer's water/sewer utility bills by approximately \$3 per month. Long Beach utility rates were already lower than many comparable jurisdictions. Exhibit A is a combined residential water and sewer bill comparison, which shows Long Beach is the lowest of the eight comparison jurisdictions.

The combined potential impact to the General Fund of both the water/sewer and gas lawsuits is over \$18 million annually. Illustratively, the amount equals almost the entire General Fund net cost of citywide parks and recreation operations. The adverse impacts of the two lawsuits can be addressed through an amendment to the City Charter that further clarifies that the transfers are authorized by the voters. This is because neither Propositions 218 nor 26 prohibit a City from making utility fund transfers to its General Fund if the voters explicitly approve of the transfers. Staff is recommending the attached City Charter amendment (Exhibit B) to explicitly authorize the continuation of water/sewer and gas utility revenue transfers that the City had been making to its General Fund for over 60 years. By authorizing the continuation of utility revenue transfers, the Charter amendment can help avoid the service reductions that the lawsuits would likely otherwise cause, by returning to the historical status quo.

The City Charter amendment has a new provision designed to protect against excessive revenue transfer amounts by placing an express limit on these revenue transfers. The City Charter does not currently have such a limit; however, under the proposed Charter amendment, the revenue transfers would be limited to not exceed 12 percent of each utility's gross revenues. This percentage limits any transfer to approximately the amount that has been transferred in recent years, as well as provides for the recoupment of the amounts paid by the General Fund to the utility for the retroactive payments per the settlement. This is about \$26 million (for all three utilities) at today's utility revenue levels. As a further control, the City Charter amendment requires an independent audit.

Under State law, any City Charter amendment must be approved by a majority of Long Beach voters. The next available date to place this Charter amendment on the ballot will be June 5, 2018. To consider this amendment for the June 5, 2018 election, State law requires that there be three public hearings/meetings over the next 60 days. At each of these hearings/meetings there will be opportunities for discussion, receiving community input, and making changes to the Charter amendment language. The hearing/meeting dates are as follows:

- January 10, 2018 – First public hearing: Receive staff presentation, hear public comment, direct staff to gather any further information or implement specific changes
- February 13, 2018 -- Second public hearing: Receive any updated information, hear public comment, direct staff to gather any further information or make amendment changes

- March 6, 2018 – Final meeting: Receive any updated information, hear public comment, make any final amendment changes, and if the City Council so chooses, adopt the required resolutions to place the Charter amendment on the June 5, 2018 Municipal General Election ballot.

This matter was reviewed by Assistant City Attorney Michael J. Mais and by Director of Financial Management John Gross on January 4, 2018.

TIMING CONSIDERATIONS

City Council and Charter Amendment Committee action is requested on January 10, 2018, to meet the noticing and public meeting scheduling requirements mandated by the Government Code for a Charter amendment election on June 5, 2018.

FISCAL IMPACT

If placed on the June 5, 2018 ballot, the City Charter amendment is expected to cost approximately \$565,000, assuming there are no other City ballot items conducted by the County on that election day. The FY 18 budget included the costs of conducting a local general election on June 5, 2018, due to the potential of Citywide elected official contests. Depending on these other election outcomes, there could be sufficient funds available to cover the costs of the Charter amendment ballot measure. If not, any shortfall would be funded by a budget increase (or savings) in other areas of the budget.

The financial impacts of the City Charter amendment are discussed in the body of this letter. Essentially, the City Charter amendment is intended to allow offsetting the impacts of the utility revenue transfers litigation and allow neutrality as to service impacts and costs to the community. Without the ballot measure the City is facing \$8.3 million in budget impact in the FY 19 budget from the water/sewer litigation and potentially another \$10 million in budget impact from the gas litigation. If approved by a majority of the voters, there could be utility revenue transfers from the water, sewer and gas utilities to the General Fund to not exceed 12 percent of the gross revenues of the respective funds. In any utility fund, the transfers could be less than 12 percent. Utility rates would include the transfer costs, as they did in prior years. Because of the litigation, the water/sewer transfers were materially reduced and the water and sewer utility rates were also decreased as of January 1, 2018, the transfer, assuming adoption of the City Charter amendment, would likely be restored to previous levels and the water and sewer rates would likely be reset to generate an equivalent level of revenue transfers before the litigation. If the gas transfer litigation is ultimately successful, a similar pattern may occur for the gas transfer. In general, the limit on the revenue transfers to not exceed 12 percent of gross revenues, provides the capacity to maintain the transfers at similar levels of prior years, in addition to the retroactive payments required by the litigation.

SUGGESTED ACTION:

Approve recommendation.


Respectfully submitted,



JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

Attachments

APPROVED:

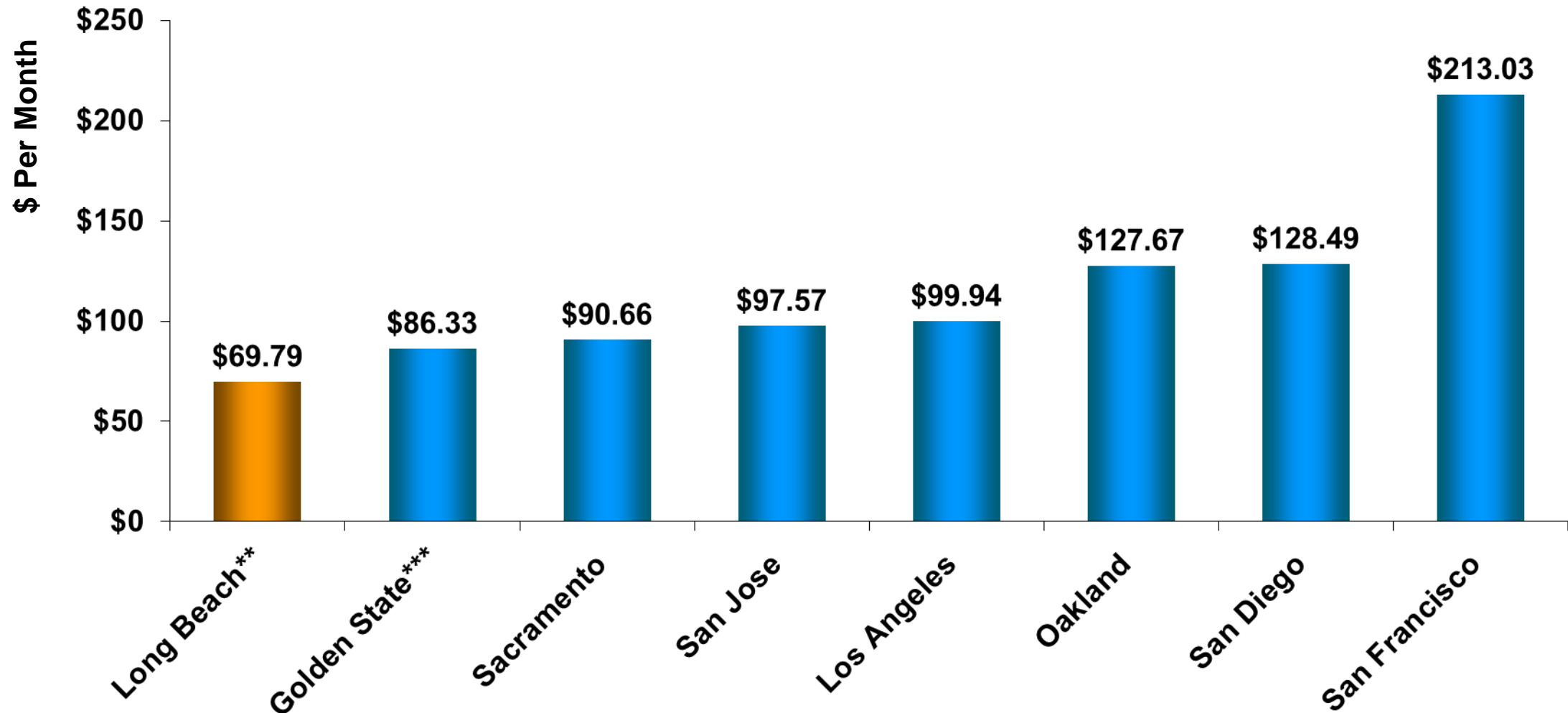


PATRICK H. WEST
CITY MANAGER

Water and Sewer Residential Bill Comparison*

Exhibit A

Source: Raftelis Rate Study, May 2017
Rates effective Oct 1, 2017



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH, CALIFORNIA, PROPOSING AN AMENDMENT TO THE CITY CHARTER AUTHORIZING UTILITY REVENUE TRANSFERS TO THE GENERAL FUND.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Long Beach, California, as follows:

Section 1: That the City Council, pursuant to its right and authority under Long Beach City Charter §1903 and California Government Code §34458, and all other applicable California law, proposes that the City Charter be amended as shown in Attachment "A".

PASSED, APPROVED and ADOPTED by the City Council this _____ day of _____, 2018.

ROBERT GARCIA
Mayor of the City of Long Beach

Attest:

Monique De La Garza
City Clerk

Approved as to form:

J. Charles Parkin
City Attorney

I, Monique De La Garza, City Clerk of the City of Long Beach, California, hereby certify that the foregoing resolution was duly and regularly adopted at a meeting of the City Council of said City at its meeting held on the _____ day of _____, 2018, by the following vote, to wit:

Ayes:

Noes:

Absent:

Abstain:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Long Beach, California, this _____ day of _____, 2018.

Monique De La Garza
City Clerk of the City of Long Beach

Attachment A

MEASURE “___”

SECTION 1. THE PEOPLE OF THE CITY OF LONG BEACH DO HEREBY AMEND THE LONG BEACH CITY CHARTER TO READ AS FOLLOWS:

“Section 1407. - USE OF WATER DEPARTMENT FUNDS.

None of the money in or belonging to the Water Revenue Fund, the Sewer Revenue Fund or such other funds as are established by the Commission, shall be appropriated or used for any purpose except for the purposes for which said fund was established, as follows:

- (1) For the necessary expense of operating and maintaining the water works and the sewer system, and for such preliminary surveys, reconnaissances, options, estimates, engineering data, experimentation and investigation, as in the discretion of the Commission shall be necessary, or as shall be incidental to the extension or betterment of the physical properties, or the business of the department and/or the acquisition of additional lands, water, water rights and/or other property.
- (2) For the payment of the principal and interest, or either, due or coming due upon outstanding notes, certificates or other evidences of indebtedness issued against revenues from said water works and sewer system in accordance with this Charter, or bonds or other evidences of indebtedness heretofore or hereafter issued for the purpose of such water works and sewer system, or parts thereof.
- (3) For the necessary expense of constructing, extending and improving such water works and sewer system, including purchases of lands, water, water rights, and other property; also the necessary expenses of conducting and extending the business of the Water Department.
- (4) To return and pay into the general fund of the City, from time to time, upon resolution of the Commission, from any surplus money in the Water Revenue Fund or other funds established as aforesaid, any sums paid by the City from funds raised by taxation or the payment of the principal or interest of any municipal bonds issued by the City for and on account of the water works or sewer system.
- (5) To transfer to the general fund of the City any funds in the Water Revenue Fund and/or the Sewer Revenue Fund that are determined by the Commission to be unnecessary to meet the obligations described in (1), (2) (3) or (4); provided that the maximum transfer does not exceed twelve percent (12%) of the water utility's and sewer utility's annual gross revenues, respectively, as shown by a financial report audited by an independent accounting firm. All proceeds from such transfers shall be

used to maintain local general fund services as the City Council may by budget adoption or other appropriation direct, including without limitation 9-1-1 response, police/fire protection, street repairs, parks and libraries.

(6) The Commission is authorized to fix, and the City Council is authorized to approve, water and sewer rates in an amount sufficient to recover the cost of the obligations described in subsections (1) through (5) above.”

“Section 1501. - UTILITY REVENUES.

All revenues received from the operation of each public utility owned and operated by the City shall be deposited and kept in a separate revenue fund in the name of the utility operation generating the revenue and shall be disbursed therefrom on behalf of each such utility operation in the following order of priority:

(a) Payment of interest and principal coming due on any bonded indebtedness relating to the utility which generates the revenue in each such specified fund;

(b) Payment of the annual operating and maintenance expenses, acquisitions, improvements and extensions of the respective utility system;

(c) Set aside a portion of each fund as a reserve to be used for contingencies in the operation of each such utility;

(d) The remainder in any of these funds that is determined by the City Manager to be unnecessary to meet the obligations described in (a), (b) and (c) may be transferred into the general fund of the City as approved by budget adoption or other appropriation by the City Council; provided that, with respect to the gas utility, the maximum transfer does not exceed twelve percent (12%) of the gas utility’s annual gross revenues, as shown by a financial report audited by an independent accounting firm. All proceeds from such transfers shall be used to maintain local general fund services as the City Council may by budget or other appropriation direct, including without limitation 9-1-1 response, police/fire protection, street repairs, parks and libraries.

(e) The City Council is authorized to fix rates in an amount sufficient to recover the cost of the obligations described in subsections (a) through (d) above, subject to the limitation contained in Section 1502 of this Charter.”

SECTION 2. Ratification of Utility Fund Transfers. Pursuant to Article XIII C, Section 2(b) of the California Constitution, this Charter Amendment is hereby adopted to establish and/or clarify the City’s authority to transfer gross revenues earned by the water, sewer and gas utilities to the City’s General Purpose Fund as specified in Section 1.

SECTION 3. Approval, Filing and Recordation of Charter Amendment. Pursuant to California Government Code Section 34460, if approved by a majority of voters, the Mayor and City Clerk shall certify, authenticate and attest to the passage of this Charter Amendment. The City Clerk shall also (i) record one copy of this Charter Amendment with the Los Angeles County Recorder's Office, (ii) file one copy in the City's archives and (iii) file one copy with the California Secretary of State. Each copy recorded with the County Recorder and filed in the City's archives shall also be filed with the following:

- (a) Certified copies of all publications and notices required of the City by State law in connection with the calling of an election to propose the Charter Amendment.
- (b) Certified copies of any arguments for or against the Charter Amendment that were mailed to voters pursuant to California Elections Code Sections 9281 and 13303.
- (c) A certified abstract of the vote at the election at which the Charter Amendment was approved by the voters.

SECTION 4. Ratification and Effective Date. Pursuant to California Government Code Section 34459, this Charter Amendment shall be deemed ratified if approved by a majority of the eligible voters of the City of Long Beach voting at the General Election of June 5, 2018. However, this Charter Amendment shall not take effect until it has been accepted and filed by the Secretary of State pursuant to Government Code Section 34460.

SECTION 5. Severability. If any provision of this Charter Amendment or the application thereof to any person or circumstance is held invalid, the remainder of the Charter Amendment and the application of such provision to other persons or circumstances shall not be affected thereby.

PASSED, APPROVED and ADOPTED by the People of the City of Long Beach
at a General Election held on June 5, 2018.

ROBERT GARCIA
Mayor of the City of Long Beach

Attest:

Monique De La Garza
City Clerk

Approved as to form:

J. Charles Parkin
City Attorney