



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

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1

March 7, 2018

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

RECOMMENDATION:

Adopt a Resolution calling for the holding of a General Municipal Election on Tuesday, June 5, 2018, for the submission of a proposed Charter Amendment to Long Beach voters and directing the City Attorney to prepare an impartial analysis of the Charter Amendment; and

Adopt a Resolution requesting the Board of Supervisors of the County of Los Angeles to consolidate a General Municipal Election for a local Charter Amendment measure to be held on June 5, 2018, with the Statewide Primary Election to be held on that date pursuant to Section 10403 of the Elections Code. (Citywide)

DISCUSSION

On January 10, 2018 and February 13, 2018, the City Council and the Charter Amendment Committee concluded two joint public hearings on a proposed Utility Revenue Transfer Charter Amendment. This third public meeting fulfills the requirements of City Charter §1903 and California Government Code §34458.

Staff recommends placing the Charter Amendment on the June 5, 2018 ballot. To place the Charter Amendment on the ballot, the City Council must (i) call for the General Municipal Election and authorize the Charter Amendment language to be on the ballot; and (ii) request a consolidated election. The City Council will formally authorize primary and rebuttal arguments at a future meeting.

The Resolution calling for the holding of a General Election includes a redline version of the proposed changes to the current City Charter, including technical changes made after the February 13, 2018 hearing.

This matter was reviewed by Deputy City Attorney Richard F. Anthony and by Director of Financial Management John Gross on February 27, 2018.

TIMING CONSIDERATIONS

City Council and Charter Amendment Committee action is recommended on March 7, 2018, to complete the hearing, meeting, and scheduling requirements mandated by the California Elections and Government Codes for placing a Charter Amendment on the June 5, 2018 ballot.

FISCAL IMPACT

If placed on the June 5, 2018 ballot, the City Charter Amendment election 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 includes the cost 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 election. If not, any shortfall would be funded by a budget increase (or savings) in other areas of the budget.

The Charter Amendment itself will allow the City to offset the financial impacts of the utility fund transfer litigation and allow General Fund neutrality as to service impacts and costs to the community. Without the ballot measure the City is facing an impact of \$8.3 million to the General Fund for the FY 19 budget due to the settlement of recent litigation related to the Water and Sewer Funds, and potentially an additional impact of \$10 million related to the ongoing litigation related to the Gas Fund. If approved by a majority of the voters, there could be utility revenue transfers from the Water, Sewer, and Gas Funds to the General Fund not to exceed 12 percent of the gross revenues of the respective funds. In any utility fund in any particular year, the transfers could be less than 12 percent. Utility rates would be set to include the transfer costs as they have in prior years. Because of the litigation, the transfers from the Water and Sewer Funds to the General Fund were materially reduced and the water and sewer utility rates were also decreased as of January 1, 2018. If the City Charter Amendment is approved, these transfers 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, plus some additional funding to repay certain prior costs and losses. If the Gas Fund transfer litigation ultimately results in an adverse decision to the City, a similar pattern may occur for the Gas Fund 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, plus some additional funding to make payments required by the settlement of the water/sewer utility litigation, which may be necessary for the gas utility litigation as well.

HONORABLE MAYOR AND CITY COUNCIL AND CHARTER AMENDMENT COMMITTEE
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SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

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ATTACHMENTS

APPROVED:



PATRICK H. WEST
CITY MANAGER

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH, CALLING FOR THE HOLDING OF
A GENERAL MUNICIPAL ELECTION ON TUESDAY JUNE
5, 2018 FOR THE SUBMISSION OF A PROPOSED
CHARTER AMENDMENT TO LONG BEACH VOTERS AND
DIRECTING THE CITY ATTORNEY TO PREPARE AN
IMPARTIAL ANALYSIS OF THE CHARTER AMENDMENT

WHEREAS, Long Beach City Charter, Sections 1407 and 1501 currently
authorize the City Council or the Board of Water Commissioners to transfer revenue from
City utility accounts to the City's General Fund if the revenue is not required to pay for a
utility's capital improvements, bond/debt service, operations and maintenance, personnel,
reserves, and other costs; and

WHEREAS, pursuant to this Charter authority, the City has, for many years,
approved annual transfers of surplus water, sewer and gas utility revenue to the General
Fund; and

WHEREAS, for FY 2016-2017, revenue transfers from the water, sewer and
gas utilities to the General Fund amounted to approximately \$21,000,000; and

WHEREAS, these revenue transfers from City utility accounts to the
General Fund are used to pay for important general City services, including 9-1-1
response, police/fire protection, street repairs, parks and libraries; and

WHEREAS, some have alleged that under California Propositions 218 and
26 (California Constitution, Article XIIC, Section 1(e) and Article XIID, Section 6), these
revenue transfers from City utility accounts to the General Fund are general taxes
requiring voter approval; and

WHEREAS, pursuant to authority provided by California Constitution, Article

XI, Long Beach City Charter Section 1903, California Government Code Sections 34450 et. seq. and California Elections Code Sections 9255 et. seq., the City Council of the City of Long Beach desires to submit to the voters a proposed charter amendment authorizing and affirming the transfers of certain revenues from City utility accounts to the General Fund, subject to the terms and conditions set forth therein ("Charter Amendment"); and

WHEREAS, California Constitution, Article XI, Section 3, requires that any charter amendment be approved by a majority of City voters voting at an election called for that purpose; and

WHEREAS, Proposition 218 (California Constitution, Article XIIC, Section 2) likewise requires that all general taxes which are imposed, extended or increased be approved by a majority of City voters voting at an election called for that purpose; and

WHEREAS, pursuant to Proposition 218 any general tax measure submitted to the voters must be held concurrently with a regularly scheduled general election for members of the City Council; and

WHEREAS, the next regularly scheduled general election at which City Council members are to be elected is June 5, 2018; and

WHEREAS, pursuant to California Government Code Section 34458(b), the City Council held a duly noticed public hearing on January 10, 2018 and a second duly noticed public hearing on February 13, 2018 to hear public comment and testimony and to consider the Charter Amendment, with the first public hearing being held at 5:00 p.m., outside normal City business hours; and

WHEREAS, pursuant to California Government Code Section 34458(b), this resolution is being adopted at a City Council meeting which is at least 21 calendar days after the second public hearing referenced above; and

WHEREAS, the City Council is authorized and directed by statute to submit the proposed Charter Amendment to the voters;

NOW, THEREFORE, the City Council of the City of Long Beach resolves as follows:

1 Section 1. The foregoing recitals are true and correct and are hereby
2 incorporated and made an operative part of this Resolution.

3 Section 2. That pursuant to the California Constitution, Article XI, Section
4 3, Long Beach City Charter Section 1903, California Government Code, Sections 34450
5 et. seq., and California Elections Code, Sections 9255 et. seq., and any other applicable
6 requirements of the laws of the State of California relating to charter cities, the City
7 Council, by a two-thirds (2/3) supermajority vote, hereby calls and orders to be held in the
8 City of Long Beach on Tuesday, June 5, 2018, a General Municipal Election for the
9 purpose of submitting the following proposed Charter Amendment to the voters.

"City of Long Beach Utility Revenue Transfer Charter Amendment. To maintain general City services like 9-1-1 emergency response, police/fire protection, street/pothole repairs, senior services, parks and libraries, shall the City of Long Beach amend its Charter to authorize annual fund transfers from the City's water, sewer and gas utilities to the General Fund not to exceed 12% of utility gross revenues, generating approximately \$25,500,000 annually for unrestricted general revenue purposes, requiring annual independent audits, until ended by voters?"	YES
	NO

17
18 Section 3. That the text of the Charter Amendment to be submitted to the
19 voters is attached hereto as Exhibit "A".

20 Section 4. That the minimum vote requirement for the Charter
21 Amendment to pass is a simple majority (50% + 1) of the votes cast.

22 Section 5. That pursuant to California Elections Code Section 9280 and
23 Long Beach Municipal Code Section 1.24.100, the City Council hereby directs the City
24 Clerk to transmit a copy of the Charter Amendment to the City Attorney. The City
25 Attorney shall prepare an impartial analysis of the Charter Amendment, not to exceed
26 500 words in length, showing the effect of the Charter Amendment on the existing law
27 and the operation of the Charter Amendment, and transmit such impartial analysis to the
28 City Clerk not later than the deadline for submittal of primary arguments for or against the

1 Charter Amendment.

2 The impartial analysis shall include a statement indicating whether the
3 Charter Amendment was placed on the ballot by a petition signed by the requisite
4 number of voters or by the City Council. In the event the entire text of the Charter
5 Amendment is not printed on the ballot, nor in the voter information portion of the sample
6 ballot, there shall be printed immediately below the impartial analysis, in no less than 10-
7 font bold type, the following: "The above statement is an impartial analysis of Ordinance
8 or Measure "____". If you desire a copy of the ordinance or measure, please call the
9 Office of the City Clerk at [insert phone number] and a copy will be mailed at no cost to
10 you."

11 Section 6. That notice of the time and place of holding the election is
12 hereby given and the City Clerk is authorized, instructed and directed to give further or
13 additional notice of the election, in time, form and manner as required by law.

14 Section 7. The City Clerk is authorized, instructed and directed to
15 procure and furnish any and all official ballots, notices, printed matter and all supplies,
16 equipment and paraphernalia that may be necessary in order to properly and lawfully
17 conduct the election.

18 Section 8. That the ballots to be used at the election shall be in form and
19 content as required by law.

20 Section 9. That in all particulars not recited in this resolution, the election
21 shall be held and conducted as provided by law for holding municipal elections.

22 Section 10. The City Treasurer is hereby authorized and directed to
23 appropriate the necessary funds to pay for the City's cost of placing the Charter
24 Amendment on the election ballot.

25 Section 11. The City Council finds that this Resolution is not subject to the
26 California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the
27 activity will not result in a direct or reasonably foreseeable indirect physical change in the
28 environment), and 15060(c)(3) (the activity is not a project as defined in Section 15378)

1 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it
2 has no potential for resulting in physical change to the environment, directly or indirectly.

3 Section 12. The provisions of this Resolution are severable and if any
4 provision of this Resolution is held invalid, that provision shall be severed from the
5 Resolution and the remainder of this Resolution shall continue in full force and effect, and
6 not be affected by such invalidity.

7 Section 13. This resolution shall take effect immediately upon its adoption
8 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

9 I hereby certify that the foregoing resolution was adopted by the City
10 Council of the City of Long Beach at its meeting of _____, 2018
11 by the following vote:

12
13 Ayes: Councilmembers: _____

14 _____

15 _____

16 _____

17 Noes: Councilmembers: _____

18 _____

19 Absent: Councilmembers: _____

20 _____

21
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23 _____
City Clerk

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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Exhibit "A"
Proposed Charter Amendment
[attached behind this page]

Exhibit 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 be transferred to the general fund of the City, if and when, in the judgment of~~ *any funds in the Water Revenue Fund and/or the Sewer Revenue Fund that are determined by the Commission such monies are no longer to be unnecessary for the purposes of the Commission to meet the obligations described in subsections (1), (2) (3) or (4) above; provided that the maximum transfer does not exceed twelve percent (12%) of the annual gross revenues of the water works and sewer system, respectively, as shown by a financial report audited by an independent accounting firm.*

(6) *All proceeds from transfers authorized by subsection (5) above 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.*

(7) *All proceeds from transfers authorized by subsection (5) above can be spent for unrestricted general revenue purposes.*

(8) *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 ~~above~~ obligations

described in subsections (a), (b) and (c) above may be transferred into the general ~~purpose~~ fund of the City as approved in the annual budget 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.

(e) All proceeds from transfers authorized by subsection (d) above 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.

(f) All proceeds from transfers authorized by subsection (d) above can be spent for unrestricted general revenue purposes.

(g) 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 Transfer. Pursuant to Article XIIC, 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 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

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION FOR A LOCAL CHARTER AMENDMENT MEASURE TO BE HELD ON JUNE 5, 2018 WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON THAT DATE PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE

WHEREAS, on March 7, 2018, the City Council of the City of Long Beach called a General Municipal Election to be held on June 5, 2018; for the purpose of submitting to the voters a City charter amendment measure relating to utility fund transfers to the General Fund; and

WHEREAS, it is desirable that the General Municipal Election for the City charter amendment measure be consolidated with the Statewide Primary Election to be held on the same date and that within the City the precincts, polling places and election officers of the two elections be the same, and that the election department of the County of Los Angeles canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election;

NOW, THEREFORE, the City Council of the City of Long Beach resolves as follows:

Section 1. Request for Consolidation. Pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Los Angeles is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide Primary Election on Tuesday, June 5, 2018, for the

1 purpose of submitting to the voters a City charter amendment measure relating to utility
2 fund transfers to the General Fund.

3 Section 2. Charter Amendment/Measure Language. The charter
4 amendment/measure is to appear on the ballot as follows:

"City of Long Beach Utility Revenue Transfer Charter Amendment. To maintain general City services like 9-1-1 emergency response, police/fire protection, street/pothole repairs, senior services, parks and libraries, shall the City of Long Beach amend its Charter to authorize annual fund transfers from the City's water, sewer and gas utilities to the General Fund not to exceed 12% of utility gross revenues, generating approximately \$25,500,000 annually for unrestricted general revenue purposes, requiring annual independent audits, until ended by voters?"	Yes
	No

11
12 Section 3. Canvass of Returns. The County election department is
13 authorized to canvass the returns and perform all other proceedings incidental to and
14 connected with the General Municipal Election. The Election shall be held in all respects
15 as if there were only one election, and only one form of ballot shall be used. Pursuant to
16 California Elections Code Sections 10403 and 10418, the election will be held and
17 conducted in accordance with the provisions of law regulating the Statewide Primary
18 Election.

19 Section 4. The purpose of this resolution is to request consolidation of
20 the General Election only as it relates to the City charter amendment/measure. The City
21 of Long Beach may also be conducting an independent election for City Council
22 candidates on June 5, 2018 which will not be consolidated with the Statewide Primary
23 Election.

24 Section 5. Necessary Steps. The Board of Supervisors is requested to
25 issue instructions to the County election department to take any and all steps necessary
26 for the holding of the consolidated election.

27 Section 6. Costs. The City of Long Beach recognizes that additional
28 costs will be incurred by the County by reason of this consolidation and agrees to

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Section 7. Filing of Resolution. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the election department of the County of Los Angeles.

I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of _____, 2018 by the following vote:

Absent: Councilmembers: _____

City Clerk