

INDIAN WELLS CITY COUNCIL

May 16, 2024



To: City Council
From: Finance Department
Prepared by: Kevin McCarthy, City Finance Director
Subject: **Consideration of Special Fire Tax Ballot Measure**

RECOMMENDED ACTIONS:

Council **DISCUSSES** and **APPROVES** adding an Annual Escalator to the Special Fire Tax and directs the City Attorney to prepare the Ordinance approving the Revision and Resolution placing the Measure on the November 2024 Ballot for Voter Consideration.

BACKGROUND:

At the recent Special Fire Tax Public Hearing, Council Member Reed proposed incorporating an annual escalator into the Special Fire Tax. Specifically, he advocated for the Finance Committee to explore the feasibility of integrating a yearly escalator mechanism, akin to a Consumer Price Index (CPI) adjustment, into the annual levy of the Fire Tax.

The City of Indian Wells has a contract with the Riverside County Fire Department for paramedics, advanced life support, and fire services. The Fire Station is open 24/7, every day of the year, and has five full-time staff members, two of whom are firefighter paramedics trained in advanced life support. The fire services team in Indian Wells is specialized and equipped to handle various emergency situations such as vehicle accidents, hazardous materials services, confined space rescues, and swift water/flood rescues. Annual contracted services have historically risen about 7% per year.

The Special Fire Tax

To ensure the continued funding of the City's emergency services program, Indian Wells voters approved a special tax of \$120 per household annually in 1980. This tax is allocated explicitly for fire suppression, paramedic services and equipment, and ladder truck services. The Special Fire Tax generates approximately \$600,000 in revenues, supporting the City's overall \$5.2 million annual fire services budget.

The proposed ballot aims to add an annual escalator mechanism to the existing tax. If approved, the tax would increase by a CPI annually. As a special tax to fund a specific purpose, the voter threshold is a supermajority (2/3rds of the voting electorate). For reference and discussion purposes only, a 3% CPI escalator would add \$3.60 to the annual

tax per household, or roughly 0.30 cents per month. Although this may seem small, the additional revenue generated would be used to support medical service calls, ambulance transport, and replacements and offset the rising costs of fire suppression.

After careful deliberation, the Finance Committee recommends advancing the proposed ballot measure to the City Council based on the potential benefits it would bring to the City of Indian Wells.

Why consider an annual escalator

An annual escalator on a municipal tax like a fire services tax can be justified for several reasons:

- **Preserve Service Levels:** With an escalator, municipalities can maintain consistent levels of emergency medical response and fire protection services without relying solely on fluctuating property values or unpredictable budget allocations. A priority in the community is having paramedic services readily available in Indian Wells.
- **Inflation Adjustment:** An escalator ensures that the tax keeps pace with inflation, maintaining the actual value of revenue collected over time.
- **Cost of Service:** As the cost of providing fire services increases due to population growth and technological advancements, an escalator helps cover these rising expenses.
- **Predictable Revenue:** An annual escalator provides municipalities with a predictable revenue stream, enabling better long-term financial planning and ensuring sufficient funding for essential services like fire protection.
- **Equitable Contribution:** It distributes the burden of funding fire services more equitably over time, preventing sudden spikes in tax rates and minimizing the impact on taxpayers.
- **Infrastructure Investment:** The additional revenue generated from the escalator can be directed towards enhancing fire safety infrastructure, training firefighters, and acquiring modern equipment, ultimately improving public safety.
- **Emergency Preparedness:** An escalator ensures that funding for fire services remains robust, allowing municipalities to invest in emergency preparedness measures, such as disaster response training and community outreach programs.

Steps to the November Ballot

The Clerk and Legal departments will be responsible for assisting in developing the ballot materials, but there are two crucial components to the November ballot process. The City will conduct a poll on adjusting the Fire Tax to gauge voter sentiment and preferences. Once polling data is complete, an extensive educational campaign will inform voters about the Special Fire Tax and its importance in the community.

Fire Tax Polling

Polling services before a municipal ballot are vital for several compelling reasons. They serve as a beacon of predictive accuracy, offering invaluable insights into voter sentiment and preferences, thus enabling candidates and political parties to fine-tune their campaign strategies with surgical precision. By identifying key issues and allocating resources, polling data becomes the cornerstone of successful electoral endeavors.

Furthermore, polls serve as a powerful tool for prioritizing the electorate's concerns, ensuring that the City addresses the issues closest to voters' hearts. The demographic data gleaned from polling facilitates targeted outreach efforts and paints a vivid picture of the diverse tapestry of opinions within the community. In essence, polling is a crucial feedback loop, guiding the City in refining its messaging and campaign tactics to resonate more deeply with voters.

The electorate is empowered with heightened awareness through publicized polling results, potentially driving greater civic engagement and turnout on election day. Thus, polling emerges as an indispensable pillar of the democratic process, providing invaluable insights that shape the course of municipal governance.

Staff will select and work with the polling firm to develop the questionnaire if approved. Both polling firms are highly qualified and bring tremendous expertise and guidance into the fold. These firms bring scientific rigor to the process, ensuring an accurate representation of public opinion through random sampling and unbiased questioning techniques. Their expertise provides invaluable insights into voter sentiment, enabling candidates and campaigns to tailor their strategies accordingly.

Educational Campaign

It's paramount for Indian Wells to undertake a comprehensive resident education program when proposing an adjustment to the fire tax aimed at enhancing funding for public safety services for several compelling reasons. Firstly, with a clear understanding of how additional tax revenue will be utilized and its potential benefits, residents may be confident and willing to support the ballot measure.

Moreover, a well-informed electorate is essential for fostering trust and transparency in local governance. By providing residents with detailed information about the continued intended purposes of the fire tax and how it will bolster public safety services, the City can build credibility and demonstrate accountability to our constituents.

Additionally, an educated electorate is more likely to recognize the importance of adequately funding public safety initiatives. By highlighting the critical role of our fire department and emergency service programs in safeguarding lives and property, the City can garner broader support for the tax proposal.

Furthermore, resident education efforts can address misconceptions or concerns surrounding the proposed tax, fostering constructive dialogue and engagement within the community. This open communication ensures that residents feel empowered to make informed decisions about the future of their local public safety infrastructure.

General Rule regarding education

Public funds may be used to inform, but they may not be used to advocate. Therefore, an agency cannot use public funds to expressly urge voters to “Vote Yes” or “Vote No” on ballot measures. A governmental entity may only expend public funds for “informational” activities in which it gives a “fair presentation of the facts” regarding a ballot measure.

The California Supreme Court has made it clear that governmental entities cannot commit public money or resources to influence voters on matters on the ballot for an upcoming election. (Stanson v. Mott (1976) 17 Cal.3d 206.) In determining whether a particular act is advocacy, courts look at the following: (1) whether the materials offer a balanced presentation of the information; (2) whether the materials are similar in nature to campaign materials; (3) whether the communication took place at a public meeting where others are afforded the opportunity to comment; and (4) whether public resources were used. Below, we have provided some guidance on what the City may and may not do during the upcoming election.

What Can Be Done

The Mayor and Council Members may Campaign.

The Mayor and Council Members retain their First Amendment rights to engage in the public discussion of the measures. For example, the Mayor and City Councilmembers may conduct typical campaign activities, including:

- Attending meetings of community groups and speaking for or against measures;
- Contributing to campaigns for or against the measures;
- Authoring letters to the editor for or against the measures; and
- Walking door-to-door, supporting or opposing the measures.

In engaging in such activities, we would recommend the following precautions:

- Always clearly identify that you are speaking on your own behalf and on your “own time” and “own dime.” Make it very clear at all engagements that City resources are not supporting the event in any manner.
- Do not seek reimbursement for any costs that may be remotely associated with campaign activities.
- Do not conduct campaign activities on City property.
- Do not contact City staff regarding the campaign. If a member of City staff is assisting in their personal capacity, please do not contact that person during City operating hours, on City electronic devices, or using City email accounts.
- Avoid meeting in groups of three or more elected officials. Although campaigning is not technically “within the subject matter jurisdiction” of the City Council, topics subject to ballot initiatives often are.¹ If the Mayor and Council Members do meet to discuss the campaign, we recommend keeping conversations strictly to the campaign. No City business should be discussed and no City decisions should be taken. The Mayor and Council Members may appear at and participate in open and public meetings held by other persons or organizations² so long as they do not discuss City business among themselves (except as part of the scheduled program).

City Staff May Campaign (But ONLY on their own time)

Like the Mayor and Council Members, members of City staff retain their First Amendment rights to engage in traditional campaign activities. However, where City staff are concerned, it is especially important that they are not campaigning while working for the City and that they receive no compensation or benefits for these activities. Efforts should be made at every opportunity to make it clear that any City staff participating in campaign activities are doing so on their “own time” and “own dime” and not at the behest of the City Council or senior City management.

The City May Take a Formal Position

The Mayor and City Council may take a formal position on the measure. The decision to take a formal position must be taken at a time when members of the public are afforded an opportunity to comment. (League of Women Voters of California v. Countywide (1988) 203 Cal.App.3d 529, 555-56.) After taking a formal position for or against an initiative measure, the City is also permitted to inform the public and media of this decision but must be careful not to do so in a way that appears to be advocacy.

¹ We are aware of at least one case where a District Attorney determined that a private campaign meeting of a majority of Councilmembers to discuss a ballot measure was not a Brown Act violation. However, we cannot say with certainty that all District Attorneys will take this position. Government transparency groups tend to argue such meetings are Brown Act violations.

² For example, a press debate on the measure or a public fundraiser for a campaign committees.

City May Author Ballot Arguments

The City may be directly involved in authoring the ballot arguments either for or against a measure. (Elec. Code § 9282; FPPC Reg. 18420.1(e)(3).) The entire City Council may approve and sign arguments for or against such measure.

Informational Handouts and Newsletter Articles

The City may prepare informational handouts for its website and for members of the public to pick up at the City Hall. While the City may not mail these handouts directly, they may be mailed out by third parties, not at the City's expense.

The City may also include informational, non-partisan articles in a regularly published newsletter. These articles can explain the measure at great length, but it is important that they be carefully reviewed to avoid taking a pro or con position.

City May Identify the Impacts of the Measure

Courts have held that a city may identify programs or services that are likely to be cut if a measure passes and may post a report on this (if it is standard practice to do so). (See FPPC Reg. 18420.1(e)(1), (e)(2); Vargas v. Salinas (2009) 46 Cal. 4th 1.) For example, it would be appropriate to identify the impact of a yes or no vote on the City's budget.

What Cannot be Done

The City may not expend resources on advocacy. This includes:

- The purchase of campaign materials such as bumper stickers, posters, advertising 'floats,' or television and radio advertisements promoting or opposing either measure;
- The dissemination of campaign literature prepared by third-party proponents (e.g., public safety unions);
- The production or preparation of materials expressly advocating the victory or defeat of a measure;
- Contributions to campaigns supporting or opposing a measure; and
- The use of staff time or City supplies to generate promotional or advocacy materials supporting or opposing a measure.

FISCAL IMPACT:

To gain deeper insights into the financial ramifications associated with introducing an annual escalator, a rudimentary model incorporating a 3% annual escalator was utilized for comparative analysis. Over the ensuing decade, the tax is anticipated to escalate from \$600,000 to \$800,000 annually, yielding approximately \$1.1 million in supplementary revenues within the same timeframe.

The cost of the polling, Resident education campaign, and election services are as follows:

- Polling – not to exceed \$27,700
- Education campaign \$58,500
- County ballot costs \$10,000
- Total Costs \$96,200

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

This action has been reviewed per the authority and criteria contained in the California Environmental Quality Act (CEQA), the State and local CEQA Guidelines, and the City's environmental regulations. The City, acting as the Lead Agency, determined that the ordinance is not subject to CEQA pursuant to Sections 15060(c)(2), 15060(c)(3), and 15061(b)(3) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect physical change to the environment as there is no possibility that the action would result in a significant environmental impact, and because it does not constitute a "project" as defined in Section 15378 of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3.

ATTACHMENTS:

1. Probolsky Research Polling
2. FM3 Research Polling
3. Tripepi Smith outreach and education