

# INDIAN WELLS CITY COUNCIL

## March 2, 2023



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**To:** City Council  
**From:** City Manager Department  
**Prepared by:** Kristen Nelson, Senior Management Analyst  
**Subject:** **Resolution Opposing Initiative No. 21-0042A1, The Taxpayer Protection and Government Accountability Act**

### RECOMMENDED ACTIONS:

Council **ADOPTS** Resolution opposing Initiative No. 21-0042A1, the Taxpayer Protection and Government Accountability Act.

### DISCUSSION:

On Feb. 1, 2023, the "Taxpayer Protection and Government Accountability Act," or AG# 21-0042A1, qualified for the November 2024 ballot. This anti-local control measure will decimate vital local and state services to the benefit of wealthy corporations. The measure is sponsored by the California Business Roundtable (CBRT) — the lobbying arm of the largest and wealthiest corporations in California.

The Taxpayer Protection and Government Accountability Act would amend the California Constitution with provisions that limit voters' authority and input, adopt new and stricter rules for raising taxes and fees, and may make it more difficult to impose fines and penalties for violation of state and local laws.

The measure puts billions of local government tax and fee revenues at risk statewide with related core public service impacts and would have significant negative impacts on the City of Indian Wells' operations and core service delivery.

### MAJOR PROVISIONS

#### Fees and Charges<sup>1</sup>:

- Except for licensing and other regulatory fees, fees and charges may not exceed the "actual cost" of providing the product or service for which the fee is charged. "Actual cost" is the "minimum amount necessary." The burden to prove the fee or

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<sup>1</sup> Initiative No. 21-0042A1 (pgs.4-6; Section 1 (a)-(j))

charge does not exceed "actual cost" is changed to "clear and convincing" evidence.

- Requires fees and charges paid for the use of local and state government property and the amount paid to purchase or rent government property to be "reasonable." These fees and charges are currently allowed to be market-based. Whether the amount is "reasonable" (introducing a new legal standard aiming to force below market fee and charge amounts) must be proved by "clear and convincing evidence."<sup>2</sup> The standard may significantly reduce the amount large companies (e.g., oil, utilities, gas, railroads, garbage/refuse, cable, and other corporations) will pay for the use of local public property.
- Prohibits fees on new development based on vehicle miles traveled.

### Taxes<sup>3</sup>:

- Taxes and fees adopted after Jan. 1, 2022, that do not comply with the new rules, are void unless reenacted<sup>4</sup>.
- Invalidates *Upland* decision that allows a majority of local voters to pass special taxes. The measure specifies that taxes proposed by the initiative are subject to the same rules as taxes placed on the ballot by a city council.
- Expressly prohibits local advisory measures which allow local voters to express a preference for how local general tax dollars should be spent.<sup>5</sup>
- Requires voter approval to expand existing taxes (e.g., Utility, Transient Occupancy) to new territory (e.g., annexations) or to expand the tax base (e.g., new utility service)
- New taxes can only be imposed for a specific time period.
- City charters may not be amended to include a tax or fee.
- All state taxes require majority voter approval.

### Fines and Penalties<sup>6</sup>:

- May require voter approval of fines, penalties, and levies for corporations and property owners that violate state and local laws unless a new, undefined adjudicatory process is used to impose the fines and penalties.

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<sup>2</sup> Initiative No. 21-0042A1 (pg.5; (3))

<sup>3</sup> Initiative No. 21-0042A1 (pgs.4-6; Section 1 (a)-(j))

<sup>4</sup> Initiative No. 21-0042A1 (pg.7; Section 6 (Sec. 2)(g))

<sup>5</sup> Initiative No. 21-0042A1 (pg.6 (3))

<sup>6</sup> Initiative No. 21-0042A1 (pg. 5 (4))

## **DISCUSSION/ADDITIONAL BACKGROUND**

On Jan. 4, 2022, the California Business Roundtable filed the "Taxpayer Protection and Government Accountability Act" or AG# 21-0042A1. On Feb. 1, 2023, the measure qualified for the November 2024 ballot.

Local government revenue-raising authority is currently substantially restricted by state statute and constitutional provisions, including the voter approved provisions of Proposition 13 of 1978, Proposition 218 of 1996, and Proposition 26 of 2010. The Taxpayer Protection and Government Accountability Act adds and expands restrictions on voters and local government tax and fee authority.

### **Fees and Taxes**

Local governments levy a variety of fees and other charges to provide core public services.

Major examples of affected fees and charges are:

- Nuisance abatement charges, such as for weed, rubbish, and general nuisance abatement to fund community safety, code enforcement, and neighborhood cleanup programs.
- Commercial franchise fees.
- Emergency response fees, such as in connection with DUI.
- Advanced Life Support (ALS) transport charges.
- Document processing and duplication fees.
- Transit fees, tolls, parking fees, and public airport and harbor use fees.
- Facility use charges, fees for parks and recreation services, garbage disposal tipping fees.

Virtually every city, county, and special district must regularly (e.g., annually) adopt increases to fee rates and charges and revise rate schedules to accommodate new users and activities. Most of these would be subject to new standards and limitations under threat of legal challenge. Based on the current volume of fees and charges imposed by local agencies, including council-adopted increases to simply accommodate inflation, Cal Cities estimates the amount of local government fee and charge revenue at risk is approximately \$2 billion per year including those adopted since Jan. 1, 2022.

Over ten years, \$20 billion of local government fee and charge revenues will be at heightened legal peril.

Hundreds of local tax measures were approved in 2022<sup>7</sup> that likely do not comply with the provisions of the initiative. Nearly \$2 billion of annual revenues from these voter-

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<sup>7</sup> <http://www.californiacityfinance.com/Votes2211final.pdf>

approved measures will cease a year after the effective date of the measure, reducing the local public services funded by these measures, unless the tax is re-submitted for voter approval.

Reductions on local government tax revenues have impacts on core services and infrastructure including fire and emergency response, law enforcement, streets and roads, drinking water, sewer sanitation, parks, libraries, public schools, affordable housing, homelessness prevention, and mental health services.

### **Fines and Penalties**

Under existing law, cities are required to provide due process before imposing a penalty or fine for violation of its municipal code:

1. A local agency must adopt administrative procedures that govern imposing fines and penalties, including providing a reasonable period of time for a person responsible for a continuing violation to correct or remedy the violation [Gov't Code 53069.4].
2. Notice must be given to the violating party before imposing the penalty; and give the party an opportunity to be heard and present any facts or arguments [*Merco Construction Engineers v. Los Angeles Unified School District* (1969) 274 CA 2d 154, 166].
3. The fine may not be "excessive" [U.S. Constitution amendments VIII and XIV].

The initiative converts administratively imposed fines and penalties into taxes unless a new, undefined, and ambiguous "adjudicatory due process" is followed. This provision may put at risk authority to impose fines and penalties for violations of state and local law.

### **FISCAL IMPACT**

The Taxpayer Protection and Government Accountability Act will take billions of dollars away from local government services statewide.

The Taxpayer Protection and Government Accountability Act will take billions of dollars away from local government services statewide, and Indian Wells is no exception. Indian Wells receives revenues in categories discussed in the Taxpayer Protection and Government Accountability Act. These categories include (1) fees and charges, (2) Taxes, and (3) fines and penalties. Collectively, these revenues comprise 94% of all General and Special Revenue Funds. Voter limitations, sunset provisions, and actual cost limitations not only serve to limit revenues in Indian Wells, but they also limit voter needs. Furthermore, the Act creates unnecessary administrative and financial burdens to maintain compliance.

## **ATTACHMENTS:**

1. Full Text of Ballot Initiative
2. February 21 Opposition Letter
3. Resolution