

November 16, 2001

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PREEMPTION OF CHARTER AMENDMENT INITIATIVE PERTAINING TO GENERAL
TAXES/ITEM 211 OF NOVEMBER 5, 2001, DOCKET

INTRODUCTION

During the Council's discussion of proposed ballot measures being considered for the March 5, 2002, election, questions arose about an initiative measure that, if adopted, would amend the San Diego City Charter [Charter] to require that any increase in an existing general tax or imposition of a new general tax be approved by a two-thirds vote. This proposed initiative received signatures of 15 percent of the City's registered voters and is required by Section 9255(a)(3) of the California Elections Code to be placed on the ballot at a City election. The initiative measure is titled "The San Diego Taxpayers Protection Act of 2000" and is commonly known as the "Manchester Initiative." It will be referred to as the Manchester Initiative in this report.

The Council asked the City Attorney to address the question of whether the Manchester Initiative is preempted by California Constitution, article XIII C and, if so, whether the City should therefore exclude it from the ballot. This report will address whether the proposed initiative is preempted by the California Constitution.

DISCUSSION

The City is a charter city pursuant to article XI of the California Constitution. The City is governed by its Charter, which was approved by voters and the state senate and filed with the California Secretary of State in 1931. Article XI of the California Constitution provides that upon voter ratification and the state legislature's approval of a city charter, the city charter "shall supercede . . . all laws inconsistent therewith." The Charter therefore represents the supreme law of the City, subject, of course, to conflicting provisions in the United States and California Constitutions. *Harman v. City and County of San Francisco*, 7 Cal. 3d 150, 161 (1972) (citations omitted).

The courts have further recognized that if a charter

differs from the constitution in any respect it does not thereby diminish the power reserved by the constitution. On the other hand, if the powers reserved to the charter exceed

those reserved in the constitution the effect of the charter would be to give the people the additional powers there described.

Hopping v. The Council of the City of Richmond, 170 Cal. 605, 611 (1915); accord *Pala Band of Mission Indians v. Bd. of Supervisors of San Diego County*, 54 Cal. App. 4th 565, 581 (1977).

Taken together, these principles hold that a charter city may implement laws respecting its governance that exceed the powers provided in the state Constitution, provided that the charter provisions do not conflict with either the state or federal Constitutions.

The Manchester Initiative proposes to amend the Charter to require any increase in an existing general tax or imposition of a new general tax be approved by a two-thirds vote. California Constitution, article XIII C, section 2(b) requires that “[n]o local government may impose, extend or increase any general tax unless and until such tax is submitted to the electorate and approved by a majority vote.” The Manchester Initiative therefore proposes to establish a voting requirement that is *broader* than that required under the California Constitution. Unless this proposed charter provision violates the state or federal Constitutions, or conflicts with the state Constitution, the charter provision, if approved, would supercede the voting requirements of article XIII C, section 2(b).

Although a departure from strict majority rule gives disproportionate power to the minority, there is nothing in the state or federal constitutions that requires that a majority always prevails on every issue. *Gordon v. Lance*, 403 U.S. 1, 5-6 (1971). Accordingly, the super majority vote proposed in the Manchester Initiative does not violate the state or federal Constitutions. The provisions of article XIII C establish a “floor” for the approval of an extension, increase of an existing, or imposition of a new general tax; it does not mandate that additional voting requirements which exceed such a level of approval will not be tolerated. The voting powers proposed in the Manchester Initiative are broader than those reserved in the state Constitution, they do not conflict with them. The effect of the initiative is therefore to give the people additional powers not reserved in the state Constitution. *Hopping*, 170 Cal. 611; *see also*, *Rossi v. Brown*, 9 Cal. 4th 688, 696 (1995) (the local initiative power may be even broader than the initiative power reserved in the Constitution).

We would note, however, that if the provisions of article XIII C, section 2(b) had provided that “no local government may impose, extend or increase any general tax unless and until such tax is submitted to the electorate and approved by *not more than* a majority vote,” there would be a conflict between the proposed charter provision and the state Constitution. Such language would establish an absolute requirement rather than a floor for voter approval of general tax measures. In such an instance, the City would be prohibited from placing the initiative on the ballot. That language *not* appearing, the Charter may provide for a super majority vote for general taxes.

CONCLUSION

The proposed voting requirement of the Manchester Initiative is not prohibited by either

the state or federal Constitutions. Although article XIII C, section 2(b) establishes a majority approval by the voters for such tax measures, the voting requirements merely establish a floor and do not prohibit a voting requirement that exceeds such levels. Inasmuch as the proposed initiative does not violate the state or federal Constitutions, and does not conflict with the state Constitution, the initiative is not preempted and the Charter may accordingly be amended.

Respectfully submitted,

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CASEY GWINN
City Attorney

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