

MEMORANDUM OF LAW

DATE: February 10, 1992

TO: The Honorable Mayor and City Council

FROM: City Attorney

SUBJECT: Proposed Amendment to 1919 Trash Ordinance

As a result of the Council discussion on February 3, 1992, we have been asked to respond to the following questions as they may relate to a proposed amendment to the 1919 Trash Ordinance.

1. Assuming a proposed amendment to the 1919 Trash Ordinance is approved by a majority of the voters at the June 1992 election which purports to impose user fees for collection and disposal of trash and which also purports to reallocate certain General Fund monies heretofore expended for trash collection and disposal purposes on the basis of "best efforts", does reallocation violate the provision of article XIII A of the California Constitution (Proposition 13).

2. Assuming passage of the measure as outlined above, does the City Council have authority to establish user fees for trash collection and disposal without violating any provisions of article XIII A of the California Constitution?

We conclude as follows:

1. No, the proposed amendment to the 1919 Trash Ordinance with the best efforts language included, would not violate the provisions of article XIII A of the California State Constitution.

2. Yes, the City Council would have the authority to establish user fees for trash collection and disposal services and those fees, if properly structured, would not violate the provisions of article XIII A of the California State Constitution.

BACKGROUND

On February 3, 1992, the City Council approved by a 5-4 vote the proposal to amend the 1919 Trash Ordinance to require trash collection and disposal services be furnished and paid for by cost recovery user fees. The end result of this amendment would be the potential for reallocation of General Fund monies heretofore allocated to financially support this service in the amount of approximately \$26 million in fiscal 1993. The amendment would require that the City Council use its best efforts to reallocate the General Fund monies to enhance police, fire, library and community and neighborhood park and recreation facilities and services, but would not mandate such a reallocation.

ANALYSIS

I. Reallocation Issue

Article XIII A was adopted by the electorate in June 1978, as an

initiative measure designed to change "the previous system of real property taxation and tax procedure by imposing important limitations upon the assessment and taxing powers of state and local governments." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 218 (1978) (wherein the California Supreme Court upheld the constitutionality of article XIII A).

Specifically, section 4 of article XIII A states:

Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district emphasis added.

Consequently, section 4 provides that a "special tax" requires a two-thirds vote of qualified electors. In *City and County of San Francisco v. Farrell*, 32 Cal.3d 47, 57 (1982), the court held that "special tax" as used in section 4 means taxes which are levied for a specific purpose. In addition, the court held that increases in payroll and gross receipts taxes, "the proceeds of which were to be used for general governmental purposes, was not a 'special tax' and was not subject to the two-thirds vote requirement of section 4 emphasis added." *Id.*

Recently, in *Rider v. County of San Diego*, 1 Cal.4th 1, 5 (1991), the California Supreme Court concluded that the increased sales tax imposed on sales occurring in San Diego County for the purposes of financing the construction and operation of criminal detention and/or courthouse facilities was invalid because it was not approved by at least two-thirds of the county's voters as required in section 4. The trial court applied the Farrell's test and concluded that the sales tax was indeed a "special tax" because its revenues were earmarked for the specific purpose of funding the county's justice facilities, and not for "general governmental purposes." *Id.* at 14. The Supreme Court, relying on Farrell's rationale concluded that a "special tax" is one levied to fund a specific project or program. *Id.* at 15.

Here, in providing for "best efforts" to reallocate General Fund monies in order to enhance police, fire, library, and community and neighborhood park and recreation facilities and services (general governmental purposes) the proposed amendment will not be called a "special tax" and consequently will not require two-thirds vote of qualified electors because this direction is not a legal mandate to the legislative body but merely an expression of intent. Indeed, if the proposed amendment were directory in nature, i.e., requiring that it be done, our view would be to the contrary.

II. User Fee

A properly structured user fee would be essential to withstand a Proposition 13 challenge. The primary source for a city's imposition of a cost recovery user fee is the constitutional "police power" found in article XI, section 7 of the California Constitution. As long as the enactment is not in conflict with the general laws of the state, it is valid if for a public purpose which promotes public health, safety or welfare. Courts will defer to a city council's discretion to determine appropriate public purpose and need for fees. *Russ Bldg. Partnership v. City and County of San Francisco*, 44 Cal.3d 839 (1988). If a Proposition 13 challenge is made, then the City has the burden of proving that the fee was reasonably related to the service provided, the fee does not exceed the cost of the service, and the fee is segregated for that described use. *Beaumont Investors v. Beaumont - Cherry Valley Water Dist.*, 165 Cal.App.3d 227 (1985).

Therefore, in order to avoid constitutional infirmity, the City must ensure there is a sufficient nexus between the user fee established and the service provided. Also, as a part of that nexus, the user fee should not exceed the cost of the service and should be sufficiently described and segregated for its intended use.

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By

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