



MAYOR DARCY PAUL
dpaul@cupertino.org

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3195 • FAX: (408) 777-3366
CUPERTINO.ORG

April 8, 2022

The Honorable Marc Berman
California State Assemblymember, 24th District
Member 10th and O Street Offices, Suite 6130
Sacramento, CA 95814

RE: Opposing Initiative 21-0042A1

Dear Assemblymember Berman,

On behalf of the City of Cupertino, I am writing to express our opposition to Initiative Attorney General File No. 21-0042A1 (“Initiative 21-0042A1”), entitled by its proponents as the “Taxpayer Protection and Government Accountability Act Initiative,” which would upend the rules for how state and local governments can impose taxes, fees, and other charges. While this measure contains some valuable taxpayer transparency provisions such as requiring governments to fully disclose the use of tax generated funds, we believe that the initiative extends beyond transparency and would also have the undesirable effect of imposing onerous restrictions on revenue generation that is used to fund vital community services.

Specifically, this proposed initiative has three main components. First, it would expand the definition of a tax to include charges that the state and local governments refer to as fees, such as certain charges that are imposed for a benefit granted to a payer but not granted to those not charged. This would significantly alter the functional definition of taxes and would subject much needed revenue generation tools to greater vote requirements. Current law already imposes regulations on how local governments can levy fees, by requiring charges associated with fees to not exceed the reasonable costs of providing the associated product or service. The revenue that is generated from our taxes and fees goes to funding essential services, such as fire, police, public works, and parks and recreation.

Second, the initiative would establish new stringent approval requirements for increasing state and local taxes, whether sought by the governing body or the electorate. For local governments, any and all tax increases under the expanded definition of taxes mentioned above would first need to be approved by two-thirds of the legislative body before it is presented to the

electorate for consideration. Further, all proposed increases must be placed before voters on a regularly scheduled general election as opposed to a special election, except in cases of emergency, which can only be declared under unanimous agreement of the legislative body. Adding these new requirements to raise or impose taxes severely undercuts the ability for local governments to respond to the needs of its residents and remain nimble under varying conditions. In the event that there are immediate community needs that cannot conjure unanimous support from the legislative body to address, our communities will suffer.

Third, this initiative would place any new tax or fee increase under extreme legal scrutiny and would invite anyone to take costly and lengthy legal action against a governing body or an individual elected leader. Specifically, the initiative would require that all new taxes or tax increases include highly technical information regarding its specified use, longevity, and estimated cost to the electorate. The inclusion of this explanatory criterion for the passage of new taxes would significantly increase liability for public officials that could result in significant damages. For instance, the initiative states that state and local governments bear the burden of providing clear and convincing evidence that the levy of a “fee” not subject to the onerous vote threshold requirements is not a tax under the new definition. In the event a private citizen or entity determines that the passage of a new fee or tax was unclear or that the amount is unreasonable, a local government could be subject to long and costly litigation.

The measure states that it is illegal for public funds or public communication (even referencing the name of the measure) to be used to oppose or pass the measure. Any public official who approves an expenditure of funds and violates these terms is personally liable for the amount unlawfully expended in an action brought by the Attorney General, District Attorney, or a taxpayer. These new litigious standards will burden our state and local governing bodies and will distract from the pressing issues at hand. Moreover, it will likely have spillover effects that could result in many distancing themselves from assuming elected leadership positions due to fear of litigation from any individual who deems a tax or fee in violation of this initiative’s requirements.

Ultimately, tax and fee public policy has always been a hot topic that has dominated the states’ initiative process for decades. It’s important to understand that California has been largely divided on the topic because it relies on individual circumstances. As written, this measure will empower the state’s tax reform extremists to decimate the state and local governing processes by fixating on the hyper-specifics of tax policies, whose revenues are directed to serve the people.

The imposition of taxes and fees to fund public services is an essential tool of government. The COVID pandemic laid bare the necessity of allowing governing bodies at all levels of government to act immediately in order to provide to their communities during times of emergency. The Taxpayer Protection and Government Accountability Act Initiative would impose onerous and undemocratic restrictions on local governments and local voters that would reduce local revenues by billions every year and would decimate vital services like emergency

response, infrastructure, and virtually all local services. For these reasons, the City of Cupertino opposes Initiative 21-0042A1.

Sincerely,

A handwritten signature in blue ink that reads "Darcy Paul". The signature is fluid and cursive, with the first name "Darcy" being more prominent than the last name "Paul".

Darcy Paul
Mayor
City of Cupertino