

City Attorney's Impartial Analysis

The proposed ordinance would require the City to prepare and publish by March 1, 2013, a Certified Financial Report ("Report") of the City's financial obligations for the next twenty year period for employee and retiree expenses, capital improvements and capital assets, and the "productive capacity" of City services (collectively "Long Term Obligations"). It would also require an evaluation of the present value of these Long Term Obligations and the yearly expenses needed to meet them. The proposed ordinance requires an updated Report be prepared and published by the first Monday in March of each odd-numbered year.

The proposed ordinance would require that either the City Manager or an independent professional who has audited a Report certify in writing that the information in the Report or updated Report is reasonably accurate and complies with the requirements of the ordinance.

The proposed ordinance purports to prohibit the City Council and the voters from incurring or approving any debt financing, or imposing any new tax, assessment or property-related fee, or increasing any existing tax, assessment or property-related fee, or scheduling any election to impose or increase any tax, assessment or property-related fee, unless the City has prepared and published a biennial financial Report and such Report has been certified, except as required by the City Charter or state law.

Examples of debt financing, taxes, assessments and property-related fees that would be affected by the proposed ordinance and could not be adopted, renewed or increased in the absence of a certified Report, would include, but not be limited to:

- annual voter-approved inflation adjustments for special taxes (e.g. the library tax, parks tax, emergency medical services tax, etc.)
- business improvement district assessments;
- refuse fees;
- sewer fees;
- annual tax revenue anticipation notes, which are issued to maintain the City's cash flow pending receipt of property taxes from Alameda County; and
- refunding bonds (to refund outstanding bonds at lower interest rates).

The ordinance provision preventing approval debt financing, taxes assessments and property-related fees absent a certified Report would conflict with the City Council's authority under the City Charter by delegating Council authority to the City Manager or another party who is a "competent, independent professional", and appears to limit the rights of voters and property owners under the California Constitution to approve taxes, bonds, benefit assessments and fees.

s/ZACH COWAN
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