

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA, CALIFORNIA CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF PASADENA, CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION HELD ON TUESDAY, NOVEMBER 3, 2020, TO SUBMIT TO THE VOTERS A PASADENA CITY SERVICES PROTECTION MEASURE TO AMEND THE PASADENA CITY CHARTER

WHEREAS, in 1934 and 1942, the voters of Pasadena elected to incorporate into the Pasadena City Charter the ability to transfer money from the Light & Power Fund to the General Fund. For decades, the retail electric rates have funded these transfers;

WHEREAS, in 2017, the Light & Power Fund transfer provisions of Pasadena City Charter, Article XIV, were challenged in court in a class action lawsuit, and the matter remains in litigation (*Komesar v. City of Pasadena*); the class plaintiff argues that the portion of the electric rates used to fund the transfers is considered a tax, and that although Pasadena voters have approved the Charter provisions authorizing the transfer, voter approval requirements that are governed by Proposition 218 and Proposition 26 are not met, because the Charter does not explicitly authorize funding the transfers from retail electric rates;

WHEREAS, in response to this lawsuit, the City Council is proposing to place a measure (the "Pasadena City Services Protection Measure") on the ballot, amending the Charter to explicitly approve of (a) the past practice of funding the transfer from electric rates, and (b) such practice on a going-forward basis;

WHEREAS, residents investing in Pasadena Water & Power enjoy a consistent source of dependable local revenue for City services, even amid medical emergencies, natural disasters, or federal and state budget cuts;

WHEREAS, the City of Pasadena has experienced a \$30 million loss due to the COVID-19 pandemic, resulting in the use of reserved funds and the deferment of infrastructure projects to maintain its current response to the pandemic, public health programs, and other services benefitting Pasadena residents and businesses;

WHEREAS, the elimination of an additional \$18 million annually from the Light & Power Fund transfer to the General Fund will cause the City of Pasadena to have significant reductions in city services such as emergency 911 response, fire, paramedic, public health, senior services, homeless programs, street repairs, and other services;

WHEREAS, the City of Pasadena places significant importance on the vulnerable in its community, utilizing General Fund revenues, supported by the Light & Power Fund transfer, among other sources, to pay for the services and programs that address: homelessness by providing job training, veterans assistance, and transitioning families with young children away from or off the street; and senior services by providing meal programs, health and fitness programs, safety services, transportation, and social and housing support, to enhance the quality of life as residents age.

WHEREAS, revenues maintained by this Pasadena City Services Protection Measure, if approved, would be subject to annual independent audits, with public review of the City budget being widely available at City Hall, online, and at the City's public libraries;

WHEREAS, the Pasadena City Services Protection Measure reduces and limits the Light & Power Fund transfer to the General Fund to not more than 12 percent, previously as much as 16 percent;

WHEREAS, the Pasadena City Services Protection Measure will not raise taxes and will not raise utility rates;

WHEREAS, revenues from the Light & Power Fund transfer will be under local control and spent on quality of life services and programs benefitting Pasadena residents and businesses;

WHEREAS, since 1934, the Pasadena City Charter provisions calling for the annual Light & Power Fund transfer have previously gone to and been passed by voters a combined total of seven times;

WHEREAS, pursuant to the authority provided by California Constitution, Article XI, Section 3 and Pasadena City Charter Section 1205(A), the City Council of the City of Pasadena desires to submit to the voters the Pasadena City Services Protection Measure;

WHEREAS, the City Council is authorized to submit the Pasadena City Services Protection Measure to the voters;

WHEREAS, on October 28, 2019, in relevant part, the City Council adopted Resolution No. 9743, calling a Primary Municipal Election for Tuesday, March 3, 2020 and a General Municipal Election for Tuesday, November 3, 2020, and Resolution No. 9744, requesting that the Board of Supervisors of the County of Los Angeles approve the consolidation of the General Municipal Election with the Statewide General Election, and direct the Los Angeles County Registrar-Recorder/County Clerk to administer said elections on behalf of the City;

WHEREAS, at the March 3, 2020 Primary Municipal Election, no one candidate for the office of Mayor received a majority (50% plus 1) of the total votes cast for that office; and as such, and pursuant to Pasadena City Charter Section 1204, the two persons receiving the highest number of votes cast shall be the candidates for election at the City's General Municipal Election called for November 3, 2020; and

WHEREAS, the City Council wishes to also submit the Pasadena City Services Protection Measure to the voters at the November 3, 2020 General Municipal Election.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pasadena, California, as follows:

SECTION 1. Pursuant to the requirements of California Elections Code Section 10403, the Board of Supervisors is requested to consent and agree to the consolidation of the City's General Municipal Election with the Statewide General Election to be held on Tuesday, November 3, 2020, in the manner prescribed in California Elections Code Section 10418, for the purpose of electing a Mayor and to submit the Pasadena City Services Protection Measure to amend the Pasadena City Charter; and to direct the Registrar-Recorder/County Clerk to perform all necessary functions, services, and tasks related to: the complete and successful conduct of said consolidated elections; the provision of all election materials and equipment; the hiring, training and supervision of election workers and other election personnel; the printing and distribution of ballot materials; the translation of ballot materials; the administration of vote by mail

processing and signature verification; the collection of submitted ballots; the tallying of votes; and the canvassing and certification of election results.

SECTION 2. The City Council, pursuant to its right and authority, does order submitted to the voters of the City of Pasadena at the General Municipal Election, to be consolidated with the Statewide General Election on November 3, 2020, the following question:

Pasadena City Services Protection Measure Shall the measure maintaining 911 response, fire, paramedic, public health, senior and homeless services, street repairs, and other services by amending the City Charter to continue collecting in electric rates and maintain the longstanding transfer, limited to 12% gross revenue, providing \$18,000,000 annually to Pasadena's General Fund that does not increase taxes or utility rates until ended by voters, requiring financial audits with all funds locally controlled benefitting Pasadena residents, be adopted?	YES	
	NO	

SECTION 3. The text of the Charter amendment to implement the Pasadena City Services Protection Measure is attached hereto as Exhibit "A", and incorporated herein by this reference.

SECTION 4. The ballots to be used at the election shall be in form and content as required by law.

SECTION 5. The Vote Centers for the consolidated elections shall be open as required during the identified voting period, pursuant to Election Code Sections 4007 and 14404.

SECTION 6. The Los Angeles County Registrar-Recorder/County Clerk is authorized to canvass the returns of the General Election, including the Pasadena City Services Protection Measure, and to certify the same to the City Council of the City of Pasadena at the time and in the manner provided by law. The vote requirement for passage of the Pasadena City Services Protection Measure shall be a majority of votes cast (50% plus 1). The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 7. The City of Pasadena recognizes that additional costs will be incurred by the County by reason of these consolidated elections and agrees to

reimburse the County for the City's share of election related costs resulting from said consolidations. The City Director of Finance is authorized and directed to pay out of the General Fund of the City a sum equal to those costs upon the completion of the services as described above and upon presentation to the City of a bill.

SECTION 8. In all particulars not recited in this resolution, the election hereby called shall be held and conducted as provided by law for holding municipal elections in said City.

SECTION 9. The City Clerk is directed to forward without delay to the Board of Supervisors and to the Registrar-Recorder/County Clerk, each a certified copy of this resolution.

SECTION 10. The Board of Supervisors is requested to issue instructions to the Registrar-Recorder/County Clerk to take any and all steps necessary for the holding of these consolidated elections.

SECTION 11. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

SECTION 12. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Adopted at the regular meeting of the City Council on the _____ day of July, 2020, by the following vote:

AYES:

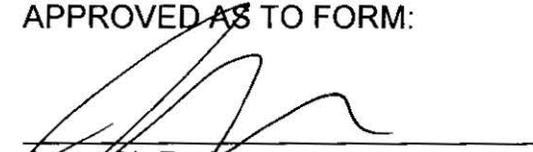
NOES:

ABSENT:

ABSTAIN:

Mark Jomsky, City Clerk

APPROVED AS TO FORM:



Javan N. Rad
Chief Assistant City Attorney

EXHIBIT A
Text of the Pasadena City Services Protection Measure

SECTION 1. Findings.

The People of the City of Pasadena hereby find and declare as follows:

(A) Article XIV of the Charter of the City of Pasadena currently directs the Pasadena City Council to make two transfers of money from the Light and Power Fund to the General Fund on an annual basis. The transfers were first approved by the People in the 1930s and 1940s, and they have remained in place, with minor modifications, ever since. One transfer must be used to pay off City bonds and fund municipal improvements, and the other may be used for any municipal purpose. Each transfer is set at 8% of the gross income received from the City's charges for electric service during the prior fiscal year, although the transfers may be reduced by the City Council if it determines that transferring the full amounts will be detrimental to the proper functioning and administration of the power utility. In addition, the two transfers, together, cannot exceed the total net income of the power utility during the prior fiscal year. This Act will combine the two transfers, allow the total amount transferred to be used for any municipal purpose, and reduce the maximum transfer from 16% to 12%.

(B) Article XIII C of the California Constitution mandates that all local taxes be approved by a vote of the local electorate. As amended in 2010, article XIII C defines "taxes" to include charges for electric service, to the extent those charges exceed the amount needed to recover the local agency's reasonable costs of providing electric service. It has been the City's practice for many decades to set its charges for electric service at rates that will generate enough revenue, in conjunction with other sources of revenue received by the power utility, to recover the cost of making the transfers and all other costs incurred to provide electric service. This practice has recently been challenged in a lawsuit filed in Los Angeles County Superior Court – *Komesar v. City of Pasadena* (Case No. BC 677632) – which alleges that article XIII C does not permit the City to recover the cost of the transfers from the power utility's ratepayers without express voter approval, and that the People's previous, repeated approvals of the transfers do not satisfy article XIII C. A recent ruling suggests that the trial court agrees with this contention.

(C) It is the understanding of the People that their previous approvals of the transfers were intended to authorize the City to recover the cost of the transfers from the power utility's ratepayers. This Act makes that intent explicit, by expressly authorizing the City to set electric service charges at rates that will generate enough revenue to allow the electric utility to pay all of its costs of providing electric service *and* make the transfers to the General Fund, consistent with the City's current rate-setting practices. The People believe that with respect to this issue, the Act is a clarification of existing law.

(D) The People also recognize that the pending lawsuit could result in a substantial loss of revenue that is currently used to support core municipal functions—including, but not limited to, emergency 911 response, fire, paramedic, public health, senior services, homeless programs, street repairs, and other general services—while simultaneously exposing the City to a large refund award. Such a result would be inconsistent with the People's views regarding the City's current rate-setting authority under the charter and would undermine the City's fiscal stability in a time of economic uncertainty. Accordingly, the People have determined that it is appropriate to apply this Act retroactively to all electric service charges collected on or after July 1, 2017.

(E) The Act also removes an existing charter provision authorizing the City to make certain transfers of money from the Water Fund to the General Fund. Because the City no longer makes these transfers, the provision is not necessary.

SECTION 2. Article XIV, section 1407 of the Charter of the City of Pasadena is amended to read:

Section 1407. RESERVED

SECTION 3. Article XIV, section 1408 of the Charter of the City of Pasadena is amended to read:

Section 1408. ANNUAL CONTRIBUTION FOR ANY MUNICIPAL PURPOSE.

Each fiscal year the City Council shall transfer from the Light and Power Fund an amount equal to twelve percent (12%) of the gross income of the electric works received during the immediately preceding fiscal year from the sale of electric energy at rates and charges fixed by ordinance. Said sum shall be transferred to the General Fund of the City by resolution not earlier than the receipt of the report by an independent certified public accountant on the examination of the books of account of the power utility nor later than the first day of June next succeeding the date of determination of the amount to be transferred. Nothing herein contained shall prohibit an advance of not to exceed seventy-five percent (75%) of the estimated amount prior to the receipt of the said report. The amount thus transferred may be expended for any municipal purpose.

The amount to be so transferred from the Light and Power Fund shall not exceed the net income of the electric works as shown on the books of account of the power utility, after payment of the maintenance and operating expenses of such works, the expenses of conducting the power utility, depreciation, and the principal, interest and premiums, if any, upon the redemption thereof, of electric works revenue bonds.

Notwithstanding anything herein contained, if the City Council at the time of or before the adoption of the budget shall determine that the transfer of such amount from the Light and Power Fund would be detrimental to the proper functioning and administration of the power utility during the budget year under consideration, the City Council may so find by resolution, and, in such event, no transfer of such amount shall

be made within that fiscal year. If the City Council shall determine that the transfer of an amount less than twelve percent (12%) from the Light and Power Fund would not be detrimental to the proper functioning and administration of the power utility during the budget year under consideration, the City Council may so declare by resolution, and shall transfer a smaller amount.

The City Council is authorized to set charges for electric service that, during the period when the charges are in effect, are sufficient to pay both the expenses of the power utility, as set forth in Section 1405, and all amounts that the City Council projects will be directed for transfer pursuant to this Section, before any adjustments based on the net income of the electric works.

SECTION 4. Retroactive Effect.

The final paragraph of Section 3 of this Act is intended to be a clarification of existing law. To that end, in addition to applying prospectively, this Act shall apply retroactively to all charges for electric service collected on or after July 1, 2017. Charges collected during the period of retroactive application are deemed to have been enacted pursuant to the authority granted in Section 3 of this Act and are hereby approved and ratified by the People.

SECTION 5. Severability.

If any section or subsection of this Act or any sentence, clause, phrase, or word in this Act is held to be unconstitutional, unlawful, or otherwise invalid, void, or unenforceable, the remainder of the Act shall remain in effect and shall be enforced. If the application of this Act to any person or group of persons is held to be unconstitutional, unlawful, or otherwise invalid, void, or unenforceable, the remainder of the Act shall continue to be enforced against all other persons or groups of persons. If the period of retroactivity or scope of retroactive application established by Section 4 of this Act is held to be unconstitutional, unlawful, or otherwise invalid, void, or enforceable, this Act shall be given the maximum retroactive effect permitted by law.