

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS
The San Luis Obispo City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

TITLE

AN INITIATIVE TO AMEND THE CITY CHARTER TO REQUIRE MAJORITY VOTER APPROVAL OF ANY CITY COUNCIL PROPOSAL TO IMPOSE, EXPAND, OR INCREASE ANY CITY REGULATORY OR USER FEE AND LIMIT THE AMOUNT OF ANY PROPOSED INCREASE

SUMMARY

Existing Law

Existing provisions of the State of California Constitution, Articles XIII C and XIII D (adopted by and referenced in this summary as Proposition 218) include detailed procedures for the imposition of all local government taxes, benefit assessments on real property, and property-related fees and charges, including voter approval requirements for certain property related fees and charges and procedures by which certain other fees or charges can be rejected by a majority protest of property owners.

Prior to approving certain new or increased fees, the City must: (1) hold at least one public hearing; (2) publish notice of the hearing twice at least 10 days before the hearing; (3) send notice of the meeting at least 14 days in advance to any interested person who has filed a written request; and (4) make available to the public, at least 10 days before the meeting, data indicating the amount of estimated cost required to provide the service for which the fee is levied and the revenue sources anticipated to provide the service.

Proposition 218 does not require voter approval of non-property related fees and charges and does not affect laws relating to the imposition of fees or charges as a condition of property development, to which other substantive and procedural statutory requirements apply. Cities must comply with Proposition 218's notice and majority protest requirements for charges related to water, sewer, and government-provided trash service.

Changes Proposed By Initiative

This initiative would add to the City's Charter a new Article XIII: "Voting Requirements for User and Regulatory Fees." The initiative would preclude the City Council from imposing, expanding, or increasing any regulatory or user fee unless such fee is placed on the ballot and approved by "a majority of the qualified electors of the City." Even with voter approval, the initiative states that "Proposed increases of existing regulatory and user fees shall not proportionally exceed the regional Per Capita Family Income levels, as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics, and the California State Department of Finance, for the month immediately prior to the time the fee increase is proposed by the Council for voter approval."

This initiative would exempt from its application any fee already addressed under Proposition 218, City franchise fees, state and federally mandated fees, and other regulatory or user fees already subject to statutory voter approval requirements or subject to existing state or federal statutes that would preempt a local voter approval requirement.

The initiative would nullify any fee imposed, expanded or increased by the City between January 1, 2010 and the election, unless approved by the voters within twelve months from enactment.

Petition for Submission to Voters of Proposed Amendment to the Charter of the City of San Luis Obispo TO THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO:

We, the undersigned, registered and qualified voters of the State of California, residents of the City of San Luis Obispo, pursuant to Section 3 of Article XI of the California Constitution and Chapter 2 (commencing with Section 34450) of Part 1 of Division 2 of Title 4 of the Government Code, present to the city council of the city this petition and request that the following proposed amendment to the charter of the city be submitted to the registered and qualified voters of the city for their adoption or rejection at an election on a date to be determined by the city council.

PROPOSED CHARTER AMENDMENT

The portions of the charter to be added are underlined and the portions to be deleted are printed in ~~strike-out~~ type.

**THE SAN LUIS OBISPO RIGHT TO VOTE ON FEES ACT OF 2010
CHARTER AMENDMENT**

THE PEOPLE OF THE CITY OF SAN LUIS OBISPO DO
ORDAIN AS FOLLOWS:

SECTION 1. Title

This Charter Amendment shall be known and may be cited as "The San Luis Obispo Right to Vote on Fees Act of 2010."

SECTION 2. Findings and Declarations

The People of the City of San Luis Obispo find and declare that:

(a) Since the people approved Proposition 13 in 1978, and Proposition 218 in 1996, the Constitution of the State of California has endowed taxpayers with a level of protection against excessive state and local taxes. These protections include requiring that increases in state taxes be adopted by not less than two-thirds of the members elected to each house of the Legislature, and that increases in local taxes be approved by the voters.

(b) Despite these limitations, financial burdens on Californians have continued to escalate. Rates for state personal income taxes, state and local sales and use taxes, and a myriad of state and local business

taxes are at all-time highs. Californians are taxed at one of the highest levels of any state in the nation.

(c) This escalation in taxation does not account for the recent phenomenon whereby local governments, such as the City of San Luis Obispo, have disguised new taxes as "fees" in order to extract even more revenue from taxpayers without having to abide by these constitutional voting requirements.

(d) Certain types of local fees, such as regulatory and user fees, have been found to be outside the citizen voting requirements imposed on other revenue sources, such as general and special taxes, assessments, and fees or charges that are an incident of property ownership.

(e) Regulatory and user fees represent significant categories of local revenue sources which are imposed, expanded, or increased without the direct consent of the People. To the extent that these local fees are not addressed by voting requirements under state law, this measure seeks to give the People of the City of San Luis Obispo a voice in the process.

SECTION 3. Purpose and Intent

The People of the City of San Luis Obispo hereby declare their purpose and intent in enacting the measure is as follows:

(a) To require that any imposition, expansion, or increase of a regulatory or user fee proposed by the San Luis Obispo City Council be approved by a majority vote of the qualified electors of the City.

(b) To require that such local voter approval be applied to any and all regulatory and user fees that are not otherwise governed by a state law voting requirement, or are otherwise exempt by virtue of preemption from such local voter approval under state law as it currently exists or as it might be changed or altered in the future.

SECTION 4. Voting Requirements For User and Regulatory Fees

The Charter of the City of San Luis Obispo is amended by adding ARTICLE XIII to read as follows:

SECTION 1301. DEFINITIONS

(a) Within this Article, terms undefined by this Charter shall have the same definitions as specified by the law of the State of California, whether constitutional, statutory, or judicial.

SECTION 1302. VOTING REQUIREMENTS FOR FEES

(a) Notwithstanding any provision of this Charter or the Municipal Code to the contrary, no regulatory fee or user fee shall be imposed, expanded, or increased by the City unless and until approved by a majority vote of the qualified electors of the City.

(b) No regulatory fee or user fee shall be imposed, expanded, increased, or collected in any amount above the actual cost of the program, service, or commodity provided, when considered in its entirety. No regulatory fee or user fee shall be imposed, increased, expanded, or collected in any amount above the proportional actual cost of the program, service, or commodity provided, as applied to an individual or an entity.

(c) Revenues derived from the regulatory or user fee shall not be used for any purpose other than that for which the regulatory or user fee was imposed, expanded, or increased.

(d) In calculating actual costs, the city may include reasonable administration costs and overhead; however, these costs shall be itemized as separate line items at the time the matter is submitted for voter approval.

(e) Proposed increases of existing regulatory and user fees shall not proportionally exceed the regional Per Capita Family Income levels, as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics, and the California State Department of Finance, for the month immediately prior to the time the fee increase is proposed by the Council for voter approval.

SECTION 1303. EXEMPTIONS

(a) This Article does not apply to any general tax, special tax, assessment, fee or charge under Article XIII Section C and D of the California Constitution.

(b) This Article shall not apply to franchise fees imposed pursuant to this Charter.

(c) This Article shall not apply to any fee which is required by the State or Federal government to be collected locally, the proceeds of which are remitted to the State or Federal government.

(d) This Article shall not apply to any regulatory or user fee which contain such procedures governing their imposition, expansion, or increase under state or federal law that the addition of local procedures is preempted in relation to a charter city.

SECTION 1304. EFFECTIVE DATE

Pursuant to subdivision (a) of Section 10 of Article II of the Constitution of the State of California, the provisions of this Article shall become effective the day after the election, except with respect to any regulatory or user fees subject to the provisions of this Article which are imposed, expanded, or increased between January 1, 2010, and the date of the election, whereby such imposition, expansion, or increase shall be treated as null and void twelve (12) months after such fees were imposed, expanded, or increased, unless approved by the voters and otherwise in conformance with this Article.

SECTION 5. Severability

In addition to the provisions of Section 108 of this Charter, if any section, part, provision, clause, or phrase of this Article or the application thereof to any person, entity, or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remaining portions or applications of this Article which can be given effect without the invalid or unconstitutional portions, and to this end the provisions of this amendment are severable.

Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of San Luis Obispo for the purpose of qualifying a charter amendment for the November 2010 general election. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

- The proposed charter amendment is intended to add a layer of protection to local property owners and fee payers from excessive rate increases.
- The budget shortfalls of the City are likely to be balanced on the backs of these property owners and fee payers if they are not endowed with the power to directly consent to rate increases.

The undersigned hereby request that the proposed charter amendment be submitted to the City Attorney for preparation of an official ballot title and summary.

Signed:

/s/
STEPHEN B. BARASCH
225 Prado Road
Suite H
San Luis Obispo, CA 93401

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NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

All signers of this petition must be registered to vote in San Luis Obispo, California.		This column for official use only
1.	Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	
2.	Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	
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11.	Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	

DECLARATION OF CIRCULATOR (To be completed in circulator's own hand after the above signatures have been obtained.)

I, _____, am registered to vote or qualified to register to vote in the State of California.

My residence address is _____ I circulated this section of the petition

and witnessed each of the appended signatures being written. Each signature on this petition is, to the best of my information and belief, the genuine signature of

the person whose name it purports to be. All signatures on this document were obtained between the dates of _____ and _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ at _____, CA.

Signature of Circulator _____
(complete signature indicating full name of circulator)