

IMPARTIAL ANALYSIS BY CITY ATTORNEY

MEASURE I

If approved by a majority of the qualified voters of the City voting on this matter, Measure I shall amend Article 7 of the Charter of the City of Pacific Grove to add an enforceable requirement that all elected officials be residents of the City.

Charter Article 7 now sets forth an elected official residency requirement that is not enforceable. The residency qualification stated in the City Charter is contrary to the “privileges and immunities” clause of the United States Constitution, as interpreted by the California Supreme Court in *Johnson v. Hamilton* (1975) 15 Cal. 3d 461, 472, 125 Cal. Rptr. 129. The *Johnson* case ruled that a pre-filing residency requirement of more than thirty (30) days violates equal protection rights. Thus, the current City Charter residency requirement cannot be enforced. Unless changed, the residency requirement for elected officials cannot be enforced.

This measure, if adopted, would require any person elected or appointed to a City elective office to be a resident and a registered voter of the City for at least thirty (30) days before that election or appointment.

A “YES” vote on this Measure means that Article 7 of the Charter of the City of Pacific Grove shall be amended to add an enforceable residency requirement for elective offices. A “NO” vote on this Measure means that no change shall occur to Article 7 of the Charter of the City of Pacific Grove, leaving the residency requirement unenforceable.

David C. Laredo
City Attorney
City of Pacific Grove

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MEASURE J

If approved by a majority of the qualified voters of the City voting on this matter, Measure J shall amend Article 9 of the Charter of the City of Pacific Grove to require the City Council to canvass election returns, declare election results and seat newly-elected officers at its first meeting after the election.

Currently Charter Article 9 requires that each of these activities occurs on the first Tuesday after the election. The current provision is contrary to the present Council meeting calendar whereby regular meetings are only held on Wednesdays.

The proposed amendment also clarifies that elected officers are required to file disclosure statements before they are seated.

A “YES” vote on this Measure means that Article 9 of the Charter of the City of Pacific Grove shall be amended to require canvassing of returns, declaration of election results and seating of elected officers at the first City Council meeting after the election. A “NO” vote on this Measure means that no change shall occur to Article 9 of the Charter of the City of Pacific Grove.

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MEASURE K

If approved by a majority of the qualified voters of the City voting on this matter, Measure K shall amend Article 11 of the Charter of the City of Pacific Grove to provide the manner in which the City Council shall fill a vacancy in the office of the Mayor. This Measure allows Council members to appoint, by four votes, one of their number as Mayor. If the Council does not fill the Mayoral vacancy within thirty (30) days, the Mayor pro tempore shall assume the office of Mayor.

Charter Article 11 currently fails to address how a Mayoral vacancy is to be filled. In 2006 the City sought extraordinary judicial relief to determine the proper procedure to appoint a successor to the vacancy caused by the resignation of Mayor James Costello (*Costello v. Pacific Grove*; Monterey Superior Court M 79436). By stating the manner in which a vacancy shall be filled, this Measure ensures that judicial relief will not be needed if a future vacancy occurs in the office of Mayor.

A “YES” vote on this Measure means that Article 11 of the Charter of the City of Pacific Grove shall be amended to provide an appointment process for a vacancy in the office of Mayor. A “NO” vote on this Measure means that no change shall occur to Article 11.

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MEASURE L

If approved by a majority of the qualified voters of the City voting on this matter, Measure L shall amend Article 13 of the Charter of the City of Pacific Grove to allow the City Council to cancel one of its two regular monthly meetings during a specific month.

Charter Article 13 now requires the City Council to hold two regular meetings each and every month of the year. Occasionally, two meetings are not needed in a single month. Also on occasion, the regular Council meeting schedule falls on a recognized holiday. For example, the July 4th holiday fell on a regular Council meeting date this year.

A “YES” vote on this Measure means that Article 13 of the Charter of the City of Pacific Grove shall be amended to allow five City Council members to cancel one regular Council meeting during a specific month. A “NO” vote on this Measure means that no change shall occur to Article 13.

David C. Laredo
City Attorney
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MEASURE M

If approved by a majority of the qualified voters of the City voting on this matter, Measure M shall amend Article 45 of the Charter of the City of Pacific Grove to add options for enforcement of violations of the City Charter, Municipal Code and City ordinances.

Charter Article 45 now requires each violation of the Charter to be prosecuted as a criminal misdemeanor. Penalties for any violation are to include fines, imprisonment, or both. Criminal misdemeanor enforcement, however, is time consuming and expensive and does not provide the most effective means to ensure compliance with City laws.

The proposed Charter amendment still allows misdemeanor enforcement for these violations, but also enables enforcement alternatives including infractions, civil actions, and administrative and citation processes to enforce the City Charter, the Municipal Code and ordinances. Penalties not set by the ordinance or resolution shall be those established by the general law of the State of California for misdemeanors or infractions.

A “YES” vote on this Measure means that Article 45 of the Charter of the City of Pacific Grove shall be amended to allow additional means to enforce Charter, Municipal Code and City ordinance violations. A “NO” vote on this Measure means that no change shall occur to Article 45, and that all violations of the Charter, Municipal Code and City ordinances shall continue to be prosecuted as criminal matters.

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MEASURE N

If approved by a majority of the qualified voters of the City voting on this matter, Measure N shall add Article 46 to the Charter of the City of Pacific Grove to ensure that each provision of the Charter is independently enforceable.

Currently the Charter does not have a “severability” or independent enforcement provision. The absence of such a provision exposes the entire Charter to potential challenge. The proposed Charter amendment provides that if any one provision of the Charter is held to be invalid or unenforceable, the people of the City of Pacific Grove declare their intent that they would have enacted each provision separately.

A “YES” vote on this Measure means that Article 46 shall be added to the Charter of the City of Pacific Grove to ensure that each provision of the Charter is independently enforceable. A “NO” vote on this Measure means that Article 46 shall not be added to the Charter of the City of Pacific Grove.

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MEASURE Q

This ballot measure is one of three linked tax proposals presented by the Pacific Grove City Council on this ballot. If approved, Measure O would increase the Business License Tax, Measure P would add a Parcel Tax, and Measure Q would increase the Uniform Sales and Use Tax within the City of Pacific Grove. A majority of voters must vote to approve each of the three separate measures (Measures O, P and Q) for any one of the taxes to be imposed. If any one measure fails to gain a majority vote, none of the tax measures shall be enacted.

The local Sales Tax is now set at the rate of one percent (1%) on the sale of most goods in the City. When combined with the State sales tax, the full sales tax is collected at the rate of seven and one quarter percent (7.25%) in Pacific Grove. If approved, the local Sales Tax would increase to one and one half percent (1.5%) for six years; the combined State and local sales tax would then be seven and three quarters percent (7.75%). If approved, the additional Sales Tax proposed by this measure shall end December 31, 2013. After that date, sales tax rates would return to levels authorized by State law, currently set at seven and one quarter percent (7.25%).

This measure proposes to amend Section 6.08.020 of the Pacific Grove Municipal Code. This would authorize the levy of an additional one-half percent (0.5%) Transaction and Use Tax (Sales Tax) within the City for six years. This amount would be added to and collected together with existing State and local sales taxes.

This measure shall be a general tax. California Revenue and Taxation Code section 7285.9 authorizes the City to increase the Sales and Use Tax for general use. The City may use this tax revenue for general functions such as police protection, fire suppression, storm water and sewer mains, street and pothole repair, park maintenance and restoration, library and museum purposes, recreation, code enforcement and other services.

The City Council authorized this measure to be placed on this ballot by unanimous vote in accord with California Constitution, Article XIII C. The Council determined a financial emergency to exist and that immediate and urgent enactment of new taxes is needed to preserve the public peace, health and safety of the community, to avoid work stoppage and/or service disruptions that shall result from staff cuts and reductions in force, and to avoid impairment of values services provided by the library, museum and recreation departments.

A "YES" vote shall authorize the one-half percent (0.5%) increase in the Sales Tax. A "NO" vote shall reject the one-half percent (0.5%) increase in the Sales Tax.

David C. Laredo
City Attorney
City of Pacific Grove

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MEASURE O

This ballot measure is one of three linked tax proposals presented by the Pacific Grove City Council on this ballot. If approved, Measure O would increase the Business License Tax, Measure P would add a Parcel Tax, and Measure Q would increase the Uniform Sales and Use Tax within the City of Pacific Grove. A majority of voters must vote to approve each of the three separate measures (Measures O, P and Q) for any one of the taxes to be imposed. If any one measure fails to gain a majority vote, none of the tax measures shall be enacted.

Pacific Grove Municipal Code Section 7.04.220 now levies a Business License Tax on businesses that conduct business within the City. The rate is set at one tenth of one percent (0.1%) of annual gross receipts for that business. The Code provides that the minimum tax is to be \$15 and the maximum tax is \$3,000. This measure would remove the \$3,000 tax limit during the period starting on January 1, 2008 and ending on December 31, 2013.

This measure would not change the Business License Tax rate; it would remain at one tenth of one percent (0.1%) of annual gross receipts. By eliminating the \$3,000 cap on the License Tax, this measure would affect businesses having gross receipts of more than three million dollars (\$3,000,000) per year. This measure shall not have any affect on businesses that have lesser annual gross receipts.

This measure shall authorize a general tax. The City may use this tax revenue for general functions such as police protection, fire suppression, storm water and sewer mains, street and pothole repair, park maintenance and restoration, library and museum purposes, recreation, code enforcement and other services.

The City Council authorized this measure to be placed on this ballot by unanimous vote in accord with California Constitution, Article XIII C. The City Council determined a financial emergency exists and immediate and urgent enactment of new taxes is needed to preserve the public peace, health and safety of the community, to avoid work stoppage and/or service disruptions that shall result from staff cuts and reductions in force, and to avoid impairment of services provided by the library, museum and recreation departments.

A "YES" vote shall authorize the \$3,000 maximum Business License Tax limit to be deleted for six years. A "NO" vote shall retain the \$3,000 maximum limit on the Business License Tax.

David C. Laredo
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City of Pacific Grove

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MEASURE P

This ballot measure is one of three linked tax proposals presented by the Pacific Grove City Council on this ballot. If approved, Measure O would increase the Business License Tax, Measure P would add a Parcel Tax, and Measure Q would increase the Uniform Sales and Use Tax within the City of Pacific Grove. A majority of voters must vote to approve each of the three separate measures (Measures O, P and Q) for any one of the taxes to be imposed. If any one measure fails to gain a majority vote, none of the tax measures shall be enacted.

The City of Pacific Grove currently does not levy a Parcel Tax. If approved, this measure shall impose an excise tax of one hundred and twenty dollars (\$120) on each non-exempt parcel of real property within the City. This measure defines a parcel to be any unit of land in Pacific Grove that receives a separate tax bill from the Monterey County Assessor's Office.

The Parcel Tax is an excise tax, not a property tax. It is based upon benefits provided by municipal services such as police, fire, recreation, planning, library, and museum programs, and from the availability of City franchises. Exemptions from the tax are available.

All property otherwise exempt from property taxes shall be exempt from the Parcel Tax. The Parcel Tax also includes an exemption for property owners who meet the City's criteria for "lower income" which is 60% of the median income for Monterey County, as defined by the U.S. Department of Housing and Urban Development and at California Health and Safety Code Section 50079.5. For 2007, the qualifying income level ranges from \$26,650 for a single-person household to \$44,100 for a six-person household. Additional full or proportional exemptions from the tax shall be available upon demonstration that a parcel is not benefited by, or is only partially benefited by, available municipal services or franchises.

This measure shall authorize a general tax. The City may use this tax revenue for general functions such as police protection, fire suppression, storm water and sewer mains, street and pothole repair, park maintenance and restoration, library and museum purposes, recreation, code enforcement and other services.

The City Council authorized this measure to be placed on this ballot by unanimous vote in accord with California Constitution, Article XIII C. The Council determined a financial emergency exists and immediate and urgent enactment of new taxes is needed to preserve the public peace, health and safety of the community, to avoid work stoppage and/or service disruptions that shall result from staff cuts and reductions in force, and to avoid impairment of values provided by the library, museum and recreation departments.

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A “YES” vote shall authorize the Parcel Tax. A “NO” vote shall reject the Parcel Tax.

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