

RESOLUTION NO. 10-7699

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA, OPPOSING PROPOSITION 16, THE “NEW
TWO-THIRDS VOTE REQUIREMENT OF LOCAL
PUBLIC ELECTRICITY PROVIDERS,” CALIFORNIA
STATE BALLOT PETITION 09-0015**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the above-captioned California State Ballot Petition 09-0015 (“Initiative”) was qualified for the June 2010 state ballot on January 12, 2010; and

WHEREAS, if enacted, the City of Santa Clara’s Electric Utility would be subject to the provisions of the Initiative; and

WHEREAS, certain provisions of the Initiative could have adverse impacts on the City’s ability to effectively provide economic and reliable electric service to customers of the City of Santa Clara’s Electric Utility; and

WHEREAS, a City Council Agenda Report (“Staff Report”), which included a recommendation to oppose the Initiative, was heard by the City Council at its regularly scheduled meeting on February 16, 2010; and,

WHEREAS, the City Council reviewed and approved the recommendations contained in the Staff Report, which included the recommendation that the City Council oppose the Initiative;

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby opposes the Initiative.
2. That the Mayor and City Manager are authorized to send copies of the Resolution upon request.

3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 16th DAY OF FEBRUARY, 2010, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:	Kennedy, Kornder, McLeod and Moore and Mayor Mahan
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	Caserta and Matthews
ABSTAINED:	COUNCILORS:	None

ATTEST:



ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:

1. New Two-Thirds Vote Requirement of Local Public Electricity Providers – Initiative Constitutional Amendment,” California State Ballot Petition 09-0015

May 28, 2009

09-0015

VIA PERSONAL DELIVERY

The Honorable Edmund G. Brown, Jr.
Attorney General
1300 I Street
Sacramento, CA 95814

RECEIVED

JUN 01 2009

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Krystal Paris, Initiative Coordinator

Re: Request for Title and Summary- Initiative Constitutional Amendment

Dear Mr. Brown:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request that a title and summary be prepared for the attached initiative entitled "The Taxpayers Right to Vote Act" as provided by law. Included with this submission is the required proponent affidavit signed by myself as proponent of this measure pursuant to section 9608 of the California Elections Code. My address as a registered voter is provided and attached to this letter, along with a check for \$200.00.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Steve Lucas (telephone: 415/389-6800).

Thank you for your assistance.

Sincerely,

Robert Lee Pence, Proponent

Enclosure: Proposed Initiative

Section 1. FINDINGS AND DECLARATIONS

09 - 0015

The People do find and declare:

A. This initiative shall be known as "The Taxpayers Right to Vote Act."

B. California law requires two-thirds voter approval for tax increases for specific purposes.

C. The politicians in local governments should be held to the same standard before using public funds, borrowing, issuing bonds guaranteed by ratepayers or taxpayers, or obtaining other debt or financing to start or expand electric delivery service, or to implement a plan to become an aggregate electricity provider.

D. Local governments often start or expand electric delivery service, or implement a plan to become an aggregate electricity provider, without approval by a vote of the people.

E. Frequently the start-up, expansion, or implementation plan requires either construction or acquisition of facilities or other services necessary to deliver the electric service, to be paid for with public funds, borrowing, bonds guaranteed by ratepayers or taxpayers, or other debt or financing.

F. The source of the public funds, borrowing, debt, and bond financing is generally the electricity rates charged to ratepayers as well as surcharges or taxes imposed on taxpayers.

G. Such use of public funds and many forms of borrowing, debt or financing do not presently require approval by a vote of the people, and where a vote is required, only a majority vote may be required.

Section 2. STATEMENT OF PURPOSE

A. The purpose of this initiative is to guarantee to ratepayers and taxpayers the right to vote any time a local government seeks to use public funds, public debt, bonds or liability, or taxes or other financing to start or

expand electric delivery service to a new territory or new customers, or to implement a plan to become an aggregate electricity provider.

B. If the start-up or expansion requires the construction or acquisition of facilities or services that will be paid for with public funds, or financed through bonds to be paid for or guaranteed by ratepayers or taxpayers, or to be paid for by other forms of public expenditure, borrowing, liability or debt, then two-thirds of the voters in the territory being served and two-thirds of the voters in the territory to be served, voting at an election, must approve the expenditure, borrowing, liability or debt. Also, if the implementation of a plan to become an aggregate electricity provider requires the use of public funds, or financing through bonds guaranteed by ratepayers or taxpayers, or other forms of public expenditure, borrowing, liability or debt, then two-thirds of the voters in the jurisdiction, voting at an election, must approve the expenditure, borrowing, liability or debt.

Section 3. Section 9.5 is added to Article XI of the California Constitution to read:

Sec. 9.5.

- (a) Except as provided in subdivision (h), no local government shall, at any time, incur any bonded or other indebtedness or liability in any manner or use any public funds for the construction or acquisition of facilities, works, goods, commodities, products or services to establish or expand electric delivery service, or to implement a plan to become an aggregate electricity provider, without the assent of two-thirds of the voters within the jurisdiction of the local government and two-thirds of the voters within the territory to be served, if any, voting at an election to be held for the purpose of approving the use of any public funds, or incurring any liability, or incurring any bonded or other borrowing or indebtedness.
- (b) "Local government" means a municipality or municipal corporation, a municipal utility district, a public utility district, an irrigation district, a city, including a charter city, a county, a city and county, a district, a special district, an agency, or a joint powers authority that includes one or more of these entities.

- (c) "Electric delivery service" means (1) transmission of electric power directly to retail end-use customers, (2) distribution of electric power to customers for resale or directly to retail end-use customers, or (3) sale of electric power to retail end-use customers.
- (d) "Expand electric delivery service" does not include (1) electric delivery service within the existing jurisdictional boundaries of a local government that is the sole electric delivery service provider within those boundaries, or (2) continuing to provide electric delivery service to customers already receiving electric delivery service from the local government prior to the enactment of this section.
- (e) "A plan to become an aggregate electricity provider" means a plan by a local government to provide community choice aggregation services or to replace the authorized local public utility in whole or in part for electric delivery service to any retail electricity customers within its jurisdiction.
- (f) "Public funds" means, without limitation, any taxes, funds, cash, income, equity, assets, proceeds of bonds or other financing or borrowing, or rates paid by ratepayers. "Public funds" do not include federal funds.
- (g) "Bonded or other indebtedness or liability" means, without limitation, any borrowing, bond, note, guarantee or other indebtedness, liability or obligation, direct or indirect, of any kind, contingent or otherwise, or use of any indebtedness, liability or obligation for reimbursement of any moneys expended from taxes, cash, income, equity, assets, contributions by ratepayers, the treasury of the local government or other sources.
- (h) This section shall not apply to any bonded or other indebtedness or liability or use of public funds that (1) has been approved by the voters within the jurisdiction of the local government and within the territory to be served, if any, prior to the enactment of this section; or (2) is solely for the purpose of purchasing, providing or supplying renewable electricity from biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal

current, or providing electric delivery service for the local government's own end use and not for electric delivery service to others.

Section 4. Conflicting Measures

A. This initiative is intended to be comprehensive. It is the intent of the People that in the event that this initiative and another initiative relating to the same subject appear on the same statewide election ballot, the provisions of the other initiative or initiatives are deemed to be in conflict with this initiative. In the event this initiative shall receive the greater number of affirmative votes, the provisions of this initiative shall prevail in their entirety, and all provisions of the other initiative or initiatives shall be null and void.

B. If this initiative is approved by voters but superseded by law or by any other conflicting ballot initiative approved by the voters at the same election, and the conflicting law or ballot initiative is later held invalid, this initiative shall be self-executing and given full force of law.

Section 5. Severability

The provisions of this initiative are severable. If any provision of this initiative or its application is held to be invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.