

COUNCIL COMMITTEE MINUTES

Concurrent Special Committee Meetings of the Sacramento City Council, Redevelopment Agency of the City of Sacramento, Housing Authority of the City of Sacramento and the Parking Authority of the City of Sacramento.

COMMITTEE NAME: Law and Legislation

MEETING DATE: May 24, 1990

MEETING TIME: 3:00 p.m.

LOCATION: **915 I STREET, 2ND FLOOR, COUNCIL CHAMBER**

I HEREBY CALL Special Meetings of the Sacramento City Council, Redevelopment Agency of the City of Sacramento, Housing Authority of the City of Sacramento, and Parking Authority of the City of Sacramento to be conducted concurrently with the Council committee meetings listed below, which are incorporated herein by reference. The Special Meetings are called to permit Members who are not on the listed committees to attend the meetings and participate in the discussions. In the event five (5) or more members of the City Council are present at a Committee meeting, only those items listed on the agenda can be acted on or discussed.

The meeting was called to order at 3:05 p.m. by Chair Lynn Robie.

PRESENT: Committeemembers Robie, Chinn, Serna* and Pane.**

* Committeemember Serna arrived at 3:15 p.m.

**Committeemember Pane arrived at 3:30 p.m.

It was requested that some of the items on the agenda be taken out of order.

14. Emergency ordinance amending Chapter 64 relating to Department of Finance and utility billing and collection procedures.

Recommendation of Staff: Recommend support and forward to Council.

Committee Action: Supported and forwarded to Council.

Voting Record: Moved: Chinn
Seconded: Robie
Ayes: Chinn, Robie
Absent: Serna, Pane

MINUTES:

There was no discussion.

COMMITTEE ACTION SHEET

16. Ordinances amending Chapter 19 relating to solid waste, Chapter 36 relating to sewage, Chapter 47 relating to water.

Recommendation of Staff: Recommend support and forward to Council.

Committee Action: Supported and forwarded to Council.

Voting Record: Moved: Chinn
Seconded: Robie
Ayes: Chinn, Robie
Absent: Serna, Pane

MINUTES:

There was no discussion.

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1. Legislative update from Ken Emanuels, the City's Legislative Advocate.

Recommendation of Staff: File

MINUTES:

Ken Emanuels, the City's Legislative Advocate, discussed some of the bills of interest to the C. He explained that the water meter bill is moving along, and that whether or not it passes will be very close. He said SB 46, the flood control bill, is making gradual progress, and Committee Chair Robie mentioned that the City Attorney's office will be hiring a full-time attorney to work on this issue.

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2. AB 3845 (Murray) relating to cable television.

Recommendation of Staff: Recommend opposition.

Committee Action: Opposed.

Voting Record: Moved: Chinn
Seconded: Robie
Ayes: Chinn, Robie
Absent: Serna, Pane

MINUTES:

Rich Esposto, Executive Director of the Sacramento Metropolitan Cable Commission presented this bill. There was no discussion.

COMMITTEE ACTION SHEET

5. ITEM CONTINUED FROM PREVIOUS PAGE.

Committee Action: Supported.
Voting Record: Moved: Chinn
Seconded: Robie
Ayes: Chinn, Robie
Absent: Serna, Pane

6. AB 3652 (Harris), as amended May 18, 1990, relating to Community-Based Gang Risk Intervention Pilot Programs.

Recommendation of Staff: Recommend opposition.
Committee Action: Opposed.
Voting Record: Moved: Chinn
Seconded: Robie
Ayes: Chinn, Robie
Absent: Serna, Pane

7. AB 3939 (McClintock), s amended April 5, 1990, relating to street gangs; minors.

Recommendation of Staff: Recommend support.
Committee Action: Supported.
Voting Record: Moved: Chinn
Seconded: Robie
Ayes: Chinn, Robie
Absent: Serna, Pane

MINUTES:

Lt. Chuck Hamilton of the Police Department presented these bills to the Committee. He said the main reason staff is opposing AB 3652 is because of where the money is coming from. Chinn moved to support AB 2617 and AB 3939 and to oppose AB 3652; Robie seconded the motion.

*Committeemember Serna arrived at 3:15 p.m.

8. AB 3436 (Isenberg) relating to consolidated freight lines.

Recommendation of Staff: Committee to take action.

ITEM CONTINUED ON FOLLOWING PAGE.

COMMITTEE ACTION SHEET

ITEM CONTINUED FROM PREVIOUS PAGE.

Committee Action:	Supported.
Voting Record:	Moved: Serna
	Seconded: Chinn
	Ayes: Serna, Chinn, Robie
	Absent: Pane

MINUTES:

Ken Emanuels, the City's Legislative Advocate, explained that the new amendments to this bill omit the San Francisco Bay Area, and provide that the members of the advisory board will now include representatives from the two cities, the two counties, RT and Caltrans. Serna moved to support AB 3436, Chinn seconded the motion, and it was unanimously supported. Serna asked whether this could go before the City Council next Tuesday night. It was noted that this would not need to go before the full Council, but Serna said he would like to see a resolution on this bill. Deputy City Attorney Diane Balter said she would see if this could be done in time.

9. AB 3297 (Bates) relating to local general plans and dependent care services.

Recommendation of Staff:	Recommend support.
Committee Action:	Supported.
Voting Record:	Moved: Chinn
	Seconded: Serna
	Ayes: Chinn, Serna, Robie
	Absent: Pane

MINUTES:

There was no discussion.

10. AB 2893 (L. Greene) relating to California Exposition and State Fair; taxes.

Recommendation of Staff:	Recommend opposition.
Committee Action:	Opposed.
Voting Record:	Moved: Chinn
	Seconded: Serna
	Ayes: Chinn, Serna, Robie
	Absent: Pane

ITEM CONTINUED ON FOLLOWING PAGE.

COMMITTEE ACTION SHEET

10. ITEM CONTINUED FROM PREVIOUS PAGE.

MINUTES:

Ken Emanuels stated that the only way to stop this bill is to convince the author that it is meaningless as it relates to a charter city. He said that the City Attorney is preparing an opinion on this bill now, and this opinion will help slow the bill down. There was some discussion as to charter cities' home rule exemption from State statutes which attempt to regulate matters which are municipal affairs. Chinn moved to oppose AB 2893, Serna seconded the motion, and it was unanimously opposed. A copy of the City Attorney's opinion is attached to these minutes.

11. Senate Constitutional Amendment 50 (Kopp) relating to insurance taxation.

Recommendation of Staff:	Recommend support.
Committee Action:	Supported, along with ACA 46 (Waters).
Voting Record:	Moved: Chinn Seconded: Serna Ayes: Chinn, Serna, Robie Absent: Pane

MINUTES:

Deputy City Attorney Diane Balter explained that this bill and ACA 46 (Waters) are similar, and that staff would like City support on both bills. It was agreed to support as well as ACA 46 as well as SCA 50 (Kopp). Chinn moved to support these two bills, Serna seconded the motion, and they were unanimously supported.

12. Funding of child abuse prevention training.

Recommendation of Staff:	Recommend support.
Committee Action:	Supported.
Voting Record:	Moved: Chinn Seconded: Serna Ayes: Chinn, Serna, Robie Absent: Pane

MINUTES:

There was no discussion.

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3. SB 2113 (Doolittle) relating to consolidation and annexations.

Recommendation of Staff: Recommend support.
Committee Action: Supported.
Voting Record: Moved: Chinn
Seconded: Serna
Ayes: Chinn, Serna, Robie
Absent: Pane

MINUTES:

Bob Smith, Executive Director of the Sacramento Ad-Hoc Charter Commission, presented this bill to the Committee. Chinn moved to support SB 2113, Serna seconded the motion, and it was unanimously supported.

15. An ordinance amending Sections 42.103, 42.109, and 42.110 of the Sacramento City Code, relating to food vending vehicles, and declaring said ordinance to be an emergency ordinance to take effect immediately.

Recommendation of Staff: Recommend support and forward to Council.
Committee Action: Supported and forwarded to Council.
Voting Record: Moved: Serna
Seconded: Chinn
Ayes: Serna, Chinn, Robie
Absent: Pane

MINUTES:

Louis Myles, Assistant Revenue Manager, presented this ordinance to the Committee. He explained that this ordinance will result in a savings to the City because the County now inspects these vehicles. There was some discussion as to the hours of operation, and it was noted that mobile food vendors would be permitted to operate during restricted hours only on non-residential private property with the permission of the occupant. Serna moved to support the ordinance, Chinn seconded the motion, and it was unanimously supported.

17. A resolution amending "Organization and Procedures Manual on Legislative Matters Affecting the City of Sacramento" relating to recycling and renewable resources.

Recommendation of Staff: Recommend support and forward to Council.

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17. ITEM CONTINUED FROM PREVIOUS PAGE.

Committee Action: Supported and forwarded to Council.

Voting Record: Moved: Serna
Seconded: Chinn
Ayes: Serna, Chinn, Robie
Absent: Pane

MINUTES:

Diane Balter, Deputy City Attorney, explained that about six weeks ago the Council approved a legislative approach on issues related to recycling, etc., and that this item would incorporate that approach into the Council's written legislative policy. Serna moved to support this resolution, Chinn seconded the motion, and it was unanimously supported.

**Committeemember Pane arrived at 3:30 p.m.

18. A resolution establishing the policy and procedure for disclosure of public records.

Recommendation of Staff: Recommend support and forward to Council.

Committee Action: Supported and forwarded to Council.

Voting Record: Moved: Chinn
Seconded: Serna
Ayes: Chinn, Serna, Robie, Pane

MINUTES:

Deputy City Attorney Diane Balter explained that this resolution makes a change in the 1988 resolution regarding public records, and that this change exempts trade secrets from the definition of public records. Chinn moved to support this resolution, Serna seconded the motion, and it was unanimously supported.

At this time Committeemember Serna asked for two ordinances. He stated he would like to see a limit on the terms for Advisory Commission members to the City Council to two consecutive terms, as he feels there is not enough turnover at this time, and that often the Commission members are in office longer than the Councilmembers. Chinn stated that Council-member Lyla Ferris is working on this now. Serna stated that the Mayor is supportive of this amendment. Committeemember Pane said that he would also like to see an amendment along these same lines for Councilmembers.

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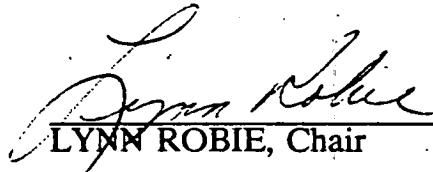
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Serna also said he would like to see an ordinance whereby persons testifying before the Council on development projects would be required to disclose any economic interests they may have with these projects or the developers. He noted that often people who testify before the Council will say they are "interested citizens" and later it is discovered that they work for the person who is presenting the project to the Council. Robie suggested that they look into the constitutionality of this type of request. Serna stressed that he isn't asking that persons be required to state money amounts; only whether or not they have an economic interest.

Chair Robie stated she feels that the issue of terms of members of boards and commissions, as well as elected officials, should be held until after the consolidation vote.

Committeemember Pane stated at this time that he hasn't seen any proposed budget as to how much money the City will receive if Propositions 108 and 111 should pass. Chair Robie said the City has gone on record in support of these propositions and that the Budget and Finance Committee will handle the budgetary part of these propositions; she believes staff is working on this now. Reggie Young of Public Works stated that Mel Johnson, Director of Public Works, will be addressing this issue next Tuesday at the Budget and Finance Committee meeting.

The meeting was adjourned at 3:40 p.m.


LYNN ROBIE, Chair

ATTEST:


JUDY SANDERS, Secretary



**OFFICE OF THE
CITY ATTORNEY**

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY

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JOSEPH McINERNEY

May 29, 1990

MEMORANDUM

TO: Law and Legislation Committee

FROM: James P. Jackson, City Attorney
Diane B. Balter, Deputy City Attorney

SUBJECT: Legal Opinion Relating to SB 2893 (L. Greene)
Relating to Cal Expo and Taxation

QUESTION PRESENTED

May the California Legislature bar the City of Sacramento, a charter city, from imposing an admissions tax on private entrepreneurs conducting events on the property of the California Exposition and State Fair?

BRIEF ANSWER

No, a statute prohibiting the City of Sacramento from imposing an admissions tax on a private entrepreneur operating within the city limits would run afoul of the principle that taxation is a municipal affair. Such a prohibition could be effected only by constitutional amendment.

ANALYSIS

SB 2893 (L. Greene) would, by its terms, prevent the City of Sacramento from imposing an admissions tax on private entrepreneurs conducting events on the property of the California Exposition and State Fair.

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At present, the City of Sacramento imposes no taxes on activities which are part of the State Fair, as the holding of the State Fair is considered to be a governmental activity. However, the City does assert a right to impose taxes on private organizations and individuals which conduct commercial activities at Cal Expo at any time other than during the State Fair.

A. Tax Not Barred by Concept of Sovereign Immunity.

Although not strictly necessary to answer the question posed, it is useful to review the concept of sovereign immunity in connection with State activities. A prohibition against taxing or regulating the State's conduct of its governmental functions derives from the principle of sovereign immunity. Board of Trustees v. City of Los Angeles (1975) 49 Cal.App.3d 45,49.

However, the courts do not easily extend that sovereign immunity to the State's proprietary functions and clearly do not extend it to private parties engaged in activities which would be proprietary if conducted by the State. On the subject of taxation, it has been held that a private party can be taxed by a charter city on gross receipts earned from work for the State relating to governmental functions even if the cost of the tax will be passed on to the State. City of Los Angeles v. A.E.C. Los Angeles, Inc. (1973) 33 Cal.App.3d 933. On the subject of regulation, it has been held that a private party using State property for commercial activity is subject to local regulation of that commercial activity. Board of Trustees v. City of Los Angeles, supra, 49 Cal.App.3d 45.

Thus, it is clear that in the absence of a valid prohibition, the City of Sacramento can impose its business operations tax, utility users tax, or any other tax (such as the admissions tax which was recently repealed by the City Council) on private entrepreneurs using a State facility.

The fact that a State agency may use revenue generated by the proprietary activities of private entrepreneurs to help support its governmental activities does not change the result. Local authority may be imposed even though it may affect the revenue generated by a State facility. Board of Trustees v. City of Los Angeles, supra, 49 Cal.App.3d at 49 (permitting local regulation affects State entity "only in whatever manner enforcement might affect the revenue production of" the state facility).

B. Charter City's Power to Tax Cannot Be Restricted by Statute.

The City's right to tax derives from the State Constitution and the City's Charter and is a municipal affair. See, A.B.C. Distributing Co. v. City and County of San Francisco (1975) 15 Cal.3d 566, 571, in which the Supreme Court said:

. . . the power of municipal corporations operating under a freeholder's charter to impose taxes for revenue purposes is

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strictly a municipal activity authorized by the State Constitution and subject only to those limitations appearing in the Constitution or the Charter itself.

The "home rule" doctrine of the California Constitution does not merely grant to chartered cities the authority to manage local affairs; it also restricts the power of the State Legislature to interfere with or override decisions on municipal matters made at the local level. Ex parte Braun (1903) 141 Cal 204, 209. The charter city's power to tax derives from the Constitution and cannot be limited by statute. Ainsworth v. Bryant (1949) 34 Cal.2d 465, 469; City of Glendale v. Trondsen (1957) 48 Cal.2d 93, 98-103.

In summary, enactment of SB 2893 (L. Greene) would not operate to prohibit the City's imposition of an admissions tax on private entrepreneurs renting Cal Expo facilities. The statute's purpose can only be accomplished by constitutional amendment.



DIANE B. BALTER
Deputy City Attorney

DBB/mr

¹ A December, 1989, Court of Appeal decision confirms the opinion set forth herein, noting that a statute may not limit a charter city's authority to impose taxes for revenue purposes, even if that statute concerns a matter of statewide concern. The Supreme Court has granted a hearing and a decision is expected later this year. Any definitive resolution of this issue must await the Supreme Court's action.