
***BGR's Review and Analysis
of The Real Property Service Charge
Proposed by the City of New Orleans***

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Executive Summary

On December 5, voters in the City of New Orleans will decide whether to authorize the City Council to levy a property service charge on real estate. The charge is to be based on the size of the parcel of property—presumably the land, though land is not specified in the proposal. The proposed charge is estimated to generate \$47.7 million a year.

The primary intended uses of the new revenues include pay raises for most city employees and for all public school employees. The proposed property service charge, if approved, would be the largest single operating revenue measure approved by voters in the city's history. Previous attempts to gain voter approval of a smaller version of a property service charge were defeated in 1986 and twice in 1990.

The BGR Board of Directors, at its October meeting, concluded that the property service charge proposal was seriously flawed and voted overwhelmingly to oppose the proposal. This report outlines the basis for BGR's opposition.

BGR concludes that the current proposal has serious deficiencies and omissions, is misleading to the public, and—despite the unprecedented size of the proposed revenue increase—would do little to address the serious, fundamental fiscal plight of the City.

Misleading Nature of Proposal

BGR is very concerned that the public may vote for this proposal thinking that this additional revenue will solve the city's fiscal crunch and that it will pay for the employee raises its approval will obligate the School Board to provide. In fact, this proposal would accomplish neither of those purposes.

Impact on City Budget and Fiscal Problems

This proposal would have only a minor impact on the city's fundamental budget problems in 1999 and beyond. Only \$5 million at most, less than 11 percent of the total funds generated, would be used to address the projected shortfall in the 1999 budget (which the City estimates at \$31 million and BGR estimates at between \$41 and \$43 million).

Most of the funds would go for new expenditures (pay raises, longer library hours, more police) or to replace existing revenue (amusement tax). So the service charge proposal, if approved, would not even provide a one-year "fix" of the city's budget problems. This proposal certainly does not address the problem of closing the long-standing gap between continuing obligations and actual resources, and the City has put forward no other plan for doing so.

Possible Legal Problems

This report identifies a number of potential legal problems with the proposal, including the questionable constitutionality of the proposed transfer of funds from the City to the School Board and the vague and imprecise nature of the election resolution and ballot language. For example:

- ◆ The proposed transfer of funds from the City to the School Board may be unconstitutional since funding public schools is not a legal duty and obligation of the City. The Cooperative Endeavor Agreement between the City and the School Board, which presumably will set out the terms of the transfer, has not yet been made available for public review.
- ◆ The election proposition and the ordinance just introduced to adopt the service charge fail to define key terms which are essential to a clear understanding of how the service charge would be levied and collected—including what the charge will be applied to (land, surface area of ground-level improvements, surface area of multi-story improvements) and who is to pay (owner or lessee).

No Plan for City Pay Raises

With regard to the use of the funds, there is at this point no approved pay plan specifying how the major portion of the city funds will be used. There are no dollar amounts or percentages setting the proposed expenditure of funds in either the election resolution approved by the City Council or in any other legally binding document.

No Need for Across-the-Board School Pay Raises

The School Board is committed by union contracts and by verbal commitment to a six percent across-the-board raise for all school board employees if this proposal is approved by voters. BGR has already gone on record as opposing across-the-board raises for school employees and as opposing any raises in the absence of (1) a strategic plan that links spending with improved student learning and (2) a program of productivity incentives for employees. Even if one supported the across-the-board raise, the current proposal is inadequate. It will provide only \$13 million of the nearly \$17 million needed to pay for the six percent raises the first year.

Problems with the Property Service Charge as a Funding Mechanism

BGR sees a number of problems with this property service charge proposal as a funding mechanism, whatever the funds were used for:

- ◆ the large number of exemptions from the proposed charge;
- ◆ the inequities in imposition of the charge;

- ◆ difficulties in administration and collection of the charge; and
- ◆ the non-deductibility on federal or state tax returns, except as a business expense.

Other Options

Finally, BGR firmly rejects the often-repeated notion that the City has no other options than the present property service charge proposal. Other options are identified below.

No homestead exemption on New Orleans' municipal millage. The elimination of the homestead exemption on municipal millage would be a far better and more progressive alternative. This change would also make New Orleans' application of the homestead exemption consistent with that of every other city in Louisiana.

Council-enacted service charge. A more immediate option would be for the City Council to levy an increase in the city's service charge for specific services. This action can be taken without voter approval and could include a sunset provision to encourage the homestead exemption change.

No homestead exception on new school board taxes. Another "better option" would be for the Legislature to allow the Orleans Parish School Board and school boards statewide to levy new property taxes with the option that the homestead exemption not apply. Such an approach would not alter any property taxes now in place.

Revised and improved property service charge. Another option would be a better-thought-out, better-defined, and significantly revised property service charge.

Other. Finally, there remains the option of further reductions in operating expenses, either through increased efficiencies or through the elimination or reduction of certain services.

BGR Commitment

While opposing the December 5 proposition, BGR pledges its full cooperation to the City and the School Board in the review and consideration of these and all other options.

Summary of Proposal

On December 5, voters in Orleans Parish will be asked to approve a property service charge on residential and commercial property—presumably land, though land is not specified in the ballot proposal. The service charge, which is expected to generate \$47.7 million per year, would be used primarily to finance raises for most city workers and all public school employees. The property service charge would be applied uniformly on a per square foot basis, as shown in the table below.

Proposed Property Service Charge	
Type of Property	Charge
Residential	5 cents per square foot
Commercial	9 cents per square foot
Vacant Land	\$200.00 per acre for fewer than 5 acres (.0045 cents per square foot)
	\$ 100.00 per acre for 5 - 25 acres
	\$50.00 per acre for 25 - 100 acres
	\$10.00 per acre for 100 acres or more and for land outside the levee protection area for which there is no access
Caps	Maximum annual charge of \$35,000 on commercial property and unimproved vacant property Maximum annual charge of \$2,000 on residential property (as proposed by City Council Ordinance No. 22,273)

Exemptions from Property Service Charge

Types of property exempt from the proposed service charge are:

- 1) property owned by a person sixty-five (65) years or older with a homestead exemption, who is below federal poverty guidelines,
- 2) all property owned by local, state, or federal governments; and
- 3) property owned by all non-profit institutions exempt from ad valorem property taxes.

Cost to Property Owners

The owner of a home on a 50-by-100 foot square foot lot would pay \$250 per year for the property service charge. The owner of a 10,000 square foot lot in commercial use would pay \$900 per year.

Proposed Use of Property Service Charge

The proposed service charge would be used primarily to fund raises for the city and school board employees. All the proposed uses are shown in the table. The amounts and percentages listed in the table are taken from press releases issued by the Mayor’s Office, City of New Orleans. No dollar amounts or percentages setting the proposed expenditure of funds appear in either the election resolution approved by the City Council or in any other legally binding document. Thus, the entire \$47.7 million is not legally dedicated to these specific expenditures or functions in 1999 or beyond.

Proposed Use of Property Service Charge		
Purpose	Amount	Percent
City of New Orleans		
Provide pay increases for non-uniformed city employees	\$22 million	44
Permanently fund 200 additional police officers	\$6.5 million	13
Reduce city’s projected deficit	\$5.0 million	10
Eliminate city’s amusement tax	\$2.0 million	4
Open city libraries on Fridays	\$1.5 million	3

Orleans Parish School Board		
Provide pay increases for all public school employees	\$13 million	26
Total	\$50 million*	100
* Estimated yield has been reduced to \$47.7 million by the City because of changes made to the proposal. No corresponding adjustment to allocations has been made.		

It should also be noted that although the proposed distribution totals \$50 million, the City, subsequent to issuance of the news release, announced that a revised estimate on the yield is \$49 million. With the addition of a proposed cap on the charge on residential property, the latest estimate on the yield is \$47.7 million. It is not clear in which category(ies) the \$2.3 million reduction would occur. The cost of collecting the property service charge has not been estimated so has not been deducted from the estimated yield.

Effective Date

There is no expiration date or sunset provision for the proposed property service charge. The property service charge would commence in 1999. The additional property charge would be listed as a separate item on ad valorem tax bills mailed in December 1998 and due at the end of January 1999.

Election Provisions

The election will be held on December 5, 1998 under the “emergency provision” of state law and the state election code. The City Council, by a vote of 6 – 1, approved Resolution R-98-647, which calls the December 5, 1998 election and provides the ballot language (see the back cover for the specific ballot language). The Orleans Parish School Board, also by a vote of 6 – 1, approved a resolution on October 12, 1998 to withdraw a 13-mill property tax proposal from the November 3, 1998 ballot in favor of the joint property service charge on the December 5, 1998 ballot.

The City of New Orleans and the Orleans Parish School Board have each agreed to provide half of the \$400,000 estimated cost of holding the special election. In addition, the City and the School Board have each agreed to spend \$500,000 for an educational campaign on the proposal.

BGR Scope of Review: Eight Questions

In analyzing the property service charges proposal, BGR focused on the following questions:

1. Is there a clear and compelling need for the purposes proposed to be funded? Is the primary need (higher pay for city and school employees) well documented and defined?
2. Is the stated need the highest priority?
3. Is there an adopted or agreed-upon plan that would address the stated need or problem?
4. Would additional revenues be necessary to fund the adopted or proposed plan?
5. If additional revenues are needed, is the proposed method (the property service charge) the best revenue option?
6. Are there any significant legal problems or issues associated with the proposal?
7. Are the terms, conditions, and provisions of the proposal clear and understandable as to how the charge would be levied and the proceeds used?
8. Are there other factors that should be considered in an evaluation of the proposal?

BGR Analysis

Is there a clear and compelling need for the purposes proposed to be funded? Is the primary need (higher pay for city and school employees) well documented and defined?

City of New Orleans Yes

Orleans Parish School Board No

Seventy-three percent of the proposed funding would go for higher salaries for city and school employees.

Regarding city employees, a 1994 city-funded study by the national consulting firm of William M. Mercer, Inc., found that salaries for city workers were, on average, 31 percent below those for their counterparts in other cities. At that time, Mercer recommended a revised pay plan for city employees that would be phased in over a 5 – 7 year period. The total cost of fully implementing the plan was estimated to be \$31 million in 1994. The 1994 Mercer Study also included an implementation alternative for the City to establish a “competitive” rather than a “fully competitive” structure.

Since 1994, all city employees have received two pay raises totaling 7.5 percent. Prior to the 1994 study, the most recent pay raises for city employees had been given in 1987 (5 percent) and 1990 (5 percent). Thus, on average, the salary levels for city employees have increased a total of 17.5 percent since 1987, a little more than half the inflation rate between 1987 and 1998, which is 32 percent. With the exception of the police department and a few isolated job classifications, the current pay scales do not reach the levels suggested in the Mercer plan’s “fully competitive” structure.

In 1998, the Civil Service Commission updated the 1994 Mercer Plan recommendations and sent a revised plan to the City Council. The revised plan, if completely implemented, would cost approximately \$26 million per year.

BGR recognizes that there is a need to increase salary levels in city government in order to recruit and retain a quality work force. However, the frequently cited statistic that 36 percent of the city work force earn salaries below federal poverty guidelines is misleading and overstates the problem. The 36 percent figure assumes that every city worker has a family of four and that none of the other family members work or receive any other funds.

As the following federal poverty guidelines indicate, the percentage of city workers earning below the federal poverty guidelines would be zero, even under the current salary structure, if the only criterion were an individual’s salary level, rather than family size. According to the City Civil Service Department, no city employee currently earns less than \$7,890 per year.

Federal Poverty Guidelines	
Family Size	Income Level
1	\$ 7,890
2	10,610
3	13,330
4	16,050

Source: Census Bureau and U.S. Department of Health and Human Services, March, 1997

As for other city needs, the desirability of maintaining the police force at 1,700 officers, opening libraries on Fridays, or eliminating the amusement tax has not been challenged.

Regarding school board needs, there may be a need for additional teacher pay, but the entire structure of salary and benefits needs to be reviewed. With the recent state pay increase, teachers in Orleans Parish are paid close to the southern regional average. There is little justification for across-the board increases for all employees. In addition, any pay raises should be considered in relation to all public school needs identified in a still undeveloped strategic plan.

Is the stated need (increased pay) the highest priority?

City of New Orleans Unknown
 Orleans Parish School Board Unknown

In the case of the City, the need to update the pay plan is but one of many needs. Other major priorities include:

- ◆ maintaining the existing level of essential city services in the 1999 city operating budget. Although the City projected its deficit for 1999 at \$31 million, this figure does not include the additional \$10 - \$12 million that BGR estimates will be needed to fund jail operations in 1998 and 1999;

◆ continuing to address the city's estimated \$1 billion in capital needs for new and improved streets, playgrounds, parks and public buildings; and

◆ improving the city's sewerage and drainage infrastructure systems.

Absent a plan to cover the cost of maintaining the existing level of essential services, should the City embark on pay raises, eliminating the city's amusement tax, adding more police and extending the hours for the public libraries?

All of these expenditures, while certainly desirable, are new spending items. Without an overall fiscal plan or a clear statement of priorities, the City may end up paying employees more, but eliminating hundreds of positions and reducing services. The police department may have 1,700 officers; but reductions in the civilian workforce within the department could once again put higher paid officers behind desks, rather than on the streets.

While BGR is sympathetic to the need to increase city employee compensation, this need should be considered in the context of a clear statement of priorities and an overall fiscal plan.

Unfortunately, the same need for an overall plan exists for the Orleans Parish School Board. The fundamental element that should precede any and all requests for additional funding is a strategic plan that indicates clearly the priorities for new or additional funding, and the School Board still does not have one.

The Orleans Parish School Board has recently agreed to cooperate with the Greater New Orleans Education Foundation in the preparation of such a plan. Still, as voters face the December 5 election, there is no plan and no generally agreed upon set of priorities for funding.

Is there an adopted or agreed upon plan that would address the stated need or problem?

City of New Orleans No

Orleans Parish School Board No

The City of New Orleans has not adopted a proposed pay plan at this time for either the classified or unclassified employees. There is no indication what employee classes would be included (fire fighters, for example) or what percentage increases would go to classified or unclassified employees. There is also no information available on whether a revised pay plan would be tied to established benchmarks for productivity and work quality, as the City's Chief Administrative Officer has recently suggested.¹ The current description of the Workforce 2000 proposal includes a requirement for 15 hours of training for employees on an annual basis, but there is no mention of benchmarks for productivity and work quality.

In the case of the School Board, all employees would receive a six (6) percent across-the-board pay raise. As previously noted, however, there is no plan for performance accountability or productivity incentives and no rationale for across-the-board increases when some classes or types of school employee salaries are more competitive than others. The Memorandum of Understanding developed recently between the School Board and the Regional Education Foundation presents principles of accountability, but no specific plan has been developed.

Developing and approving a revised pay plan for the City will require a cooperative effort of the City Administration, the Civil Service Commission, the City Council, and the staff of the Department of Civil Service. With no pay plan in place, and with major compensation issues and policies yet to be resolved, it may be premature to ask voters to support funding.

Would additional revenues be necessary to fund the proposed plan?

City of New Orleans Yes, if one had been adopted
Orleans Parish School Board Yes

Despite the impending fiscal crunch, no credible plan has been put forward to reduce the city's general fund by \$22 million, the amount allocated to the proposed pay plan, without reducing or eliminating services. BGR believes that further "belt-tightening" somewhere in a \$499 million budget is generally possible and should always be pursued.

However, the areas which would appear to be the most likely candidates for budget cuts are funded with federal or enterprise funds. This means that further cuts in these areas would have no impact on the city's general fund revenue, which is the city's primary budget problem. While the City has yet to deliver on its long-overdue plan to reorganize city government, it is not expected that a reorganization would result in immediate, significant cost savings.

In addition, demographic trends are not in the city's favor. Recent population figures show the continued erosion of the tax base due to the out-migration of approximately 6,000 residents per year for the last ten years, on top of the major population losses experienced in the 1960s, '70s and '80s. The City has lost approximately 130,000 residents since 1960, a decline of 21 percent.

Furthermore, the City is still struggling to produce a balanced budget for the current year, with no plan yet announced to deal with a \$10-12 million shortfall for jail operations. The financial prospects for 1999 look even bleaker, with no fund balance available and without the heavy reliance on one-time revenues that have been used to balance past city budgets. It is quite unlikely that the State will agree anytime soon to assume more of the cost of funding court and criminal justice system costs. The commission established by the Governor to study the issue of state-mandated costs is not even scheduled to submit its report until the year 2000.

Compared to the City, the School Board is in better fiscal condition. At the end of the last fiscal year, the School Board had a positive fund balance of approximately \$17 million. BGR has repeatedly suggested, however, that no portion of the fund balance should be used to pay recurring operating expenses such as pay raises. The School Board needs to maintain an emergency fund amounting to at least five percent of its operating budget.

In addition to the need to maintain a “rainy-day fund” for emergencies, the School Board faces a contingent liability of \$30 – 37 million as a result of the unemployment insurance billing judgment now under appeal. Unfortunately for the School Board, the current proposal would not only require additional funds, it fails to provide them. The \$13 million which would go to the School Board under the current service charge proposal would still leave the Board nearly \$4 million short, in the first year, of what the promised six percent pay raise would cost. In subsequent years, the \$13 million figure would not increase, while the shortfall in providing the pay raises would continue.

If additional revenues are needed, is the proposed property service charge the best revenue option?

City of New Orleans No, at least not as currently proposed
Orleans Parish School Board No

A property service charge—but not the present one—may be a viable revenue option for the City. The current proposal, which will obligate the School Board to pay employees more money than the City proposes to transfer to the School Board, is certainly not the best revenue option for the School Board. Besides, the anticipated transfers of city funds to the School Board may not be constitutional.

The best revenue source would narrow or even eliminate many of the exemptions from the proposed service charge, would address some of the inequities embodied in the present proposal, and would avoid the other problems associated with the current proposal.

EXEMPTIONS

The proposed property service charge, like the ad valorem property tax, completely exempts numerous and extremely valuable properties. Proponents of the property service charge have argued that since the fee would be paid by everyone, the tax burden would be spread more evenly across the community. Unfortunately, this claim is only partially true. While some property owners who now do not pay ad valorem taxes, will pay the service charge, it is not true that “everyone will pay.” The exemptions to the property service charge include all land owned by:

◆ local, state, and federal governments, including property under lease to private corporations, such as Harrah’s Casino, the Chateau Sonesta Hotel, Riverwalk, the World Trade Center, One River Place, and private companies on Orleans Levee District and Dock Board lands;

- ◆ non-profit corporations including hospitals and educational institutions;
- ◆ labor unions;
- ◆ clubs, lodges, and fraternal and social clubs;
- ◆ business, industry and professional societies or associations; and t non-profit corporations devoted to promoting trade, travel and commerce.

Based on BGR's analysis, approximately 48 percent of the value of all real property would be exempt from the proposed property service charge, as it is now exempt from ad valorem property taxation. An opportunity is thus lost to recover at least some revenue from these properties.

INEQUITIES

Some of the inequities associated with the property service charge proposal result from the exemptions. For example, only residential owner-occupants in poverty who are also 65 or older are exempt.

The fairness of a service charge, however, that pays no attention to ability to pay except for the elderly is questionable. What about younger people who own their homes but live in poverty?

Likewise, elderly indigent persons who rent their homes would not be exempt from the charge, which will likely be passed on to tenants by landlords. By paying no attention to ability to pay on the lower spectrum of the income strata except for the elderly, the proposed service charge compounds the generally regressive impact of the state and local tax structure.

Other inequities and seeming inequities are associated with locations and uses of property, particularly if the service charge is looked at in isolation. For example, the owner of a highly profitable and valuable office tower and the land on which it sits in the CBD and the owner of a vacant warehouse in Central City and its land could be assessed the same charge, if the parcels of land were the same size. This situation seems unfair if the service charge is looked at in isolation from the rest of the local tax structure; but if the entire local tax structure is considered, the ad valorem property tax corrects for what looks unfair about the service charge alone.

Another possible inequity with the service charge is that large, non-income-producing tracts such as those in eastern New Orleans and the lower coast of Algiers would be particularly hard hit. A city ordinance was introduced November 5 to establish a cap on the charge for large residential lots. It is unclear, however, whether the proposed cap will be legal since the ballot language included a cap for commercial but not residential property. It is also unclear whether additional adjustments will be proposed and what impact other possible revisions may have on the estimated yield of the service charge.

DIFFICULTIES IN COLLECTION AND ADMINISTRATION

The City has no reliable, up-to-date and complete database on property that would clearly identify the owner(s) of the parcels of property, the use of the property, and its size.

There will also be cumbersome administrative problems. For example, who will review federal income tax forms and birth certificates to determine eligibility for exemptions? Who will determine whether the land is in commercial, residential, or mixed use or is unimproved? Who will verify the legitimacy of a non-profit corporation? Who will resolve errors in billing, resolve payment disputes, update changes in ownership? Would there be an appeal process? If so, who would process the appeals?

NON-DEDUCTIBILITY FOR INDIVIDUALS

The property service charge is unlikely to be deductible on federal and state income tax returns for individuals.

DISTORTING ECONOMIC EFFECTS

The property service charge may cause distortions in the local economy, such as an impetus to create more 501(C)(3) nonprofit organizations to circumvent the charge; the consolidation of separate parcels owned by a single owner into a single parcel to take advantage of the cap; and the potential for more demolition of buildings in order to qualify for the “vacant land” rate.

NON-GROWING REVENUE SOURCE

Finally, the amounts allocated to a new pay plan for city employees (\$22 million) and a pay raise for school employees (\$13 million) are fixed sums. The dollar amounts provided would fund a shrinking portion of the increased personnel costs each year because of automatic longevity pay increases for city employees (currently two-and-a-half percent every five years). The impact of inflation would further reduce fund value to both the City and School Board.

Are there any significant legal problems or issues associated with the proposal?

City of New Orleans Yes

Orleans Parish School Board Yes

The proposed transfer of revenues from the City to the School Board may not be constitutional. The Louisiana Constitution includes a prohibition against one political subdivision’s granting or donating funds to another (La. Const. 1974, Article VII, Section 14(a)). The Louisiana Supreme Court has ruled that the Cooperative Endeavor Agreement authorization provided for in subsection (c) of Section 14 of Article VII is not an exception to the prohibition against one political subdivision’s granting or donating

funds to another. (See *City of Port Allen v. La. Municipal Risk Management Agency, Inc. et al.*, 439 So.2d 399 (La. 1983).)

In order to justify the transfer of funds to the School Board called for by the city's proposal, the City will have to be able to show all of the following conditions:

1. that the transfer is made pursuant to a legal duty or obligation of the City to fund pay raises for School Board employees;
2. that the transfer is for a public purpose; and
3. that the City, as an entity making the donation or transfer of public funds pursuant to its municipal functions, will receive benefits comparable in value.

That the City can meet the second part (public purpose) of the three-part test is self-evident; its ability to meet the first and third criteria is debatable.

BGR has found no provision of the constitution and statutes of Louisiana nor of the City Charter that obligates or requires the City to fund the parish public schools or school board or to pay the salaries and benefits of public school employees.

The Attorney General, in his recent opinion to Mayor Morial, Opinion No. 98-410, decided that because the City has the authority to enter into a cooperative endeavor agreement with the School Board, the City, therefore, has a duty or obligation to fund the School Board. This kind of "boot-strap" reasoning is highly questionable.

With respect to the "benefits received" condition mentioned above, the City will presumably argue that the transfer of public funds will contribute to improving education in the City and that improved education will foster economic development and promote the general welfare. However, opponents might contend that this argument is so broad and loose that it could be used to authorize just about any proposed city donation for ostensible economic development or general welfare purposes and would render the Section 14 (a) prohibition meaningless.

If the voters approved the tax but the funds transfer were ruled unconstitutional, the City would still be able to impose and collect the tax. Since there is nothing in the ballot proposition that requires that any specific portion of the tax proceeds be transferred to the School Board, the City would probably be able to levy and collect the tax and expend all the proceeds on the city purposes to which the tax is dedicated.

The content of the proposed Cooperative Endeavor Agreement between the City and the School Board is completely unspecified at this point. It would be possible for the City to present to the School Board, as a take-it-or-leave-it offer, a proposed Cooperative Endeavor Agreement that made the public funds transfer contingent on the school board's acquiescence to a list of conditions, stipulations, and requirements which the Mayor and City Council, but not the School Board, deem to be in the best interests of public education. Such an agreement, either initially or in subsequent years, could require a significant transfer of power and authority from the School Board to the City.

Are the terms, conditions and provisions of the proposal adequately defined to provide a clear understanding of how the charge would be levied and the proceeds utilized?

City of New Orleans No
Orleans Parish School Board No

There are inadequacies in the ballot language authorizing the proposed service charge, and the proposed ordinance that would actually levy the charge does not remedy them. Further, the Cooperative Endeavor agreement between the City and the School Board has not been made public.

Under the provisions of the New Orleans City Charter, a tax or fee can only be effective after an ordinance is adopted and becomes law. Such an ordinance must be advertised and must lay over for twenty days as provided in the Charter. An ordinance to levy the property service charge was introduced on November 5 and could be acted upon anytime after November 25. The first regularly-scheduled council meeting after the required layover is December 1. Even if a special meeting were called, the schedule would leave little opportunity for public review and understanding of the proposed ordinance before the December 5 election.

The ordinance should provide the terms, conditions and definitions which will govern the levy, collection and distribution of the property service charge; but as introduced, it does not. For example, “residential” and “commercial” are not defined. Should the terms be construed as they are defined in the zoning ordinance? Or in property tax law? Or in the sanitation service charge ordinances? If a parcel is used for both residential and commercial purposes, which rate applies? Do both rates apply? Is an apartment hotel residential or commercial? What about a for-profit five-unit owner-occupied apartment complex? A time-share condominium? To continue with questions unanswered by the proposal, what is the definition of “vacant unimproved” property? Is a playground parcel in a walled community “vacant unimproved”? Is a 2,000 acre parcel with a boat launch and a pier “vacant unimproved”? What is the meaning of “property”? Is it land or land and improvements? Does “land outside the levee protection area for which there is no access” include privately-owned marshes and non-navigable water-bottoms? What is “no access”—no road? No Helicopter pad? Do the dollar caps on the charge apply per parcel or per owner? Is all property owned by a non-profit to be exempt from the property service charge, including land leased to a private entity for commercial purposes? Or only the property owned by a non-profit that is currently exempt from ad valorem taxes because of a charitable use?

The ordinance imposing and levying the charge will have to be consistent in every respect with the description presented to the voters in the ballot proposition. However, many conceivable features of the service charge ordinance are not described in the ballot proposition.

For example, the proposition does not say who must pay the service charge, though it implies the owner. Could lessees or tenants be deemed the payers, actually removing the obligation on owners of commercial parcels and adding to the city's collection and enforcement problems?

Furthermore, the proposition would authorize the imposition of charges at a given rate "per square foot" but does not say exactly what is to be measured--whether it is land, unimproved surface area, or improved surface area of a parcel of property. While the City Council probably meant "per square foot of improved and unimproved surface area of land of each record parcel of land," the ballot does not so state.

Finally, the scope, terms, extent, and conditions of the proposed Cooperative Endeavor Agreement between the City and the School Board have not yet been revealed.

Are there other factors which should be considered in the evaluation of the proposal?

City of New Orleans Yes

Orleans Parish School Board Yes

If approved, the property service charge would be another tax levied only in New Orleans vis-à-vis the rest of the metropolitan region. This new charge, when added to higher sales taxes, property taxes, and user charges, might lead to additional displacement of residents and businesses to suburban parishes. The disparity of the tax burden between the City and surrounding parishes becomes particularly troublesome when coupled with the probable increase in sewerage fees and imposition of a new drainage fee, likely to occur in December or early 1999.

In addition, the City is likely to propose the next round of capital improvements shortly after the first of the year. According to the May 1998 Moody's Investor Services report on New Orleans: Officials are currently working on the next five-year capital program, estimated at \$100 million to \$200 million and consisting of approximately 60 percent street improvements and 40 percent building renovations. Officials anticipate seeking voter authorization in 1999 for additional bonds to finance the capital program. Although the five-year capital plan recently introduced for city council review contains no general bond revenue beyond 1999, BGR was told by the capital planning staff that the next phase of the city's capital improvement plan will total approximately \$110 million and will likely be introduced in 1999.

While the disparity between New Orleans' and surrounding parishes' taxes is a growing concern, BGR also recognizes that citizens—both individual and corporate—may be inclined to leave because of the deterioration in services and the quality of life. Nevertheless, the disparity problem should be considered in the context of an overall fiscal and strategic plan to meet the city's human and physical infrastructure needs.

BGR Position

BGR opposes the proposed property service charge on the December 5 ballot. Although the proposal attempts to address a major need of the City (primarily an inadequate and outdated pay plan) and a contingent contractual obligation of the School Board (to grant six percent raises) the proposal is seriously deficient and lacking in many critical respects.

Missing elements

- ◆ An approved pay plan indicating what the city funds would be used for and how much it would cost
- ◆ An adopted ordinance that clearly defines how the property service charge would be levied and collected (definitions, procedures, etc.) and how much would go to what function or purpose
- ◆ An overall fiscal plan showing how the City plans to address its projected \$31 million deficit in 1999, with only \$5 million from this proposal committed to that purpose

A strategic plan for the Orleans Parish School Board (promised but not yet developed)

- ◆ An agreement between the City and the School Board outlining the terms and conditions of the proposed transfer of city funds to the School Board

Unnecessary element

- ◆ Across-the-board pay raises for all public school employees, particularly with no plan for accountability or performance incentives. (Twenty-seven percent of the proposed \$47.7 million is promised to this purpose.)

Legal questions or problems

- ◆ The proposed transfer of city funds to the School Board could be ruled unconstitutional because the city has no “duty or legal obligation” to fund pay raises for public school employees.
- ◆ Neither who is obligated to pay the charge nor exactly what the charge will be applied to (land or land and surface area of improvements) is clearly stated in either the ballot proposition or the proposed ordinance.
- ◆ Under either scenario (that the transfer of funds is unconstitutional or that the City requires conditions for funding that are unacceptable to the School Board), the City could end up collecting and using the entire \$47.7 million for city purposes.

Major concerns about the property service charge funding mechanism

- ◆ The charge exempts property owned by non-profits, schools, religious organizations, labor unions, business and professional organizations, social and fraternal clubs, lodges, health organizations, Mardi Gras krewes; trade, travel and commerce organizations; some cemeteries; and all local, state or federally owned land. Together, these exemptions encompass approximately 48 percent of the value of all real property in the City of New Orleans.
- ◆ Estimated revenue yields of the property service charge are based on inadequate information. Even though two experts have stated that the city's estimates are "plausible," the City has no reliable database on owner(s), dimensions of property, or classification of use to employ when preparing bills. Because of the six classes of property taxed at different rates with three caps, the need to document and verify exemptions, and the need to set up a review and appeal procedure, there will be substantial new costs involved in collecting the property service fee. The City's description of the proposal, however, states that "... no additional collection costs will be incurred."
- ◆ The property service charge would likely be non-deductible on a federal or state tax return except as a business expense.

Misleading aspects

- ◆ The public may vote for this proposal thinking that this additional revenue would solve the city's fiscal crunch. In fact, this proposal would have only a minor impact on the city's fundamental budget problems in 1999 and beyond. Only \$5 million at most (approximately 10 percent of the total funds generated) would be used to address the projected shortfall in the 1999 budget. Most of the funds would go for new expenditures (pay raises, libraries, more police) or to replace existing revenue (amusement tax). This proposal, if approved, would not even provide a one-year "fix" of the city's fiscal problems.
- ◆ The \$13 million proposed for the School Board would not entirely cover the raises the proposal's passage would obligate the School Board to pay. In some respects, the School Board would be worse off than it is now, in that an obligation is created that is not fully funded.

Concluding Remarks

BGR is neither blind nor unsympathetic to the fundamental fiscal challenges facing both the City of New Orleans and the Orleans Parish School Board: how to meet high needs for services with a comparatively low tax base.

Serious funding constraints face both the City and the School Board:

- ◆ Any additional property tax, as that tax is presently structured, is strongly opposed by the business community.
- ◆ Sales tax in general is a regressive form of taxation (that is, one whose burden falls disproportionately on those least able to pay), and the local sales tax is already at one of the highest rates in the nation.
- ◆ Local governments in Louisiana are blocked by the State Constitution from levying any form of income tax.

Given these constraints, a property service charge may be a viable revenue option; but the current proposal is far from the best or only option. The current proposal:

- ◆ obligates the City to new expenditures while failing to close old gaps between needs and revenues,
- ◆ obligates the School Board to expenditures the proposal fails to fully cover, and
- ◆ relies on an undefined agreement to transfer city funds to the School Board, that may be unconstitutional.

Other Options

BGR firmly rejects the often-repeated notion that the City has no other options than the present property service charge proposal.

No homestead exemption on New Orleans' municipal millage

A better option would be to end the applicability of the homestead exemption to the City of New Orleans' municipal millage, thereby putting New Orleans on a par with all other cities in the state. Proponents of the property service charge seem to implicitly assume that the "sacred cow" status of the homestead exemption vis-a-vis municipal taxes is unassailable, but this is an assumption that should not be accepted at face value. In 1990, voters in Orleans Parish and statewide approved a constitutional amendment that removed the homestead exemption from a proposed new 10-mill property tax for police and fire protection. Change in the applicability of the homestead exemption in New Orleans has been accomplished once and can be accomplished again.

No homestead exemption on new school board taxes

Another “better option” would be for the Legislature and voters to allow the Orleans Parish School Board and school boards statewide to levy new property taxes with the option that the homestead exemption not apply. Such an approach would not alter any property taxes now in place.

Council-enacted service charge

A more immediate revenue option for the City would be for the City Council to levy an increase in the city’s service charges for specific services. This action can be taken without voter approval and could include a sunset provision to encourage the homestead exemption change. Revised and improved property service charge.

Revised and improved property service charge

Another option would be an improved property service charge proposal, one:

- ◆ backed by a clear plan, with terms better defined;
- ◆ supported by a clear and detailed ordinance; and
- ◆ free of the possibly unconstitutional transfer of funds to another body.

Other

Finally, there remains the option of further reductions in operating expenses, either through increased efficiencies or through the elimination or reduction of certain services. BGR

BGR Commitment

While BGR opposes the December 5 proposition, it pledges its full cooperation in the review and consideration of these or other options.

December 5 Ballot Language

“Shall the City of New Orleans (“City“), levy an annual real property service charge of five cents (\$0.05) per square foot on residential property (including residential structures containing four (4) or less units) exclusive of property with a homestead exemption owned by a person sixty-five (65) years or older who is below the poverty guidelines issued annually by the United States; nine cents (\$0.09) per square foot on commercial property in (including residential structures containing five (5) or more units) with no levy on commercial property to exceed thirty-five thousand dollars (\$35,000.00); on all unimproved vacant property in Orleans Parish as follows: two hundred dollars (\$200.00) per acre for less than five (5) acres; one hundred dollars (\$100.00) per acre for five (5) up to twenty-five (25) acres; fifty dollars (\$50.00) per acre for twenty-five (25) up to one hundred (100) acres and ten dollars (\$10.00) per acre for one hundred acres or more and for land outside the levee protection area where there is no access, with no levy on said property to exceed thirty-five thousand dollars (\$35,000.00), with no charge to be levied on property owned by non-profit institutions or by local, state or federal government exempt from ad valorem property taxes, paid annually to commence in 1999, the proceeds to be dedicated for salaries and benefits for City employees; and for other City services, including but not limited to police and library, and dedicated through a cooperative endeavor agreement for salaries and benefits for Orleans Parish School Board employees?

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