

**Update on the Law of
Municipal Finance**
by
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New Cal Business Roundtable Initiative

- “The Taxpayer Protection and Government Accountability Act”
- Missed '22 ballot, but made '24 ballot
- Reprises a measure Big Soda traded for a ban on local soda taxes till 2031
- Seems to be backed by development interests and the target seems to be VMT taxes / fees on new development
- AMR donated \$3m in 2023

CBRT Measure

- The measure's impacts are draconian and impractical
- If it is not traded for legislation, it will attract well-funded opposition from public sector unions, environmentalists, and those who do business with government or require public infrastructure
- Nevertheless, we cannot ignore it

CBRT Measure

Impact on State

- Any increased tax – on even one taxpayer – requires voter approval
- All taxes must have sunsets
- All taxes must be limited to specified purposes
- Exempt fees require legislation, not agency action

CBRT Measure

Local Impacts

- Repeals *Upland* exception for initiative special taxes
- Fines require “adjudicatory process”
- No VMT tax or fee as condition of development or occupancy
- Expressly protects TBID and PBID assessments
- General tax ballot label must say “for general government use”

CBRT Measure

More Local Government Impacts

- Measure A / B proposals (general tax + advisory measure) forbidden
- Exempt fees must be adopted by legislative body, not staff or a commission
- No tax can be imposed by a charter amendment
- All parcel taxes require 2/3-voter approval

CBRT Measure

Impacts on both State and local governments

- Repeal special benefit exception to “tax” definition
- “Reasonable cost” becomes “actual cost” of a service or product, defined as “minimum amount necessary” net of other revenues “received to provide such service or product”
- Fees for use of government property must be “reasonable”
- Window period: taxes or fees approved after 1/1/22 sunset in 12/25 if not (re)adopted in compliance w/ this measure

CBRT Measure

More State / local government impacts

- Government bears burden of proof by “clear and convincing evidence”
- Receipt of \$ by private party is not a factor in identifying a tax (plastic bag fees, sure, but what about the minimum wage?)
- Voluntariness or receipt of benefit, privilege or other exchange is not a factor in identifying a tax
- “Impose” means “collect” – new suits with every payment?

CBRT Measure

What to do?

- Stay on top of the news
- If it makes the ballot, inform your stakeholders
- If you adopt new revenues before its fate is known, try to comply with it
- Fasten your seatbelts!

Response to CBRT Measure

ACA 13 (Ward, D-San Diego)

- Proposed constitutional amendment for March 2024 ballot – before CBRT measure will be voted in November 2023
- measure imposing supermajority requirements must pass by that supermajority
- So CBRT measure would require 2/3 voter approval
- Backed by the Speaker, introduced 7/13/23 and approved by Elections Committee and pending in Appropriations Committee as of 8/24/23

Business License Taxes

Cal. Cannabis Coalition v. City of Upland (2017)
3 Cal.5th 924

- DCA concluded Prop. 218 does not require 2/3-voter approval of tax imposed by initiative, only of taxes proposed by government; Supreme Court affirmed
- Court identified “loophole” later understood to allow initial special taxes without 2/3 vote

Upland & Special Taxes With Majority Voter Approval

City & County of San Francisco v. All Person Interested in the Matter of Proposition C (2020) 51 CA5th 703, review denied

- Business license tax increase to fund homeless programs got 60% approval
- City filed validation action; HJTA and business groups opposed
- DCA held initiative proposing special tax may pass w/ 50%+1 approval despite
 - Prop. 13
 - Prop. 218
 - City charter

Still More on Upland

- *HJTA v. City & County of San Francisco* (2021) 60 Cal.App.5th 227
 - Followed the first SF case; another victory for the City
 - City Councilmember service a proponent using his city hall address not a problem
- *City of Fresno v. Fresno Building Healthy Communities* (2020) 58 Cal.App.5th 884
 - Followed the SF case, ruling for Fresno

Still More on *Upland*

- *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058
 - Followed earlier cases, this was a parcel tax
 - School district involvement in drafting measure not a problem
- *Jobs & Housing Coalition v. City of Oakland* (2021) 73 Cal.App.5th 505
 - Followed earlier cases
 - Fact that ballot materials said 2/3 required was not a problem

Still More on Upland

Alliance San Diego v. City of San Diego (2023) ____
Cal.App.5th ____ [2023 WL 5163284]

- Initiative special tax for streets, homeless and Convention Center expansion got just less than 2/3 valid even though ballot materials said 2/3 required
- City waited till post-*Upland* cases decide to declare it passed and authorize debt
- Competing validation actions led to MJOP against City in trial court; DCA reversed
- But remands to try whether service of City-appointed Convention Center Corp. director as initiative proponent invalidates the measure (despite two SF cases on point)

More on *Upland*

- *Alameda Co. Taxpayers Assn v. County*, ACSC Nos. RG 2007 0099, RG 2007 0495, 1st DCA A166401
 - Validation and reverse validation cases filed 08/20 & 09/20
 - Trial court victories, appeals should be dismissed as untimely
 - Appeal fully briefed and awaiting argument as of 7/25/23

Sales & Use Tax

- Statute imposes a 2% cap on all local sales & use taxes
- Race-to-the-cap has begun in LA and Bay Area
- 2019 legislative proposals to lift the cap for some cities and counties
 - AB 618 (Scotts Valley, Emeryville) – vetoed
 - AB 723 (Alameda County and its cities) – Chapter 723 of the Statutes of 2019

Sales Tax

Southwest Jet Fuel Co. v. CDTFA, Fresno Superior Court Case No. 22 CECG 01224

- Plaintiff sued in April 2022 alleging collection of sales tax on jet fuel on 100% of sales violates Proposition 62, demanding \$10.7 million refund. The Plaintiff did not include the affected cities or counties as defendants. State demurred for failure to join indispensable parties Demurrer to be heard in late 2022
- Affects 7 counties and several large cities (with airports)
- Summary judgment notion set for 9/21/23

Sales Tax

Online Merchants Guild v. Maduros (9th Cir. 2022) 52 F.4th 1048

- affirmed dismissal of suit to restrain CA requirement for sale tax permits for internet sellers into CA under federal Tax Injunction Act because adequate state remedies provided

Sales Tax

AB 2887 (Garcia, D-Coachella)

- Sales tax exemption exemption for “alternative feedstock” manufacturing
- Effective 1/1/23 as PRC 26011.8

Sales Tax

AB 2622 (Mullin, D-San Mateo)

- Sales tax exemption for zero emissions transit buses
- Supported by local government associations
- Effective 1/1/23 as Rev & Tax Code 6377

Sales Tax

Grosz v. CDTFA (2023) 87 CA5th 428

- Taxpayer consumer lacked standing to challenge CDTFA's discretionary determination that Amazon is liable for sales tax on third-party transactions on its platform

Sales Tax

City of Oxnard v. Starr (2023) 88 Cal.App.5th 313

- initiative sequestering proceeds of sales and use tax until pavement standards met improper because topic was not legislative, but administrative

Sales Tax

- AB 52 (Grayson, D-Contra Costa)
 - Sales tax credit for research and development
 - FTB estimates substantial revenue losses to the State (and locals)
 - In Senate Appropriations suspense as of June 2023

Soda Taxes

Cultiva La Salud v. State of California (2023) 89
Cal.App.5th 868

- Invalidated part of 2018's AB 1838 — legislative deal to preempt soda taxes until 2031 in exchange for CBRT (temporarily) abandoning initiative to make nearly all government revenues subject to voter approval
- If charter city established home rule power to impose such a tax, CDTFA required to stop collected sales tax
- But soda tax ban in place until further charter city litigation

Cannabis Taxes

SB 512 (Bradford, D-Inglewood)

- Reduces cannabis taxes by excluding them from bases of all state and local sales and excise taxes
- May violate Prop. 64
- If the problem is a glut of supply and low commodity prices, why add to profits of retailers?
- Held in Assembly Rev. & Tax in July 2023

Property Taxes

290 Division (EAT), LLC v. City and County of San Francisco (2022) 86 Cal.App.5th 439

- Sale of city building to private party with covenant for three years below-market lease back and two years market-rate lease was assessed at full fair market value because the subsidy was not a public benefit agreement within the meaning of the Rev. & Tax Code

Property Tax

County of Sta Clara v. Superior Court (AT&T Mobility, LLC) (2023) 87CA5th 347

- Article XIII, section 19 does not require that investor-owned utility property be taxed at same rate as other property, although it does require uniform treatment of some business property

Property Taxes

AB 84 (Ward, D- San Diego)

- welfare exemption from property tax for low-income housing
- In Senate Appropriations Suspense as of August 2023

Property Tax

ACA 1 (Aguiar-Curry, D-Yolo)

- Would amend Prop. 13 to allow 55% voter approval of supplemental property taxes to fund bonds to finance public infrastructure and affordable housing
- In Assembly Appropriations Suspense as of 08/23

Property Tax

Olympic and Georgia Partners, LLC v. County of Los Angeles (2023) 90 Cal.App.5th 100, review granted

- County incorrectly assessed hotel because City subsidy was an intangible asset that should have been deduced from the income assessment

Property Tax and ERAF

- *North Sonoma Coast Fire Protection Dist. v. Roeser* (2022) 74 Cal.App5th 267
 - Rejected fire district's challenge to ERAF calculation following a LAFCO-approved reorganization
 - Application of technical aspects of ERAF specific to fire districts

Documentary Transfer Tax

HJTA & Apartment Assn of Greater LA v. LA, LASC 22 STCV39662 (filed 12/21/22)

- Initiative “mansion tax” of higher documentary transfer tax on sales of > \$5m to fund housing
- Suit argues that illegal special tax because approved by majority, not two-thirds, of voters
- Plaintiffs’ MJOP awaiting hearing date because parties DQ-ed the judge

Documentary Transfer Tax

More Challenges to Measure U LA

- *Newcastle Courtyards, LLC v. LA*, LASC 23 STCV00352 (ULA alleged to be retroactive in that it applies to sales after its effect date and not only to properties acquired after that date) – consolidated with HJTA, which is the lead case
- *Newcastle Courtyards, LLC v. LA*, C. D. Cal No. 2:23-cv-00104 – 3/27 motion to dismiss challenging federal jurisdiction under Tax Injunction Act, abstention in favor of LASC cases, under submission as of 06/22/23

Documentary Transfer Tax

Cal. Business Roundtable v. Santa Monica, LASC 23
SMCV 00111

- single-subject challenge to Sta. Monica progressive DTT to fund housing and schools
- filed 1/9/23, MJOP granted to City on 8/4/23
- Appeal may be likely

Documentary Transfer Tax

- *Ashford Hospitality v. City & County of San Francisco* (2021) 61 Cal.App.5th 498
 - Tiered documentary transfer tax did not violate equal protection
 - Generally, the ability to pay is a justification to ask someone to pay more (e.g., progressive income taxes)
 - But 1935 SCOTUS opinion found a progressive gross receipts tax violated equal protection; the case is still good authority, but is read very narrowly

Documentary Transfer Tax

- *CIM Urban REIT 211 Main Street (SF) LP v. City & County of San Francisco* (2022) 75 Cal.App.5th 939
 - Merger of limited partnerships was a “transfer” of property subject to documentary transfer tax
 - \$12m tax was disputed
 - City won several procedural issues, too

Documentary Transfer Tax

- *CSHV 1999 Harrison, LLC v. County of Alameda* (2023)
92 Cal.App.5th 1117, *petn. for review pending*
 - Cal STRS not exempt from documentary transfer tax as to investments operated by third parties

Parcel Taxes

Traiman v. Alameda USD (2023) ____ Cal.App.5th ____
[2023 WL 4982212]

- Parcel tax of \$299 per vacant parcel and \$0.265 per building square foot not to exceed \$7,999 per parcel was “uniform” w/in Gov Code section 50079
- Follows *Borikas v. Alameda USD* (2013) 214 Cal.App.4th 135 which invalidated tax of \$x per dwelling unit and ¢y per square foot of non-residential buildings

PACE Charges for Energy Conservation Upgrades

Morgan v. Ygrene Energy Fund, Inc. (2022) 84 Cal.App.5th 1002

- Property Assessed Clean Energy (PACE) lends ratepayers funds to install energy conservation equipment and collects debt on property tax roll
- Property owner required to exhaust property tax administrative remedies via County to seek refund of charges

Transient Occupancy (Hotel Bed) Taxes

- SB 584 (Limon, D-Sta. Barbara)
 - Would impose a 15% State bed tax on short-term rentals to fund affordable housing
 - In Assembly Housing & Community Development and Revenue & Tax committees
 - Hearing cancelled by author in June 2023
 - opposed by short-term renters and their platforms, business interests and some housing advocates object to prevailing wage provisions of the bill
 - Supported by labor and housing advocates

Utility Users Taxes

City of Torrance v. Southern California Edison Co. (2021)
61 Cal.App.5th 1071

- Cap and trade greenhouse gas program produces credits against power bills
- Utilities and PUC decided those credits reduce local UUT tax bases, but text of ordinances is to the contrary
- Torrance sued SCE to force it to collect tax on the credits, lost in the trial court, won on appeal
- Affects all 104 cities and counties with electricity UUTs
- Case partly settled; attorney fees denied, Culver City won penalties and interest

Utility Taxes / General Fund Transfers

- *Wyatt v. City of Sacramento* (2021) 60 Cal.App.3d 373
 - Post-218 approval of GFT from water, sewer, and trash utilities to general fund as a general tax was lawful
 - Plaintiffs had argued that Prop. 218 forbids all general UUTs
 - Victory means voters can approve GFTs

Utility Taxes / General Fund Transfers

- *Lejins v. Long Beach* (2021) 72 Cal.App.5th 303
 - Similar facts as *Wyatt v. Sacramento* – post-218 election to validate GFT from water and sewer utilities
 - Purported to distinguish *Wyatt* in ruling for challengers, but really disagrees with *Wyatt*
 - Bad fact: tax applied to non-resident customers of water utility, but election in City only

Utility Taxes / General Fund Transfers

Palmer v. City of Anaheim (2023) 90 Cal.App.5th 718

- Voter approval of charter amendment to authorize general fund transfer sufficient to protect it from prop. 218 / 26 challenge
- Effectively sides with *Wyatt* over *Lejins*
- Plaintiffs did not seek rehearing or review; case is final as of 6/20/23

More UUT disputes

Simpson v. City of Riverside, Riverside Sup. Ct. Case No. RIC 1906168

- Followed *Lejins*, distinguished *Wyatt, Palmer*
- In remedies phase as of 08/23

Beck v. City of Canyon Lake, Riverside Sup. Ct. Case No. VRI2202608

- City lost writ trial
- Considering appeal as of 08/23

Hotel Bed Taxes

Gajanan, Inc. v. City & County of San Francisco (2022)
77 Cal.App.5th 780

- Court relieved taxpayers of penalties and interest because their reliance on employee to file timely returns was reasonable
- Returns were filed, but were inaccurate
- Good faith defense to penalties allowed by ordinance is not optional for the City
- \$1.7m in issue

State Water Project Taxes

- State Water Contractors have pre-Prop. 13 authority to impose a property tax to fund their obligations to the DWR under the SWP contracts
- *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900 held such taxes survived Prop. 13 because the State Water Project and its associated contract, debts and taxes were pre-Prop. 13 debt
- *Goodman* rule reaffirmed in *Coachella Valley Water Dist. v. Superior Court* (2021) 61 Cal.App.5th 755
- May be important to pending discussions of a Delta conveyance / “Big Fix”

State Water Project Taxes

- *Coachella Valley Water District v. Superior Court* (2021)
61 Cal.App.5th 755
 - Challenge to tax must be brought in validation with very short statute of limitations
 - Case continues as to subsequent tax years, in remedies phase as of 08/23

Climate Resiliency Districts

SB 852 (Dodd, D-Napa)

- Authorizes creation of a RDA-like entity to fund projects to mitigate climate change
- Very broad financing powers, including power to tax, with voter approval
- No property tax share without consent of affected agencies
- Effective 1/1/23 as Gov Code § 62300 et seq.

Groundwater Extraction Charges

Ventura v. UWCD (2017) 3 Cal.5th 1191

- Groundwater charges subject to Prop. 26, not 218
- Remanded to decide if:
 - 3:1 ratio of ag. to non-ag. rates mandated by Water Code §75594 violates Prop. 26
 - Adequate justification for rates on UWCD's record
- DCA remanded to UWCD for a new hearing
- City prevailed again; UWCD appealed again

Groundwater Extraction Charges

City of San Buenaventura v. United Water Conservation Dist. (2022) 79 Cal.App.5th 110, review denied

- Affirmed City's victory on remand
- Statute requiring 3:1 ratio of M&I to ag fees unconstitutional
- District could not justify 3:1 ratio on any of its many records
- Standard of review under Prop. 26 is independent judgment
 - No deference to ratemaker
 - Follows 218 standard of *Silicon Valley*
- Prop. 26 requirement of "fair or reasonable relationship" between fee and a payor's burdens on and benefits from service allows ratemaker "flexibility"

SGMA Suits

Mojave Pistachios, LLC v. Indian Wells Valley Groundwater Authority, Orange Co. Sup. Ct. No. 30-2021-01187589

- Challenges GSP, sustainable yield report, and extraction fee
 - Alleges writs, validation, takings, constitutional claims, and CEQA violations
 - Fee of \$2,120 / AF and allocation of water to China Lake NAWS
 - Consolidated with other cases in Orange County
 - Latest demurrer set for 12/21/22
- *Searles Valley Minerals v. Indian Wells Valley Groundwater Authority*,
 - Focuses on the replenishment fee

Prop. 218 & Water Rates

- Challenges to tiered water rates after *Capistrano*:
 - *Patz v. Otay Water District, Coziahr v. Otay Water District*, 4th DCA Case No. D080308 – trial court invalidated tiered rates, City’s appeal fully briefed May 2023, but replies to amici due late August 2023
 - *Dreher v. LA DWP*, City won all but low-income discount; no refunds because plaintiff did not pay under protest; plaintiffs appealed
 - 2d DCA B329610
 - Record being prepared as of 08/23

Prop. 218 & Water Rates

- Still more suits:
 - *Campana v. EBMUD* (2023) 91 Cal.App.5th 1075
 - Suit time-barred
 - SOL starts when fees adopted, not when effective or collected
 - But GC 53759's new 120-day SOL runs from effectiveness
 - *Chinitz v. City of Sta. Cruz*, SCSC no. 19 CV 03364 (tiered rates) City prevailed, no appeal

Water Rates

- 2020's SB 323 (Caballero, D-Salinas)
 - Establishes a 120-day statute of limitations to challenge water and sewer rates, comparable to that for power rates
 - Must give notice of the SOL in notice of Prop. 218 protest hearing
 - Adopts GC 53759 for rates adopted after 1/1/21

Water Rates

Miner's Camp LLC v. Foresthill PUD, 3rd DCA Case No. C088828

- Rates include a charge to master-metered properties based on the number of units
- Customer sued without exhausting remedies by participating in the Prop. 218 hearing
- Trial court ruled for property owner on exhaustion and the merits and PUD appealed
- DCA ruled for challengers in unpublished decision
- Request to publish denied 10/19/22

Water Rates

Plata v. City of San Jose (2022) 74 Cal.App.5th 736,
review denied

- *Post-Capistrano* challenge to tiered water rates
- Late payments not subject to Prop. 218 analysis (and get lenient review under Prop. 26)
- Trial court abused its discretion to allow plaintiffs to raise at trial an issue not in Government Claims Act claim or in complaint

Water Rates

2023's AB 755 (Papan, D-San Mateo)

- Requires water cost-of-service analysis to isolate costs to serve top 10% of each customer class
- Would make it risky not to have tiered rates
- But tiered rates are challenging, too
- Pending Third Reading in Senate as of 8/22/23

Sewer Fees

Plantier v. Ramona MWD (2019) 7 Cal.5th 372

- Prop. 218 challenge to sewer fees defeated in trial court for failure to exhaust administrative remedies by participating in the Prop. 218 protest hearing
- S Ct. reversed, concluding the Prop. 218 protest proceeding was not fit to resolve complaint about EDU assignment
- Left open whether plaintiffs must participate in protest hearing to challenge fee increases
- Advisable to establish a local remedy that **does** apply to as-applied and facial challenges and to state in notice of 218 hearing that all challenges will be heard

Sewer Fees

- *Plantier v. Ramona Municipal Water Dist.* 4th DCA Case No. D079529
 - Affirmed trial court ruling decertify class as riven with internal conflicts
 - Ramona and CASA unsuccessfully sought publication
 - SCOCA denied review 1/11/23

Sewer Fees

SB 231 (Hertzberg, D-San Fernando Valley)

- Effective 1/1/18, defines “sewer” under Prop. 218 to include storm sewers (GC 53750(k))
- Seeks to overrule *HJTA v. Salinas* by statute, citing *Crawley v. Alameda* and *Griffith v. Pajaro*
- This authority is most safely used for stormwater reuse project benefitting water supplies
- Test litigation has not come
- Cited favorably in *Paradise Irr. Dist. v. Comm’n on State Mandates*
- Construed negatively, but not reached in *DOF v. Mandates Commission* (3rd DCA 2022)

Sewer Fees

Marks v. City of San Diego, San Diego Superior Court Case No. 37-2018-00014112

- Class action challenge to transfer from sewer to water fund to contribute to cost of advanced metering infrastructure
- Claims 50/50 split of AMI cost between utilities violates Prop. 218 because sewer does not benefit equally w/ water
- Trial court refused extra record evidence, but changed its mind post-*Malott*, City unsuccessfully sought writ review and SCOCA review
- City then settled for a 70/30 split of AMI costs

Sewer Fees

- *Allred v. City of San Diego*, SD Superior Court Case No. 37-2021-00030939
 - Alleges City overcharges sewer customers to cover bad debt from industrial dischargers and to subsidize rates to such dischargers
 - Class certification to be resolved Summer 2023
 - City preparing AR in 07/23

Sewer Fees

Raja Development Co., Inc. v. Napa Sanitary Dist. (2022)
86 Cal.App.5th 85

- Challenge to use portion of combined use and connection fee for sewer services not subject to validation under Gov Code 66022

Sewer Fees

Balderelli v. San Diego claim 2023

- Alleges sewer rates violate Prop. 218 b/c COSA showed need for change which city did not fully implement

Stormwater Fees

- *Dessin, LLC v. City of Sacramento*, Sac. Superior Court Case No. 34-2022-80003901
 - Reverse validation challenge to increase in storm water fee because margin of victory in property owner vote provided by city's own properties and those of other government agencies
 - Writ trial set for 11/27/23

Stormwater Fees

Dept. of Finance v. Commission on State Mandates
(2022) 85 Cal.App.5th 535, review denied

- Street-sweeping mandate not reimbursable b/c local governments can impose fees for trash removal
- But partial exemption from Prop. 218 for “sewer” fees limited to sanitary sewer fees
- Did not reach impact of 2017-18’s SB 231, which took the opposite view, b/c statute not retroactive to this case

Franchise Fees

Jacks v. City of Santa Barbara (2017) 3 Cal.5th 248

- SCE agreed to increased franchise fee upon PUC authorization for line item on power bills
- DCA found tax requiring voter approval
- Supreme Court remanded: Franchise fees must reflect reasonable value of franchise
 - Reasonable value may be shown by bona fide negotiations, “other indicia of worth”
 - Also reaffirms that valid fees do not become taxes simply because passed on to rate payers
- City won remand trial
- City won further appeal in an unpublished ruling; plaintiffs did not seek review

Trash Franchise Fees

Zolly v. City of Oakland (2022) 13 Cal.5th 780

- Challenge to franchise fee imposed on City solid waste franchisees under Props. 218 and *Jacks v. City of Santa Barbara*
- SCOCA ruled apartment owners had standing because they bore economic incidence of fee; city's claim otherwise could not be tested on demurrer
- Prop. 26 exception for use of property limited to tangible property, not franchise itself
- Fee was "imposed" so as to trigger Prop. 26 b/c established by legal authority
- Oakland can try to prove at trial that haulers get unusual rights in rights-of-way that are proportionate in value to franchise fee

Trash Franchise Fees

- Tips for protecting this revenue source
 - Avoid controversy if possible
 - Make a record that haulers get rights in rights-of-way that others do not (like the right to place bins in the street once a week)
 - Make a record that the value of those rights is at least roughly proportionate to the franchise fee
 - Have a cost-of-service study in your record; consider hiring a consultant, and have a lawyer review it
 - Separately cost regulatory fees (like AB 939 compliance fees)

Franchise Fees

Apartment Owners Association of California v. City of Los Angeles (2d DCA Case No. B313439)

- Class action challenge by well-known plaintiffs' lawyers to franchise fees on commercial and multi-family haulers under Prop. 218
- City won summary judgment; plaintiffs appealed
- DCA reversed and remanded citing *Zolly*
- LASC Case Nos. BC677423, BC709658
 - Summary judgment set for 2/22/24

Solid Waste Fees

Padilla v. City of San Jose (2022) 78 Cal.App.5th 1073,
review denied

- Class action challenge to collection of delinquent trash fees on tax roll
- Court affirmed trial court conclusion that plaintiffs could not pursue case because they had not paid the fees under protest under HSC 5470 et seq. or to pay first and litigate later
- Powerful defense for water, sewer and trash rates

Solid Waste Fees

- *Chiquita Canyon, LLC v. County of Los Angeles*, LA Superior Case No. BS171262
 - Challenge to landfill tipping fees imposed via CUP on landfill operator under Mitigation Fee Act
 - Trial court found some fees lacked nexus
 - Park development
 - Natural habitat
 - Disaster debris cleanup
 - Others lacked proportionality
 - AB 939 fee of 25¢ per ton
 - Road impacts of 50¢ per ton
 - \$200k to \$3m for alternative technology research
 - Granted writ 7/2/20, settled October 2022

Other Fees for Use of Public Property

Howard Jarvis Taxpayers Assn v. Bay Area Toll Authority
(2020) 51 CA5th 435

- Regional Measure 3 raised Bay Area bridge tolls \$3 to fund a range of transportation projects.
- Didn't get 2/3 at the polls or in the Legislature
- DCA upheld as property-use fee not limited to cost
- SCOCA granted review pending *Zolly* but dismissed review and case is now final

Other Fees for Use of Public Property

Turo, Inc. v. Superior Court (City and County of San Francisco) (2022) 80 Cal.App.5th 517

- Granted writ to reverse summary judgment for City to enforce airport access fee on car rental app
- DCA concluded app was a software provider, not a car rental company
- Another example of the difficulty of applying existing laws to e-commerce

Development Impact Fees

AB 602 (Grayson, D-Contra Costa) GC 65940.1, 66016.5, 66019

- Affects development impact fees on housing, including AB 1600 fees, Quimby fees, construction excise taxes, and Mello-Roos taxes
- Requires nexus study and rough proportionality, including fees allocated per square foot and not per dwelling unit
- Requires HCD to develop model nexus study
- Requires all fees to be posted to City's website and City to provide total fee calculation to developer on request
- Effective 1/1/22

Utility Connection & Capacity Charges

- 2022's AB 2536 (Grayson, D-Contra Costa)
 - Requires special districts to provide nexus studies for capacity and connection charges
 - Requires all local agencies to make the study available 14 days before rates are adopted
 - Adopted Gov. Code 66016.5 effective 1/1/23

Development Impact Fees

County of El Dorado v. Superior Court of El Dorado County (2019) 42 Cal.App.5th 620

- Statute of limitations to challenge DIFs is one-year
- But suit can be filed after each year's findings, so it serves to limit remedy, but not risk of suit
- AB 1600 findings are burdensome, but it is very risky not to do a good job on them every year
- Limited *Walker v. City of San Clemente* (2015) 239 Cal.App.4th 1350 which had ordered refund of all fees collected since inception of fee

Development Impact Fees

Hamilton and High, LLC v. City of Palo Alto (2023) 89 Cal.App.5th 528, review denied

- in-lieu parking fees are AB 1600 fees
- Time for suit runs from denial of refund claim, but no deadline for such a claim
- Questions *El Dorado*
- Legislative response is possible

Development Impact Fees

- 2021's AB 571 Mayes, I-Rancho Mirage
 - Forbids "inclusionary zoning fees and in-lieu fees" on affordable units in density bonus projects
 - GC 65915.1
 - Essentially no opposition in the Legislature
 - Effective 1/1/22

Development Impact Fees

- *Schmier v. City of Berkeley* (2022) 76 Cal.App.5th 549
 - Statute of limitations for challenge to affordable housing fee on condo conversion runs from imposition of fee, not recordation of lien to enforce it
 - Cites favorably problematic decision in *Honchariw v. County of Stanislaus* (5th DCA 2020) involving time to challenge map conditions

Development Impact Fees

Sheetz v. County of El Dorado (2022) 84 Cal.App.5th 394

- \$23,420 traffic impact fee on new house challenged as regulatory taking
- DCA affirmed County's victory, concluding
 - *Nollan / Dolan* analysis does not apply to legislative fees
 - AB 1600 does not require tract-specific analysis
 - Fee reasonably related to traffic impacts
- SCOCA denied review, petition for cert to SCOTUS pending as of 08/23

Development Impact Fees

Discovery Builders, Inc. v. City of Oakland (2023) 92 Cal.App.5th 799

- 2005 agreement provided for development's payment of fees to cover City's cost to monitor mitigation measures
- In 2016, developer alleged new citywide DIFs breached agreement
- DCA rules the contract did not mean that and, if it did, the City could not contract away its fee-setting power
- City not estopped to deny contract

Prop. 26 Litigation

Citizens for Fair REU Rates v. City of Redding (2018) 6 Cal.5th 1

- Challenge to electric utility PILOT
- Trial court found grandfathered
- DCA found subject to Prop. 26 b/c adopted w/ biennial budget & remanded for cost justification
- Court concluded fees not made taxes by PILOT because non-retail-rate revenues were sufficient to cover it
- Did not reach grandfathering issue or whether cost reasonable b/c comparable to taxes IOUs pay

Prop. 26 Litigation

Citizens for Fair REU Rates v. City of Redding (2018) 6 Cal.5th 1

- Gross proceeds of wholesale transactions treated as discretionary revenue
- May make sense to segregate reserves between those funded by rates and those funded by discretionary revenues
- 26 is plainly less demanding than 218
- Free-riders are a problem only if fee-payers cover them
- No duty to subsidize rates with discretionary revenue

Prop. 26 Litigation

Similar GFT challenges against gas and electric utilities

- Alameda – voters approved GFT in 12/16
- Anaheim (water settled, City won power: *Palmer v. City* (2023) 90 Cal.App.5th 718)
- Burbank (settled)
- *Beck v. City of Canyon Lake*, Riverside case no. RIC2003025 – city lost
- Glendale (unpub. Dec. 12/27/18, pub'n & review denied; plaintiffs' remedy appeal denied in unpublished decision; no petition for review filed)

Prop. 26 Litigation

- *Lejins v. Long Beach* – voter approval of GFT as tax lost in trial and DCA, SCOCA denied review
- Los Angeles (settled)
- *Hobbs v. Modesto Irrigation District* (lost liability phase; won remedy phase; plaintiffs settled for fees)
- *Green v. Palo Alto* (Won power, lost gas; settled on appeal)
- *Komesar v. Pasadena*, City won under *Wyatt*, appeal settled
- *Simpson v. Riverside*, RIC 1906168 (voter approved water GFT, remedies phase pending as of 08/23)

Prop. 26 Litigation

Otay Mesa Water Dist. v. City of San Diego, Otay Water District v. City of San Diego, Riverside Superior Court
Case No. RIC1804278

- Challenged San Diego's allocation of costs for recycled water to other utilities. Argues two recycled water systems should be costed separately
- Trial court ruled for San Diego concluding
 - No duty to set separate rates for 2 plants
 - Rates for recycled water were less than cost and therefore satisfied Prop. 26
- Remaining claims to be tried

Assessments

Silicon Valley Taxpayer's Ass'n v. Sta. Clara Co. Open Space Auth. (2008) 44 Cal.4th 431

- Independent judicial review of assessments
- Tighter definition of "special benefit"
- Open space and other services that benefit public broadly harder to justify
- Proportionality requirement unclear

BID Assessments

Dahms v. Downtown Pomona PBID (2009) 174 CA4th 708 allows:

- exemption of residential property from assessment for security, streetscape maintenance & marketing
- discounted assessments for non-profits
- use of front-street frontage for apportionment, along with lot & building size
- Very generous to agency; later cases less so
- *Broad Beach GHAD* read it narrowly

BID Assessments

AB 2890 (Bloom, D-Sta. Monica)

- Attempts to codify *Dahms'* standards for PBIDs
- Effective January 1, 2023
- Amends the PBID law

BID Assessments

Hill RHF Housing Partners, LP v. City of Los Angeles
(2021) 12 Cal.5th 458

- Affordable housing owner challenged renewal of two LA BIDS, claiming assessment not proportionate to its benefit
- City & BIDs prevailed on the merits at trial
- DCA affirmed for failure to exhaust administrative remedies
- SCOCA reversed, eliminating this defense in most Prop. 218 & 26 cases absent legislation
- Remanded for DCA to review merits, which ruled for City in unpublished decision

BID Assessments

- *Craig v. City of Stockton*, 3rd DCA Case No. C096280
 - Stockton prevailed in Prop. 218 challenge to Tourism BID
 - Plaintiffs appealed
 - Appeal abandoned 8/25/22

GHAD Assessments

Broad Beach GHAD v. All Persons (2022) 81 Cal.App.5th 1068

- Homeowners formed GHAD to fund beach restoration, approving two assessments without incident
- 2017 assessment to fund expensive Coastal Commission mandates drew controversy
- Trial court found insufficient justification for allocation of special benefit, insufficient general benefit, and concluded assessment should reflect cost of eminent domain to acquire construction access rights
- DCA affirmed

GHAD Assessments

- *Broad Beach GHAD*
 - DCA treated beach enhancement like a public park, demanding substantial public benefit
 - May make assessment funding of seaside projects difficult
 - Accepted trial court's fact-finding and rejected defenses that
 - Treated existing revetment as "facts on the ground," not part of the project
 - Beach enhancement as regulatory cost of project, not part of its special benefit
 - General benefits provided at no additional cost by provisions of special benefits need not be counted

Advice re Assessments

- Trend of cases is conservative (anti-assessment)
- Assessments other than for tried-and-true improvements and services are risky
- Use a strong, current engineer's report
- Get legal review of reports
- Consider special taxes instead; initiative special taxes need only 50% approval

Mandates

- *Dept. of Finance v. Commission on State Mandates*
(2021) 59 Cal.App.5th 546
 - NPDES business inspection mandates not reimbursable b/c local governments can impose fees on regulated businesses
 - Mandate for trash services at transit stops was a reimbursable mandate b/c local governments cannot impose fees on transit agencies

Mandates

Coast Community College Dist. v. Commission on State Mandates (2022) 13 Cal.5th 800

- Statute allows Chancellor of Community College System to reduce state funding to districts which do not satisfy state curriculum requirements
- SCOCA reversed DCA's ruling for district, concluding the expenditures were not legally compelled, but might be practically compelled, and remanded that issue

Gann Limit

- 2022 budget trailer bills amended the definition of “state subventions” under the Gann Limit statute to move a number of identified subventions to Counties’ Gann Limits rather than State’s
- Counties must report if this puts them over their Gann Limit by 11/1 of each year and, if so, the State will “take it back”
- One-time fix for a flush State budget?

Revenue Bonds

- *San Diegans for Open Government v. Public Facilities Financing Authority of City of San Diego* (2021) 63 Cal.App.5th 168
 - San Diego charter provision governing revenue bonds did not apply to JPA bonds
 - Nor did it apply to lease revenue bonds
 - The risk of litigation is always present in public finance
 - JPAs and lease/leaseback financing are immune from many challenges to other debt

Validation

Davis v. Fresno USD (2023) 14 Cal.5th 641

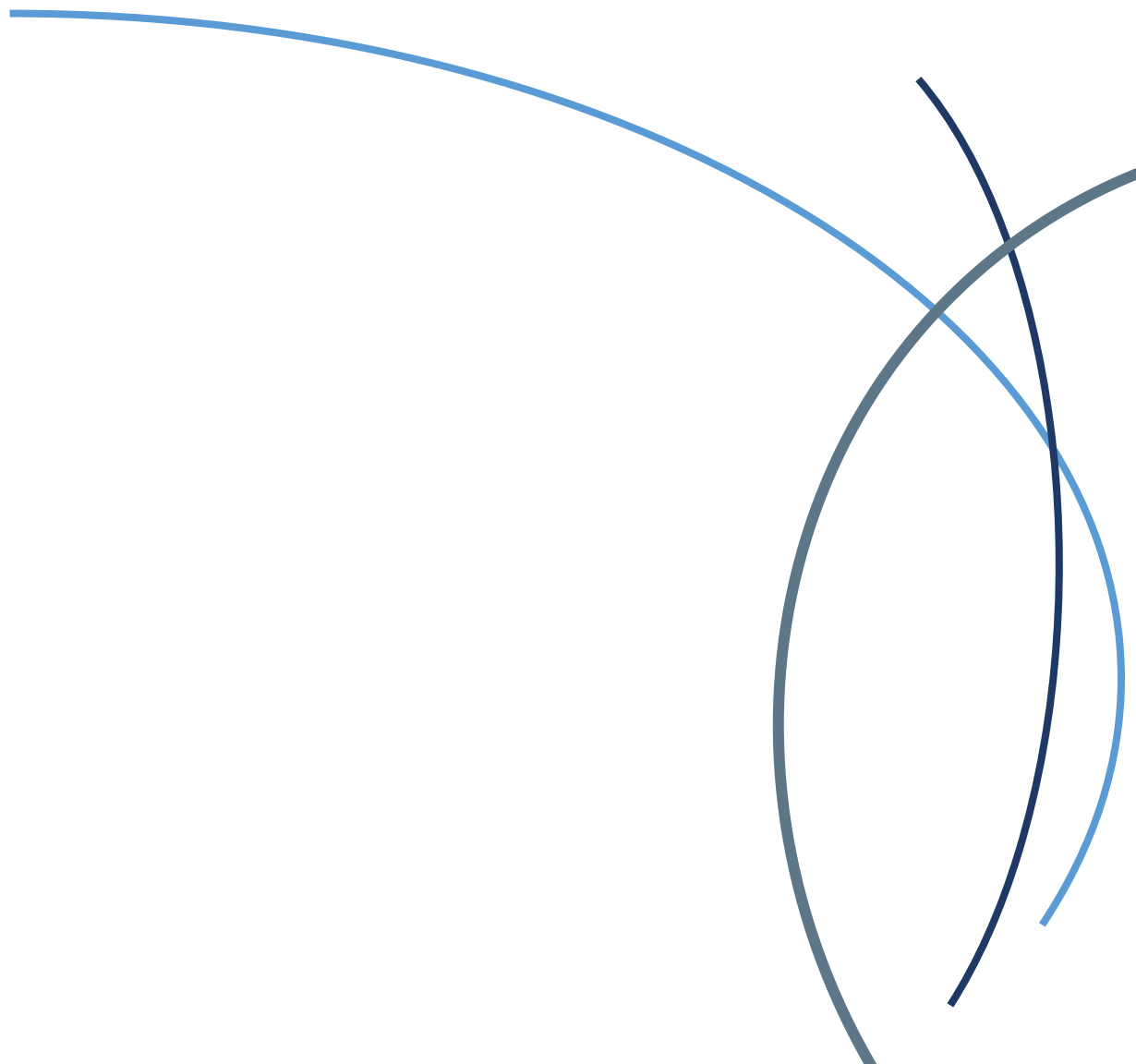
- Lease/lease-back construction contract was not subject to validation under Gov Code section 53511 because it did not finance construction – that was funded by proceeds of an earlier issue

Mandated Fiscal Training

SB 769 (Gonzalez, D-Long Beach)

- would mandate 2 hours of fiscal and financial training every two years for elected officials and compensated members of Brown Act bodies
- Limited to local governments categorized as “high risk” by State Auditor, which failed to timely file annual FTR, or knowingly submitted a false FTR.
- In Assembly Appropriations Suspense as of 07/23

Questions?



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