

**Selected Topics in
Municipal Finance**
by
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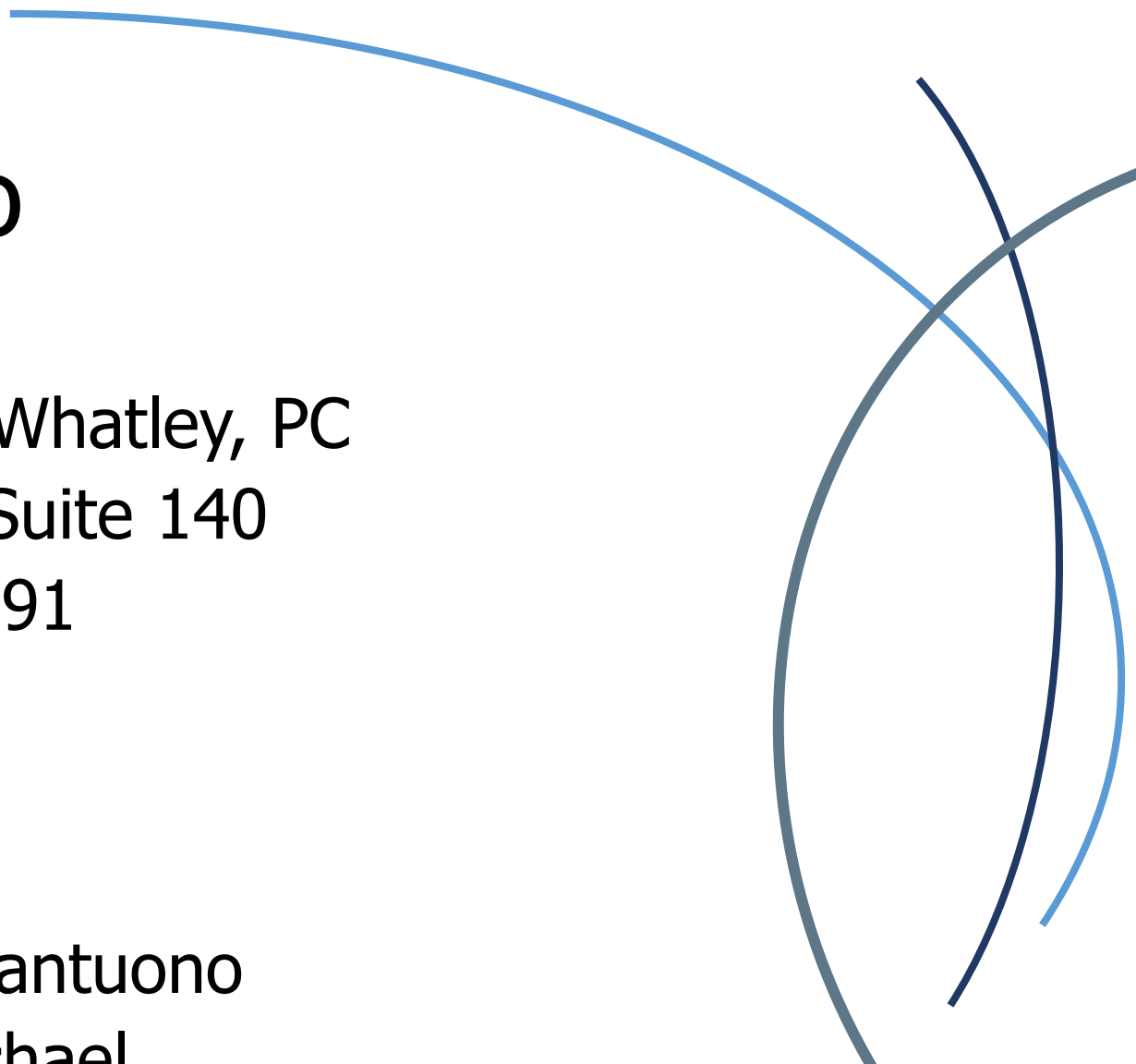
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Property Tax

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
- On the November 2024 ballot

Response to CBRT Measure

ACA 13 (Ward, D-San Diego)

- Proposed constitutional amendment on November 2024 ballot – affecting CBRT measure if it is also voted in November 2023
- Initiative constitutional amendment imposing supermajority requirements must pass by that supermajority
- So, CBRT measure would require 2/3 voter approval

Utility Taxes / General Fund Transfers

- *Wyatt v. City of Sacramento* (2021) 60 Cal.App.5th 373
 - Upheld post-218 approval of GFT from water, sewer, and trash utilities to general fund as a general tax
 - Plaintiffs argued 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 seems to disagree with *Wyatt*

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 defeat Prop. 26 challenge
- Effectively sides with *Wyatt* over *Lejins* by concluding voter-approved taxes collected from the utility, rather than on customers bills, do not cause rates to exceed cost of service in violation of Propositions 218 and 26
- Plaintiffs did not seek rehearing or review

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 04/24

Beck v. City of Canyon Lake, 4th DCA No. D083322

- City lost writ trial, but defeated refund remedy
- Respondents / Cross-Appellant brief on appeal due 4/26/24

Water Rates

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

- Requires water cost-of-service analysis to isolate costs to serve top 10% of customers (but not customer classes)
- May make it risky not to have tiered rates (but perhaps not if rate are class-based, as is common)
- But tiered rates are challenging, too
- Adopts Water Code section 390 et seq. effective 1/1/24

Water Rates

AB 1827 (Papan, D-Millbrae)

- facilitates tiered water rates, stating that, in allocating costs, COSA can consider any or all of higher water demand, maximum potential water use, and projected peak water use
- Allows meter size as a cost-allocation factor
- Response to adverse rulings in City of San Diego and Otay Water District cases
- In Assembly Local Government Committee as of 4/15/24

Stormwater 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 or sewer supplies
- Followed in *Gluck v. City and County of San Francisco*, 1st DCA No. A170087 [appeal from order sustaining demurrer without leave to amend; awaiting record as of 4/15/26]
- Cited favorably in *Paradise Irr. Dist. v. Comm’n on State Mandates* (3rd DCA 2019)
- Construed negatively, but not reached in *DOF v. Mandates Commission* (3rd DCA 2022)

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
- Agencies now processing mandate claims with support from D-Max

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 fee must reflect reasonable value of real estate rights conferred by 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 found standing because apartment owners alleged 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 rights
- 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 street weekly)
 - 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 denied 3/1/24

Franchise Fees

City of Lancaster v. Netflix, Inc. (2024) 99 Cal.App.5th 1093

- City sought to enforce DIVCA franchise fee on streaming services
- DCA found no private right of action in city to sue non-franchisee under DIVCA

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

Sheetz v. County of El Dorado (2022) 84 Cal.App.5th 394, cert. granted SCOTUS No. 22-1074

- \$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

Sheetz v. County of El Dorado (Apr. 12, 2024) ___ U.S. ___, 2024 WL 1588707

- *Nollan / Dolan* analysis applies to legislative fees
- Remanded to apply *Nollan / Dolan* here and to determine how to do so.
- Three justices concurred to defend impact fees
- Property rights bar remains hopeful
- It seems that nexus is easily shown, and that rough proportionality must be applied differently to prospective fees for a class of uses than for one fee imposed quasi-judicially

Development Impact Fees

Barajas v. Petaluma, DCA No. A165258

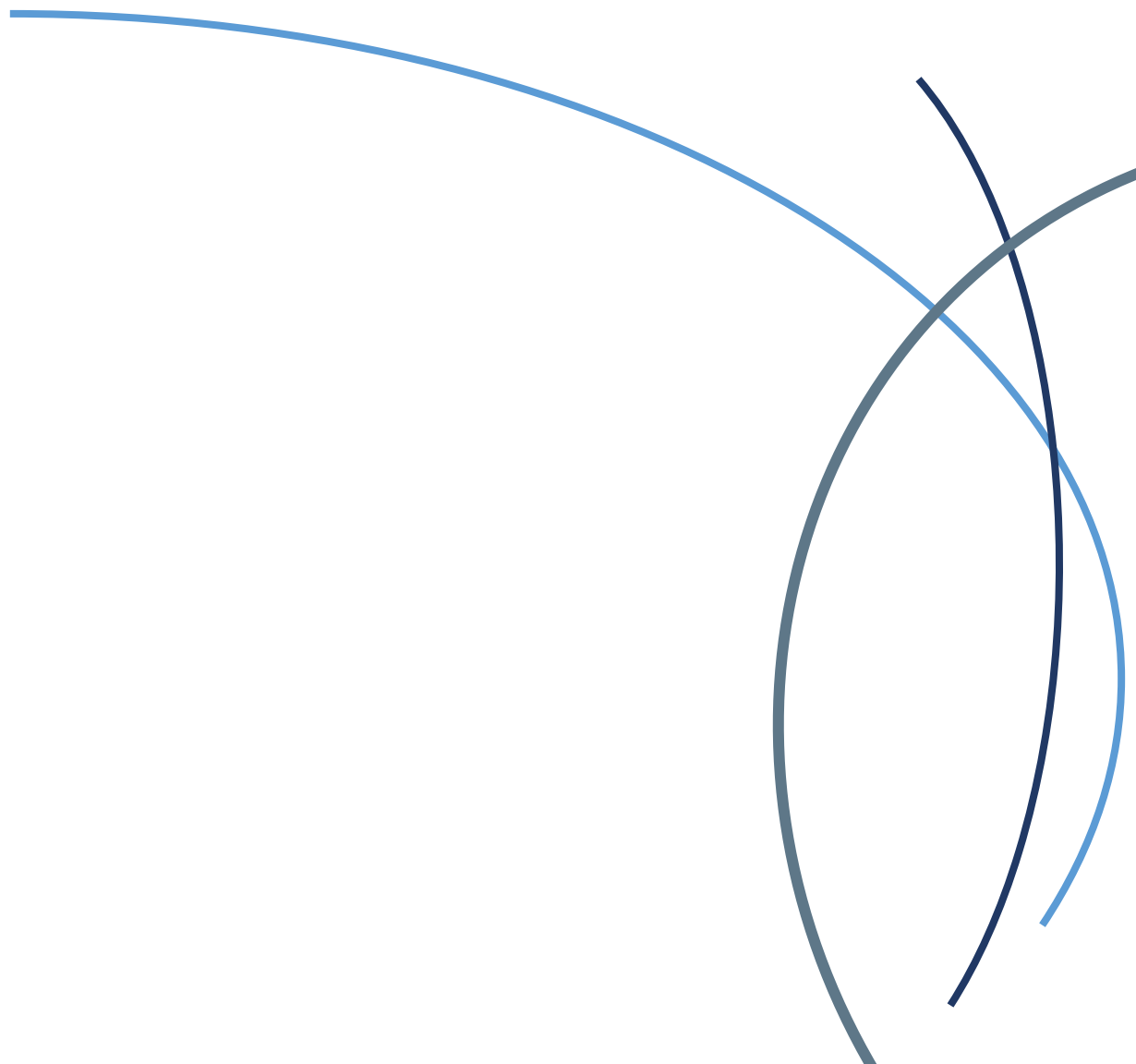
- challenge to AB 1600 fees post-*White* and *El Dorado*
- Cal Cities filed amicus brief
- Fully briefed and awaiting argument as of 1/18/24

Development Impact Fees

AB 516 (Ramos, D-San Bernardino)

- Effective 1/1/24
- Additional requirements for annual and 5-year reports on AB 1600 fees, reporting on project status and on refunds paid
- Additional requirements for audits, including review of construction schedules; must inform fee-payors of right to request audits; and must post reports to website

Questions?



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