

**ADSC Webinar**

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LEAGUE OF  
**CALIFORNIA  
CITIES**

Strengthening California Cities through  
Advocacy and Education

# **Essential Hour: The Basics of Municipal Revenues: Taxes, Fees and Assessments**

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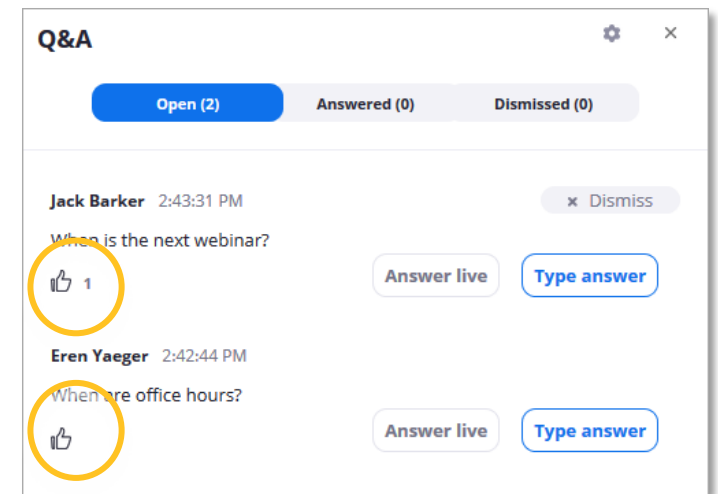
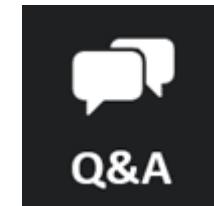
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# Housekeeping Notes

- This session is being recorded.
- Attendees are muted.
- Question and Answer is available throughout the webinar.
- Following the presentation, the recording will be shared with attendees.

# How to Ask a Question

- To write in a question, select the Q&A button on your tool bar.
- You can “upvote” other attendees’ questions. This brings the most popular questions to the top of the Q&A screen.



# Attorney Development & Succession Committee

- **Develop and enhance**
  - the legal, technical, practical, & interpersonal skills necessary to succeed as a city attorney or senior member of a City Attorney's Office
- **Provide opportunities**
  - for members to build & expand their knowledge of both substantive & essential skills integral to municipal law practice
- **Engage and connect**
  - experienced municipal practitioners with newer attorneys to encourage mentoring, effective knowledge transfer, & succession planning
- **Encourage**
  - municipal law practice in our law schools through panel discussions, internships, and mentorship

# Attorney Development & Succession Committee

- **Subcommittees**
  - Substantive Law
  - Essential Skills
  - Law School Outreach
- **Upcoming Events**
  - FPPC Essential Hour
    - November 2022

# The Power to Tax

- Not the police power
- Revenue-raising, not regulatory
- Charter cities – “Home rule” authority in the Constitution over “municipal affairs.”  
(Cal. Const. Art. XI, § 5.)
- General law cities – need statutory authority.  
(Gov. Code § 37100.5 – Can impose any tax a charter city can impose.)

# Kinds of Taxes

- Property taxes – Triggered by owning property
- Excise taxes – Triggered by doing something

# Kinds of Taxes Continued

- General taxes – Revenues can be used for any legitimate government purpose.  
(Cal. Const. Art. XIII C, § 1 (a) – Proposition 218.)
- Special taxes – Revenues are restricted and can only be used for certain purposes.  
(Cal. Const. Art. XIII C, § 1 (d) – Proposition 218.)



# Kinds of Taxes Continued

- Prop 26 definition of tax – Every charge is a tax unless it fits into an exception. (Cal. Const. Art. XIII C, § 1(e).)
  - A fee for a benefit, privilege, service, or product
  - A regulatory fee
  - A charge for use of property
  - A fine or penalty
  - A charge imposed as a condition of property development
  - Assessments
  - Property-related fees

# Property Taxes

- Proposition 13 (Cal. Const. Art XIII A) (1978)
- 1 % ad valorem tax
- Allocation rules (“A.B. 8”)
- Bond overrides

# Excise Taxes

- Business license taxes
- Utility user taxes
- Transient occupancy taxes
- Sales and use tax (and transaction and use taxes)
- Vehicle License Fees
- Real Property/Documentary Transfer Taxes

# Parcel Taxes

- A form of property tax
- Must be a special tax (Cal. Const. Art. XIII D, § 3 – Proposition 218)
- Mello-Roos (CFDs) (Gov. Code § 53311 et seq.)
- Police and fire protection (Gov. Code § 53978)
- Libraries (Gov. Code § 53717)

# Limitations

- Equal Protection – Rational basis
- Commerce Clause – Cannot discriminate against intercity/interstate commerce
- First Amendment – Cannot tax speech
- Takings?

# Voter Approval

- All new taxes must be voter-approved.
  - Proposition 13 (1978) - Special Taxes
  - Proposition 62 (1986) - General and Special Taxes (statutory)
  - Proposition 218 (1996) - General and Special Taxes (constitutional)
- To “impose,” “increase,” or “extend” a tax requires voter approval.

(Cal. Const. Art. XIII C, § 2 – Proposition 218)
- General taxes require approval by a simple majority
- Special taxes require two-thirds voter approval

# Other Procedural Restrictions

- Two-thirds of City Council must approve putting general tax on the ballot.  
(Gov. Code § 53724 – General law cities)
- A general tax must be on the ballot in an election with councilmembers (unless an emergency)  
(Cal. Const. Art. XIII C, § 2)

# Appropriation Limits

- Proposition 4 (1979) – The Gann Limit  
(Cal. Const. Art. XIII B)
- Limits the expenditure of taxes (even if voter approved)
- Formula in the Constitution and Government Code  
(Gov. Code § 7900 et seq.)



# Assessments

- Assessments are imposed upon real property for a special benefit conferred upon the real property
  - Examples:
    - Streetlights
    - Roads
    - Water or sewer standby service
    - Parks
    - Fire protection

# Assessments

- Limits on Authority – **Proposition 218**
  - Article XIII D, section 4 and 5 of the California Constitution, as well as Government Code section 53753, set forth requirements for imposing assessments
  - These include procedural and substantive requirements
  - Requirements apply any time a city is imposing a new assessment or increasing an existing assessment
  - These also apply to most assessments that were in existence at the time Proposition 218 went into effect

# Assessments

- Limits on Authority– **Procedural Requirements**
  - Assessments must be supported by a detailed engineer's report prepared by a registered engineer certified by the State
  - Calculate the assessment for each identified parcel
  - Hold a public hearing and mail notice to property owners subject to the assessment
  - At the public hearing, protests are tabulated
  - City may only adopt the assessment if no majority protest exists

# Assessments

- Limits on Authority– **Majority Protest**
  - A majority protest exists if, upon the conclusion of the public hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment
  - The ballots are weighted according the proportional financial obligation of the affected property

# Assessments

- Limits on Authority– **Substantive Requirements**
  - Only special benefits are assessable
  - The general benefits must be separated from the special benefits
  - Local agency, State, and federal properties that receive special benefits are not exempt from assessment

# Assessments

- Special versus General Benefit
  - "[A] special benefit must affect the assessed property in a way that is particular and distinct from its effect on other parcels and that real property in general and the public at large do not share."
  - Evidence must demonstrate distinct benefits that do not accrue to public at large in the same way as they do to assessed parcels
  - Engineer's report must separate general from special benefits
  - Apportionment is a function of total cost of the project
  - General enhancement of property value does not constitute "special benefit"

# Assessments

- Best practices for engineer's report:
  - Validity of assessment is a constitutional question
  - Courts apply independent standard of review, and the burden is on the city to demonstrate compliance with Proposition 218
  - This means that engineer's report should provide strong evidence of constitutionality, and should:
    - Clearly distinguish between general and special benefit
    - Provide narrative explaining specifically the basis for allocation of benefit
    - Avoid relying on generic statements, and instead opt for city-specific information and nuance

# Assessments

- Role of legal counsel
  - Issue spot situations where Proposition 218 is triggered:
    - Is an assessment being increased?
    - Is a new assessment being proposed?
    - Is an assessment being levied after a sunset date?
  - Review engineer's report based on case law interpreting Proposition 218
  - Prepare and/or review documentation for adoption of assessment, including resolutions or ordinances, notice of public hearing, and ballot



# Assessments

- Power to assess must be derived from grant of authority
  - General law cities rely on various statutory schemes, such as:
    - Landscaping and Lighting Act of 1972
    - Improvement Act of 1911
    - Municipal Improvement Act of 1913
    - Benefit Assessment Act of 1982
    - Property and Business Improvement District Law of 1994
  - Charter cities may have authority to impose assessments in charter as well
  - Each grant of authority has its own procedures and requirements for adopting assessments, which must be reviewed carefully and reconciled with Proposition 218

# Assessments

- Example – **Landscaping and Lighting Act of 1972**
  - Authorizes a variety of improvements and services – e.g., landscaping, statues, fountains, streetlights, traffic signals, sidewalks, trash removal, parks
    - Authorized improvements are limited by Proposition 218
  - To form a new district, city must:
    - Adopt initiating resolution and resolution of intention
    - Order and approve engineer's report
    - Hold a public hearing in compliance with Proposition 218
    - Confirm and record the diagram and assessment

# Assessments

- Example – **Landscaping and Lighting Act of 1972**
  - Additionally, city must comply with annual levy proceedings:
    - Adopt resolution describing any proposed new improvements or changes
    - Order engineer's report for annual levy
    - Adopt resolution of intention and set public hearing
    - If assessment will be increased, Proposition 218 is triggered
    - After public hearing, city council may confirm diagram and assessment for such year

# FEES

- **Authority to Impose Fees**

- General Police Power (California Constitution Article XI, Section 7)
- Public Works Power (California Constitution Article XI, Section 9)
  
- Market Participant
  
- Enabling Acts
  - Examples:
    - Water, sewer and solid waste collection (Health and Safety Code Sections 5470-5474.10)
    - Mitigation Fee Act

# FEES

- **Types of Fees**

- Charges for City Services
  - Water, sewer, solid waste collection fees
  - Connection fees
  - Park and recreation program fees
  - Gas and electric fees
- Charges for Use of City Property
  - Franchise fees
  - Park and recreation entrance and equipment fees
  - Rent paid pursuant to lease

# FEES

- **Types of Fees** (continued)
  - Regulatory Fees
    - Power to Regulate
    - Processing applications
    - Inspections
  - Development Processing Fees
    - Examples:
      - Zoning applications
      - Building permits and inspections

# FEES

- **Types of Fees** (continued)
  - Development impact fees / AB 1600 Fees
    - Condition of approval
    - Development impact fee program
    - Charged in connection with approval of a development project for the purpose of defraying the cost of public facilities related to the development project
    - Nexus
    - Procedural requirements

# FEES

- Limits on Authority to Impose – **Proposition 26**
  - California Constitution Article XIII C, Section 1 (e)
  - Defines "tax"
  - ANY levy or charge, except:
    - Charge for specific benefit, service or product provided directly to payor that is not provided to those not charged, and which does not exceed the reasonable costs of providing the benefit, service or product
      - Fee study
      - Discounts and waivers



# FEES

- Limits on Authority to Impose – **Proposition 26**
  - ANY levy or charge, except (continued):
    - Charge for reasonable regulatory costs of issuing licenses and permits, performing investigations, inspections, and audits, and the enforcement costs
    - Charge for entrance to or use of government property, or the purchase, rental , or lease of government property
    - Fines and penalties
    - Charge imposed as a condition of property development
    - Charge for a property related service imposed pursuant to Proposition 218.

# FEES

- Limits on Authority to Impose – **Proposition 218**
  - California Constitution, Article XIII D
  - Government Code Sections 53750-53758
- Limit on the authority to impose or increase fees for "property-related services"
  - Water, sewer, solid waste
  - Does not apply to gas or electric services

# FEES

- Limits on Authority to Impose – **Proposition 218**
  - Procedural requirements:
    - Mailed notice 45 days before public hearing
      - Who gets notice
      - contents of notice
    - Majority protest proceedings at public hearing
    - Election required for a property related service that is NOT water, sewer and refuse collection (e.g., stormwater services)

# FEES

- Limits on Authority to Impose – **Proposition 218**
  - Substantive requirements:
    - Revenues from fee cannot exceed funds required to provide service
    - Revenues cannot be used for any purpose other than service for which fee is imposed
    - Amount of fee cannot exceed proportional cost of the service attributable to the parcel
      - No subsidies
      - Tiered rates
    - Service must be actually used by or immediately available to the property owner
    - No charge for general governmental services

Questions?

