

FEES! You got 'em. How do they work today?



The Public Works Edition: March 14, 2024 at Cal Cities

Moderator: Tim Seufert with Speakers: Chris Ghione and Matt Summers

fees...fees...Fees...FEES!!!



Town of Ross – Roofing Permit Fee (@ value)



Fee of \$928 Vs \$\$\$

El Dorado County – Impact Fee

No. 22-1074

IN THE
Supreme Court of the United States

— x —
GEORGE SHEETZ,

Petitioner,

v.

COUNTY OF EL DORADO, CALIFORNIA,

Respondent.

— x —
On Writ of Certiorari to the Court of Appeal of
California, Third Appellate District

— x —
**BRIEF OF AMICI CALIFORNIA STATE
ASSOCIATION OF COUNTIES, LEAGUE OF
CALIFORNIA CITIES, AND CALIFORNIA
SPECIAL DISTRICTS ASSOCIATION IN
SUPPORT OF RESPONDENT**

— x —
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Fire/EMT Service – Helicopter Evac Fee



With FEES in CA, there is no perfect DEFINITION...

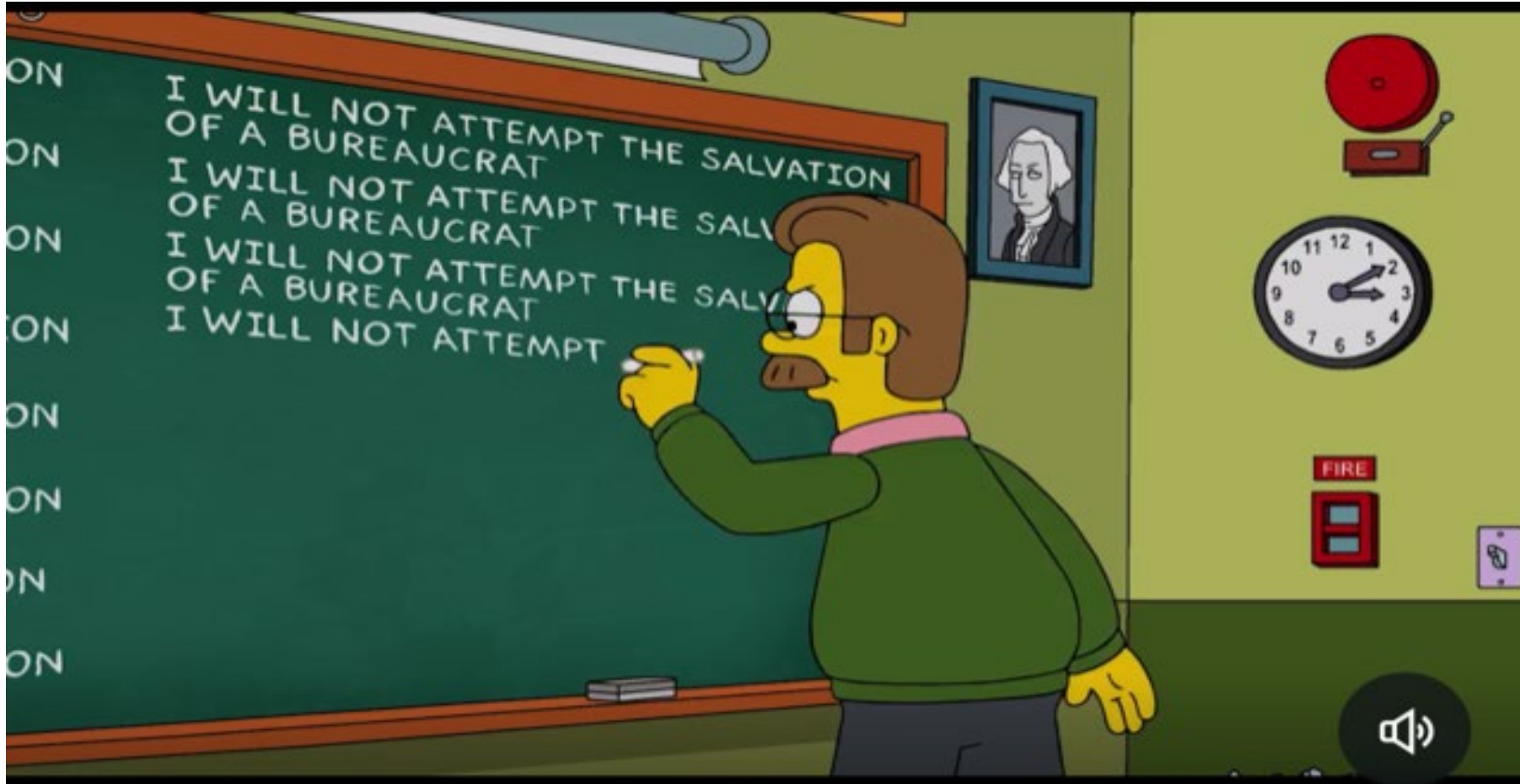
Overview: Fees comprise a broad category of locally-imposed revenues generally intended to recover all or a portion of the government's costs for:

- Providing a service
- Providing access to public property, or
- Mitigating the impacts of the fee payer's activities on the community

- **A fee may not exceed the 'reasonable cost' of providing the service or facility.**
- **Plus, a fee is not a Tax.**
- **A franchise fee is a charge that a franchisee is required to pay for rights given under a franchise agreement.**

Text largely borrowed from The California Municipal Revenue Sources Handbook and Prop 26

With FEES, there is no perfect SALVATION...



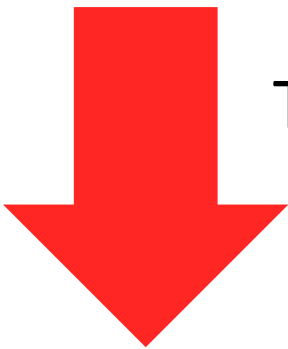
Why the Obsession with FEES and other Revenues?



Why the Obsession with Revenues?



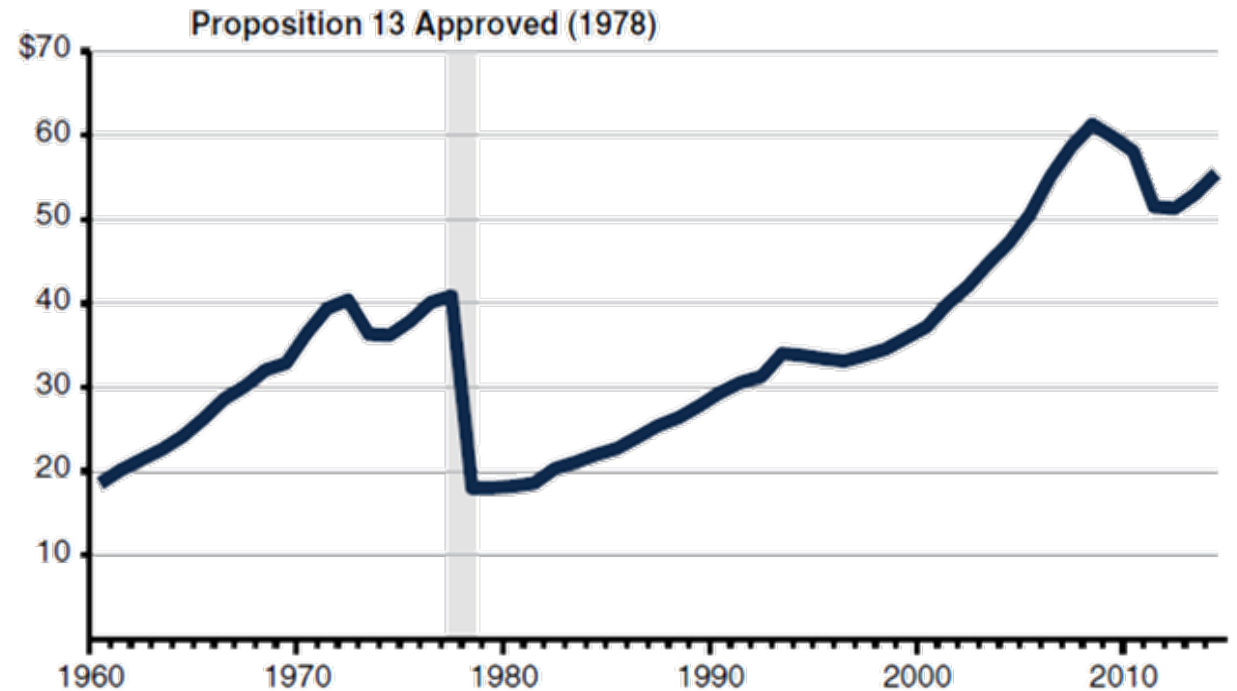
1977: > 90%



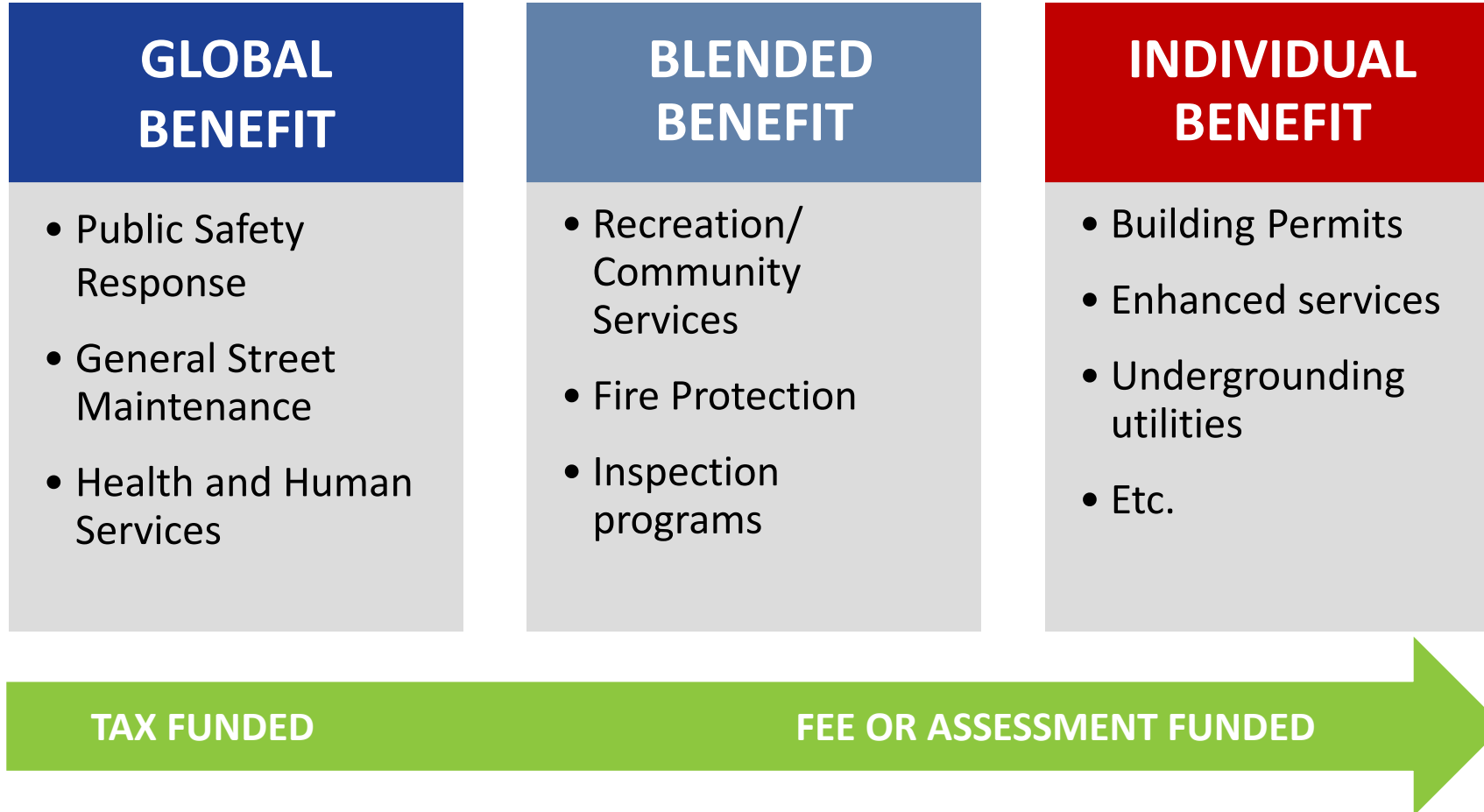
Today: < 66%

Local Government Revenue Dropped Immediately After Proposition 13

Local Government Annual Property Tax Revenue (In Billions, 2014-15 Dollars)



Context: Spectrum of Tax to Fee/Assessments...



Typical Local Government Fees (excluding Franchise Fees)

User/Regulatory Fees

Fees limited to recovering the cost of providing the service

- Example: Building Permits

Entrance / Use Gov't. Property

The City can charge whatever price the market will pay (must be competitive)

- Example: Facility Rentals

Fines and Penalties

Fines are not subject to cost recovery rules and may be set by Council

- Example: Library Fines

Impact Fee (AB1600)

Separate legislative authority and process

- Example: Development Impact Fees/Quimby for Fire/Parks/Etc.

Property-related Fees (Prop 218)

Water/Sewer/Trash plus other

- Example: Water/Sewer Rates or balloted Storm Drain Fee

Example - Development Impact Fees

- One-time source of capital
- Consider nexus and defensibility
- Understand the context and fiscal and policy choices
- SCOTUS 2024?



Common Property-Related Fees: Article XIII D, § 6



The other Property-Related Fee *(not water, sewer, trash)*

ANALYTICAL RIGOR

- Voluntary nature?
- Analytical analysis

APPROVAL MECHANISM

- “Property-based fees” balloted to property owners (50%)
- Or registered voter election (2/3)

SAMPLES

- Sacramento Storm drain and RD 1000 fees
- CSA fees for roads, fire, etc.

Taxpayer Protection and Government Accountability Act

Sample provisions related to cities:


- Affirms 2/3 voter requirement for ALL special taxes/reverses Upland case ('initiatives')
- Specifies that all parcel taxes are special taxes
- Specifies that all taxes must be limited to specific purposes
- Requires a clear sunset provision for any revenue measures
- Forbids the Measure A/B approach (revenue plus advisory votes)
- Upholds property-based Business Improvement Districts (PBID and TBID)
- Recategorizes business-based BID charges from governing body approval to "voter" approval
- **States fees shall not exceed 'actual' costs vs. 'reasonable' cost currently**
- **Puts forth new standard of 'minimum amount necessary' for fees/rates**
- Targets VMT (Vehicle Mileage Traveled) and new development fees

Let's Dig In!

Public Works/Services Perspective:
Chris Ghione

Legal Update:
Matthew Summers, Esq.





Fees! You Got 'Em. How Do They Work Today?

Chris Ghione
Public Services Director, City of Morgan Hill

March 14, 2025

Fees and Charges

Any levy, charge or exaction of any kind imposed by a California government, is a tax except:

- **User Fees and Assessments:** for a privilege/benefit, service/product
Planning permits, development fees, parking permits, user fees, copying fees, recreation classes, etc.
- **Regulatory Fees:** regulation, permits, inspections
Permits for regulated commercial activities (e.g., dance hall, bingo, card room, check cashing, taxicab, peddlers, catering trucks, massage parlor, firearm dealers, etc.); fire, health, environmental, safety permits; police background checks; pet licenses; bicycle licenses.
- **Rents:** charge for entrance, use or rental of government property
Facility/room rental fees, room rental fees, equipment rental fees, on and off-street parking, tolls, franchise, park entrance, museum admission, zoo admission, tipping fees, golf green fees, etc.
- **Penalties** for illegal activity, fines and forfeitures, etc.
Parking fines, late payment fees, interest charges and other charges for violation of the law.
- **A payment that is not *imposed*** by government
Includes payments made pursuant to a voluntary contract or other agreement that are not otherwise “imposed” by a government’s power to coerce.

Fee Setting

- **Fiscal Sustainability**
 - **Cost Recovery**
 - **General Fund Subsidy**
 - **General Fund Impacts**
 - **Police vs. Storm Water Inspections**
- **Political considerations**
 - **Who enjoys taking fees to your elected officials?**
- **Community benefits**



Utility Rates: Water and Wastewater

- **Enterprise Funds – operations and capital**
- **Proposition 218 process - majority protest**
- **Political? Defer the inevitable?**
- **Set your elected officials up for success**
 - **Don't make it a everyday thing for them to review**
 - **Plan ahead thoroughly (Master Planning)**



Utility Rates: Water and Wastewater

- **Enterprise Funds**
 - Major Expense Drivers
 - Treatment Plant
 - Groundwater Charges
- **Pass Through Fees**
 - Flexibility
 - Political cover
- **Connection Fees/Impact Fees**
 - Utilize to fairly charge impacts to new development



Assessment Districts

- Move maintenance costs outside City
- Established for improvements and maintenance
- Fee increases subject to maximum levy
- Balancing fees and service level

Zone	Units	FY 2023/24 Maximum Assessment Rate	FY 2023/24 Actual Assessment Rate	Total Assessment ⁽¹⁾
Belle Estates	36	\$502.22	\$310.00	\$11,160.00
Chang/Bertelone	8	1,215.00	550.00	4,400.00
Conte Gardens	11	477.82	365.00	4,015.00
Diana Estates	64	139.39	139.39	8,920.96
Fox Hollow ⁽²⁾	75	240.21	173.53	13,014.75
Hamilton Square	38	425.54	425.00	16,150.00
Jackson Meadows #6	70	108.10	108.00	7,560.00
Jackson Meadows #7	10	314.58	100.00	1,000.00
La Grande Estates	32	88.00	88.00	2,816.00
Lacrosse/Gera	24	142.99	50.00	1,200.00
Llagas Creek ⁽²⁾	71	323.46	233.67	16,590.57
Llagas/Obata	5	629.16	450.00	2,250.00
Mill Creek ^(2,4)	84	311.42	285.00	23,940.00
Oak Creek I, II, III	119	453.82	425.00	50,575.00
Parsons Corner ⁽³⁾		NOT APPLICABLE		
Rose Haven	27	488.47	400.00	10,800.00
Sandalwood ⁽⁴⁾	11	450.00	450.00	4,950.00
Sparhawk ⁽²⁾	18	344.43	334.00	6,012.00
Stone Creek ⁽²⁾	35	537.71	388.46	13,596.10
Sunnyside/Stonegate ⁽²⁾	10	788.02	375.00	3,750.00
Totals:	748			\$202,700.38

(1) Actual amount placed on secured tax roll may be less due to Santa Clara County submittal requirements. Amounts placed on the tax roll must be rounded down to an even number.

(2) Maximum Assessment Rate increases by 3% annually.

(3) Detachment of Parsons Corner Zone was approved in April 2019.

(4) Includes increased maximum assessment rate approved by property owners.

Development Fees

- **Development Review and Inspection Fees**

- Cost of review and inspection for projects
- Cost recovery level policy
- Regular fee updates are good

- **Impact Fees**

- Imposed on specific development projects to defray the cost of new or additional public infrastructure that are needed to serve those developments.
- Include traffic, public facilities, parks & recreation, water, wastewater, stormwater, library fees, among others.

- **Considerations**

- Comparability between agencies
- Totality of fees



Storm Water Fees

- **Utility Fees – Requires a vote for those that don't already have them.**
- **PCR Fees**
- **Active Construction Inspection Fees**
- **Overall inspection fees can be included in development fees**



Franchise Fees

- **Morgan Hill Utilizes third party franchise for Solid Waste**
- **Basic Franchise Fee**
 - **Used to cover specific impacts of the Franchise on the jurisdiction**
- **NEW – Exceptional Cost Fees**
 - **Community Support Items**
 - **Mandated Compliance (1383, Storm Water Trash Capture)**
- **City Council sets fees annually**
 - **Per agreement formula**



Park and Recreation Fees

- **Fee Schedules**
 - **Cost Recovery Policy**
 - **Authority to set**
- **Community benefit**
 - **Example: Outdoor Sports Center**
 - **Third party operator agreement**
 - **Cost Recovery**
 - **Maintenance and improvements**
 - **Volunteers**
- **Online Fees – Rentals**
- **Credit card fees**



Communication

- **NO ONE LIKES HIGHER FEES AND/OR RATES!**
 - **When Does Communication Help?**
 - **When Doesn't It Help?**
- **Explain the fees in ways those paying them understand**
 - **Know your community members.**
 - **Point the finger when necessary if others are causing the fees. (utility increases, regulatory requirements)**
 - **Find champions who can tell the story.**

Take-Aways

- **No one likes higher fees and/or rates!**
- **Help your elected officials in dealing with fee increases**
- **Periodic fee reviews and studies are critical**
- **Advance public notice and education really help**



FEES! You got `em. How Do They Work Today

Local Government Financial Tools

Matthew T. Summers, Esq.
Public Works Officers Institute
Thursday, March 14, 2024

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Two Topics:

Basics for Revenue Tools and
Legal Update

California Business Roundtable
Measure

Basics for Revenue Tools with Legal Update

Voter Approved Taxes

Includes sales tax, parcel tax, utility user's tax, rent/use tax, transient occupancy tax, etc.

Proposed by ordinance or resolution of the Agency

Action must state the type of tax, the tax rate, the method of collection, and the election date

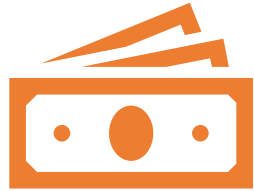
Taxes are either general or special taxes

Voter Approved Taxes

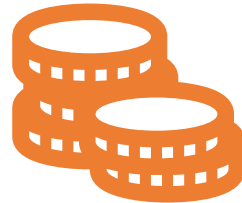
Approved by 2/3 vote of agency's governing body

Set for voter approval at the next regularly scheduled general election for the governing body

General Taxes



Revenue not dedicated to specific purposes



Revenue used for general government purposes



Can only be imposed, extended, or increased by a majority vote

Special Taxes

Created by Proposition 13

To impose, extend or increase a special tax requires 2/3 vote of the electorate

Imposed for a specific purpose

Special tax can have multiple purposes for broad government functions such as police or parks

Special Taxes (cont.)

Revenues must be used for the stated purposes only

The ordinance/resolution must state the purpose or service

A special tax sought to be imposed, extended, or increased by **citizen initiative** only requires majority approval from the electorate

Special Tax by Initiative with Majority Vote

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

- Court concluded Prop. 218 does not require 2/3-voter approval of tax imposed by voter-proposed initiative
- 2/3 vote only required for taxes proposed by government body

Following *Upland*:

City and County of San Francisco v. All Persons Interested in the Matter of Proposition G (2021)
66 Cal.App.5th 1058

- Adopting parcel tax with less than 2/3 voter approval

Jobs & Housing Coalition v. City of Oakland (2021) 73
Cal.App.5th 505

- Fact that ballot materials said 2/3 required was not a problem

Property Taxes



Limits any ad valorem tax on real property to 1% of the full cash value of the property



Restricts annual increases in the assessed value of a property to 2% per year

Property Tax

County of Santa Clara v. Superior Court (AT&T Mobility, LLC) (2023) 87 Cal. App.5th 347

The California Constitution 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

Parcel Tax

- Parcel tax collected on the property tax roll
- Based on either a flat, per-parcel rate, or a rate that varies based on factors like size or use
- Parcel taxes cannot be based on value
- Parcel tax can only be approved as a special tax

Assessments

Proposition 218 sets substantive and procedural requirements for assessments

Assessment is a levy upon real property for a special and direct benefit conferred upon the property

Assessments

Examples – improvement districts for streets, lighting, irrigation, sewer, drainage, and flood control

Sometimes called special or benefit assessments

Assessments

Four Basic Requirements for a Valid Assessment

1. Identify all Benefitted Parcels
2. Distinguish Benefits
3. Proportionality
4. Reasonable Cost

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 the required reports

Regulatory Fee

A regulatory fee is not a tax if:

- The fee does not exceed the reasonable cost of service
- Not for unrelated revenue purposes
- It is in an amount necessary to achieve the purposes of the regulation

Regulatory Fee

- Governing body need only apply sound judgment in determining the amount of the fee
- Licenses, permits and inspection fees are types of regulatory fees
- Valid without any perceived benefit for fee payer

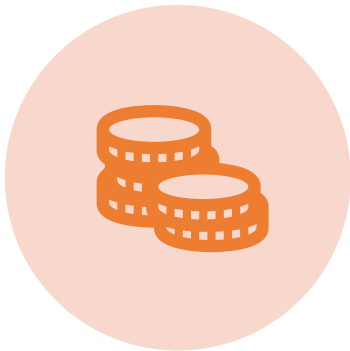
User Fee for Government Services

- Agency can impose user fees for governmental services
- Must reasonably relate to the cost of the governmental activity
- Park entrance fee, parking garage fee, museum entrance fee, swimming pool fee

Fees and Taxes from Utility Operations



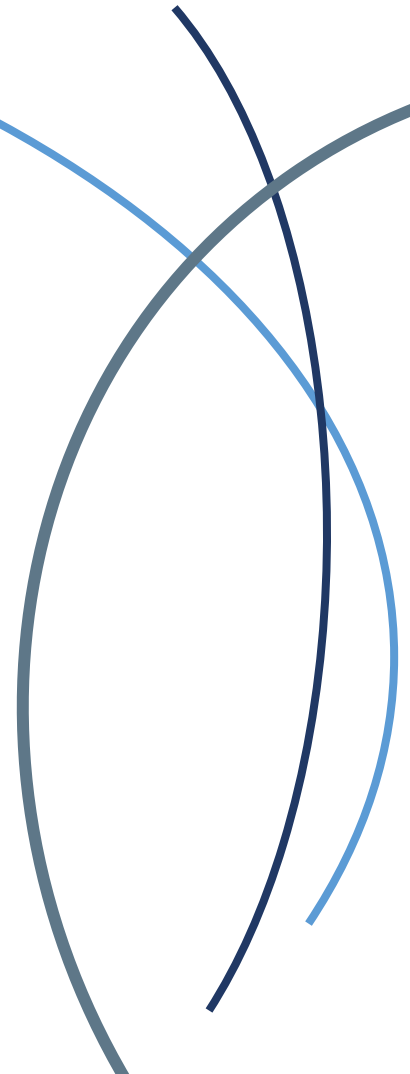
PROPERTY-RELATED
FEES



GENERAL FUND
TRANSFERS



FRANCHISE FEES



Property-Related Fees

- A property-related service is one having a direct relationship to property ownership
- Property-related fees do not require voter approval if required procedures followed
- A property-related fee is subject to procedural and substantive requirements set out in Proposition 218

Prop. 218 & Water Rates

Campana v. EBMUD (2023) 91 Cal.App.5th 1075

- Upholds 120-day limitations period to challenge water rates. Public Utilities Code § 14402.
- Rejecting *Howard Jarvis Taxpayers Assn. v. La Habra's* rolling statute of limitations – Prop. 218 does not authorize a new legal challenge with a new statute of limitations every time the utility collects charges.
- Did not reach the merits of the tiered water rates challenge.

Prop. 218 & Water Rates

Patz v. City of San Diego - Case No. D080308 – Pending

- Trial court invalidated City of San Diego's tiered rates and awarded \$80 million to class plaintiffs
- Ruled that they were not adequately tied to the cost of service; rejected the use of peaking factors
- San Diego's appeal fully briefed August 2023

Property-Related Fees – Pay under Protest Requirement

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 held that plaintiffs could not pursue case because they had not paid the fees under protest under code section requiring pay first and litigate later
- Powerful defense for water, sewer and trash rates

General Fund Transfers from Government Utility

Palmer v. City of Anaheim

- Applied *Fair REU Rates* to allow 1.5% right-of-way fee because agency had non-rate revenue to cover
- Confirmed that the electorate approved the overcharge for the general fund transfer when it approved section 1221
- Electorate may approve above cost-of-service rates for a general fund transfer

Utility Franchise Fees

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

- Supreme Court held that franchise fees must reflect reasonable value of franchise
- Reasonable value may be shown by bona fide negotiations or “other indicia of worth”
- Reaffirms that franchise fees paid by the utility do not become taxes simply because the cost is passed on to rate payers

Trash Franchise Fees

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

- Apartment owners challenge to franchise fee imposed on City solid waste franchisees under Prop. 218 and *Jacks v. City of Santa Barbara*
- Court found there was not enough evidence to apply the exception to the *Jacks* definition of tax for use of property
- Franchise rights are intangible unless tied to the use of property
- 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

- 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



California Business Roundtable Measure November 2024 Ballot

The CBRT Measure

- “The Taxpayer Protection and Government Accountability Act”
- Backed by development interests to target fees on new development
- Measure would significantly restrict the ability of local governments to raise taxes and fees
- Creates new opportunities for legal challenges

The CBRT Measure



Retroactive Window: taxes or fees approved after 1/1/22 sunset in 12/25 if not (re)adopted in compliance w/ this measure



Overturns *Upland* decision – Under measure, initiative measures to increase or impose a tax always require 2/3 vote

CBRT Measure

Impacts on both State and local governments

- Defines all government revenue as taxes or “exempt charges” – this would include all local fees
- “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 must be “reasonable” – what is reasonable?

CBRT Measure

What provisions impact local governments:

- Exempt charges must be enacted legislatively not by administrative body
- No vehicle miles traveled (VMT) tax or fee as condition of development or occupancy
- Expressly protects TBID and PBID assessments

CBRT Measure

More Local Government Impacts

- Measure A / B proposals (general tax + advisory measure) forbidden
- No tax can be imposed by a charter amendment
- All parcel taxes require 2/3-voter approval

CBRT Measure

Other issues:

- Government bears burden of proof by “clear and convincing evidence”
- “Impose” will now mean “collect” – this may allow new suits with every payment
- Receipt of benefit, privilege, or other exchange is not a factor in identifying whether a fee is a tax

CBRT Measure

What to do?

- Stay on top of the news
- If you adopt new revenue measures before its fate is known, try to comply with it
- Fasten your seatbelts!



Questions?

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