

TO: Mayor Martin and City Councilmembers

FROM: Thomas Frutchey, City Manager

SUBJECT: Skill Development for Members of City Advisory Bodies

DATE: February 16, 2016

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Needs: For the City's advisory bodies to function at the highest possible level.

- Facts:
1. The City has eight standing and ad hoc advisory boards, committees, and commissions with a regular meeting schedule, and four that meet as needed (see Attachment 1).
  2. These commissions and committees advise the Council and, in certain cases, are delegated some decision-making responsibilities.
  3. The higher the quality of deliberations, recommendations, and decisions by the boards, committees, and commissions, the higher the quality of governance provided by the City.
  4. For most members, serving on a City advisory body requires new knowledge and enhanced skills; most members, for example, have not needed to understand the Brown Act prior to their appointment.
  5. The League of California Cities holds a new Mayors and Council Members Academy each year. Some of the sessions at the Academy address materials that would be helpful to members of City advisory bodies, including the basics of municipal governance, the relationship between city legislative bodies and staff, what commissioners need to know about City finances (see Attachment 2) and maintaining the public's trust.
  6. Planning Commissioners have an opportunity to attend an intensive Planning Commissioners Academy, developed and presented by the League of California Cities. The curriculum includes, among land use topics, such general topics as engaging the public and conducting effective and respectful meetings. The Academy is being held this year from March 2-4. It appears that all five of the City's Planning Commissioners are planning on attending.
  7. Members of the City's other advisory boards, committees, and commissions do not have a similar academy or even single-topic workshops that they can attend, to improve their skills and capabilities.

Analysis &  
Conclusion: Because most of the volunteers on the City's advisory bodies have limited formal opportunities to enhance their knowledge and skill base, it behooves the City to provide in-house skill-building and information sharing for their benefit. Appropriate topics could include those generic matters addressed at the League's New Mayors and Councilmembers Academy and Planning Commissioners Academy, as well as such topics as the Brown Act (see Attachment 3) and small-

group decision making (see Attachment 4), among others. Topics to be addressed can be developed by staff in collaboration with the chairs and members of the City's advisory bodies.

Policy

Reference: The Council's Policies and Procedures document, last revised in January, 2015, addresses the importance of the City's advisory bodies in eliciting public input on key issues and making recommendations to the Council. It does not, however, address the importance of ensuring the advisory bodies operate at the highest effective levels.

Fiscal

Impact: Staff time and materials copying costs.

- Options:
- a. Direct the City Manager to meet with each of the eight standing Council advisory boards, committees, and commissions to identify and develop appropriate materials and discussions to further their development. Such materials provided to and such sessions shall be open to prospective commissioners as well.
  - b. Amend, modify, or reject the above option.
  - c. Take no action.

Attachments:

1. Listing of City Advisory bodies and Council Liaisons
2. Introduction to City Finances
3. Introduction to the Brown Act
4. Small Group Decision Making

<b>Public Agencies &amp; Associations</b>	<b>Meeting Dates/Location</b>	<b>Current Member</b>
Air Pollution Control District (APCD)	Every odd month/4 <sup>th</sup> Wed – 9:00 AM - Board of Supervisors Chambers, County Government Center	Hamon Alt: Gregory
Calif Joint Powers Insurance Authority (CJPIA)	Board meets annually; 4 <sup>th</sup> Thursday of July CJPIA Offices, 8081 Moody Street, La Palma, CA	TBD
Integrated Management Authority (IWMA)	Every odd month/2 <sup>nd</sup> Wed – 1:30 PM - Board of Supervisors Chambers, County Government Center	Hamon Alt: Martin
Nacimiento Water Project Commission	Even months/ 4th Thurs – 4:00 PM - TCSD Board Room	Hamon Alt: Martin
SLO Council of Governments (SLOCOG)	1 <sup>st</sup> Wed - 8:30 AM - Board of Supervisors Chambers, County Government Center	Strong Alt: Martin
SLO Regional Transit Authority (SLORTA)	1 <sup>st</sup> Wed (alternating months) - 8:30 AM - Board of Supervisors Chambers, County Government. Center	Martin Alt: Strong
Chamber of Commerce Board	4 <sup>th</sup> Thursday - 7:00 AM - Paso Robles – Paso Robles Inn	Martin Alt: Strong
Downtown Paso Robles Main Street Assn.	2 <sup>nd</sup> Monday - 5:45 PM - Paso Robles Main Street Office	Reed Alt: Strong
Community Action Partnership of SLO	3 <sup>rd</sup> Thursday, 5:00 PM – EOC Board Rm, 1030 Southwood Drive, SLO	Martin Alt: Reed
Homeless Services Occupation Center (HSOC)	3 <sup>rd</sup> Wed – 1:00 PM – Veterans Memorial Bldg, San Luis Obispo	Martin Alt: Reed
Paso Robles Events Center Liaison	As Needed at PREC Offices	Gregory Alt: Martin
Paso Robles Housing Authority	2 <sup>nd</sup> Tuesday – 5:00 PM - George Stephan Oak Park Rec. Building	Strong Alt: Reed
Paso Robles School District Liaison	Monthly (no specific date) 12:00 - 1:00 PM - PR School District Office	Martin Alt: Gregory
Paso Robles Wine Country Alliance	As Needed, meeting locations to be announced	Martin Alt: Strong
Youth Sports Council	2 <sup>nd</sup> Wednesday – 7:00 PM	Hamon Alt: Reed
<b>Council Liaison to City Advisory Bodies</b>	<b>Meeting Dates/Location</b>	<b>Current Member</b>
Airport Advisory Committee	4 <sup>th</sup> Thursday - 7:00 PM - Airport Terminal, 4900 Wing Way	Hamon Alt: Gregory
Travel Paso Robles Alliance (TPRA) Hotelier BID	4 <sup>th</sup> Tuesday – 1:00 PM – City Hall Large Conference Room Staff Liaison: Assistant City Manager, Director Admin Services	Martin Alt: Hamon

Library Board of Trustees	2 <sup>nd</sup> Thursday - 9:00 AM - Paso Robles Library	Gregory Alt: Reed
Parks & Recreation	2 <sup>nd</sup> Monday - 4:00 PM - Centennial Park Live Oak Room, 600 Nickerson	Gregory Alt: Hamon
Tourism Collaboration Committee	2 <sup>nd</sup> Tuesday – 3:30 PM – City Hall Large Conference Room 2 <sup>nd</sup> Floor. Staff Liaison: Assistant City Manager	Martin Alt: Hamon
Senior Advisory Board	2 <sup>nd</sup> Monday - 1:30 PM - Senior Center Library	Reed Alt: Gregory
Youth Commission	1 <sup>st</sup> Wed – 2:30 PM - PR School District Board Room (School Year)	Gregory Alt: Hamon
Sales Tax Oversight Committee	Meets Quarterly	Gregory Alt: Reed
<b>Ad Hoc Committees</b>	<b>Meeting Dates/Location</b>	<b>Current Member</b>
Wastewater Ad Hoc	As Needed	Gregory, Martin
Solid Waste Ad Hoc	As Needed	Gregory, Martin
Water Rates Ad Hoc	As Needed	Hamon, Gregory
<b>Appeals Boards</b>	<b>Meeting Dates/Location</b>	<b>Current Member</b>
Building Board of Appeals	As Needed	None

# What Planners Need to Know About City Finance

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Fiscal Policy Advisor

CSMFO / League of Calif Cities

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530.758.3952



## Cities Vary ... and so do their finances

- ✓ Geography: proximity, climate, terrain, access
- ✓ Community Character / Vision: Land use  
Bedroom? Industrial? Tourist? Rural? etc.
- ✓ Size – urban / rural
- ✓ Governance / service responsibilities  
full service city - vs.- not full service

❖ *Statewide generalizations often mask trends among sub-groups*

•



# Taxes

- ✓ Charges which pay for public services and facilities that provide general benefits. No need for a direct relationship between a taxpayer's benefit and the tax paid.
- ✓ Cities may impose any tax not otherwise prohibited by state law. (Gov Code § 37100.5)
- ✓ The state has reserved a number of taxes for its own purposes including:
  - cigarette taxes, alcohol taxes, personal income taxes.
- ✓ General & Special
  - General Tax - revenues may be used for any purpose.
    - Majority voter approval required for new or increased local tax
  - Special Taxes - revenues must be used for a specific purpose.
    - 2/3 voter approval required for new or increased local tax
    - Parcel tax - requires 2/3 vote



# Fees and the Rest

California Constitution per Prop218(1996, Prop26(2010), etc.

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.



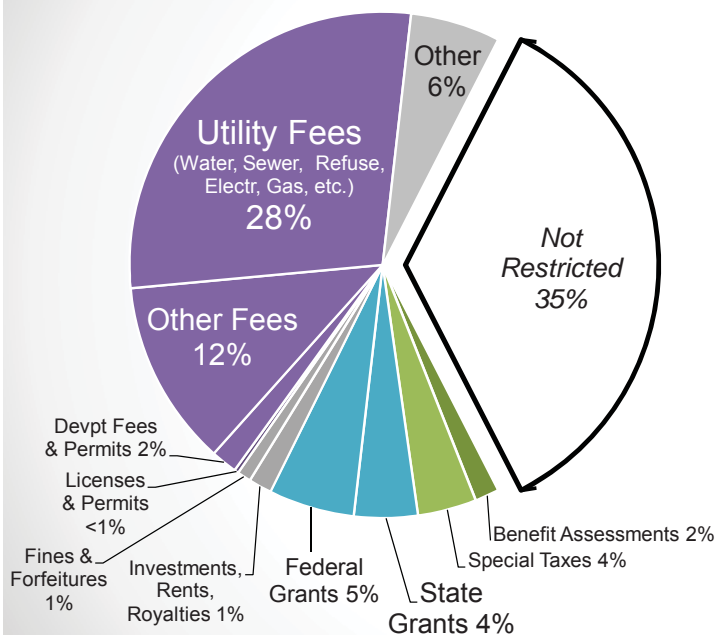
# Taxes and Fees/etc. Approval Requirements (California Constitution)



	TAX- General	TAX- Parcel or Special (earmarked)	G.O.BOND (w/tax)	Fee / fine / rent
City / County	Majority voter approval	Two-thirds voter approval	Two-thirds voter approval	Majority of the governing board.*
Special District	n/a	Two-thirds voter approval	Two-thirds voter approval	Majority of the governing board.*
K-14 School	n/a	Two-thirds voter approval (parcel tax)	55% voter approval*	Majority of the governing board.*
State	For any law that will increase the taxes of any taxpayer, two-thirds of each house of the Legislature ...or approval of majority of statewide voters.		Statewide majority voter approval	Majority of each house.



## California City Revenues



- Taxes
  - general benefits / services
  - general v special
  - general - majority vote
  - special (earmarked) - 2/3
- Fees
  - user fees
  - regulatory fees
- State/Federal Aid
- Rents, penalties
- Other

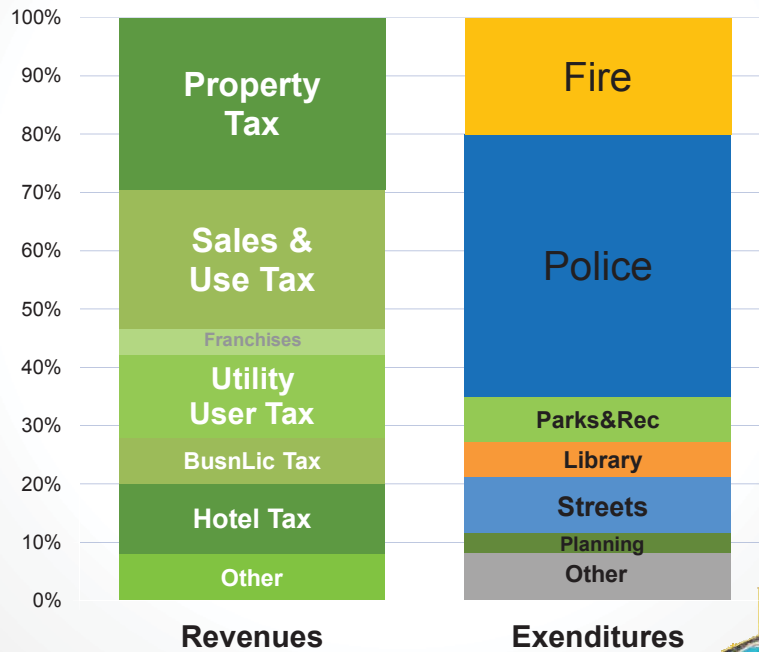
Source: CaliforniaCityFinance.com computations from data from California State Controller (revenues). Does not include data from the following cities that failed to report: Beaumont, Hawthorne, Imperial, La Habra, Lindsay, Placerville, Stockton, Taft, and Westmorland.





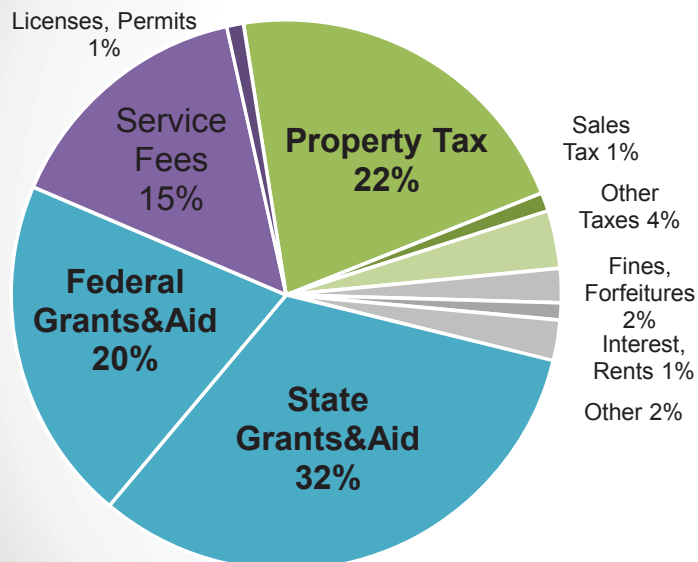
# Discretionary Revenues and Spending

## Typical Full Service City



Source: Coleman Advisory Services computations from State Controller reports

# California County Revenues



Counties are hybrid local/state

- state/federal programs: Aid to families (CalWORKS), food stamps, foster care, In-Home Support Services (IHSS), alcohol & drug treatment.
- countywide services: jails, courts, elections, property tax collection & allocation.
- "city" services to unincorporated areas

Source: CaliforniaCityFinance.com computations from data from California State Controller.



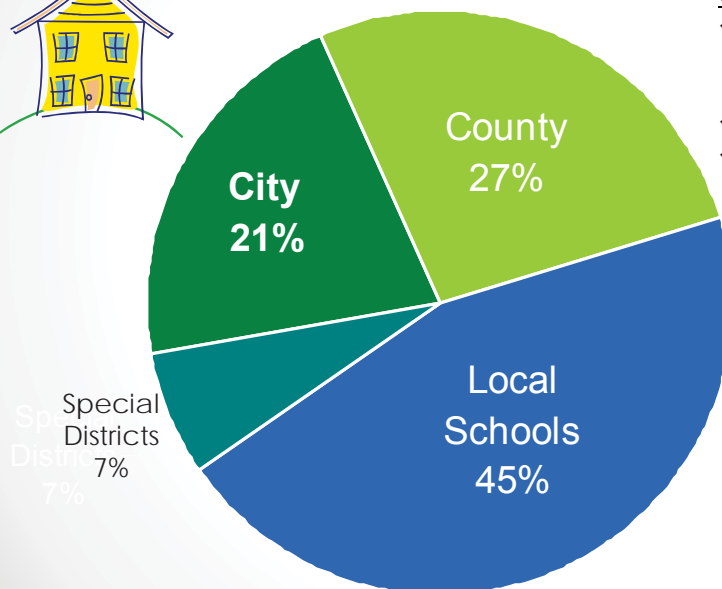
# Property Tax



- ✓ An *ad valorem* tax imposed on real property and tangible personal property
- ✓ Maximum 1% rate (Article XIII A) of assessed value, plus voter approved rates to fund debt
- ✓ Assessed value capped at 1975-76 base year plus CPI or 2%/year, whichever is less
- ✓ Property that declines in value is reassessed to the lower market value.
- ✓ Reassessed to current full value upon change in ownership (with certain exemptions)
- ✓ Allocation: shared among cities, counties and school districts according to state law.



## Where Your Property Tax Goes

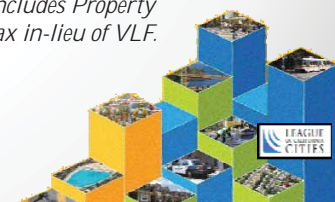


### Shares Vary!

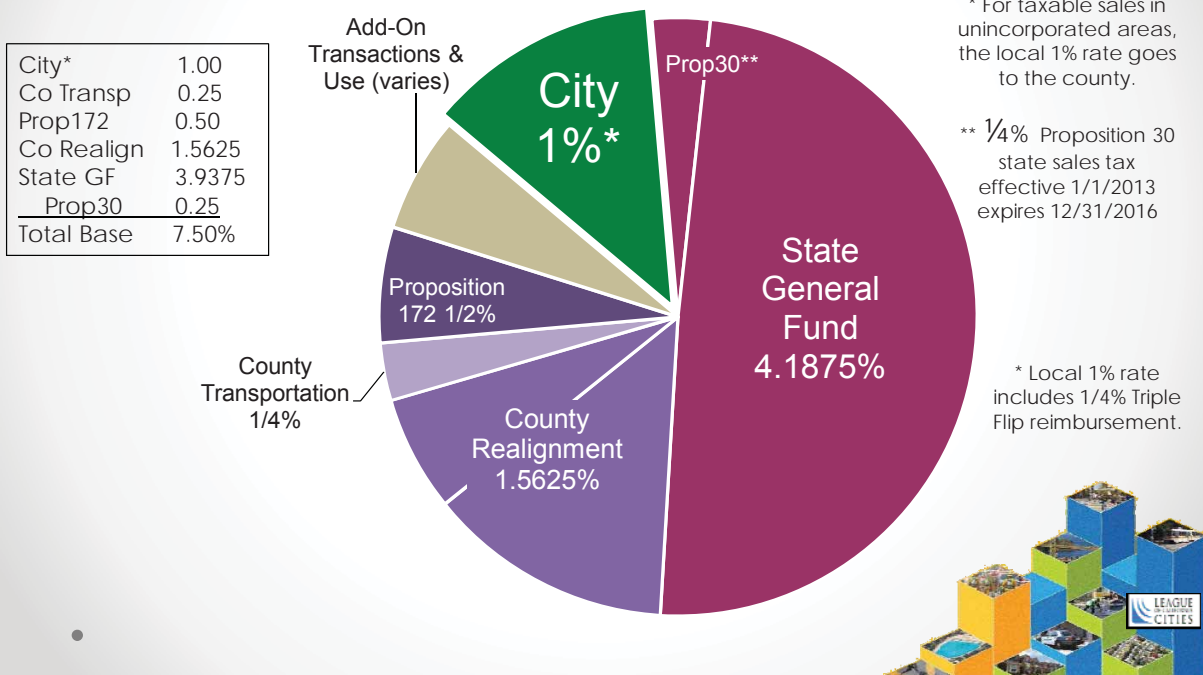
- ✓ Non-Full service cities: portion of city shares go to special districts (e.g. fire)
- ✓ Pre-prop13 tax rates
- ✓ Everyone gets Prop-Tax In Lieu of VLF shares – except new cities since 2004.

*Typical homeowner in a full service city not in a redevelopment area.*

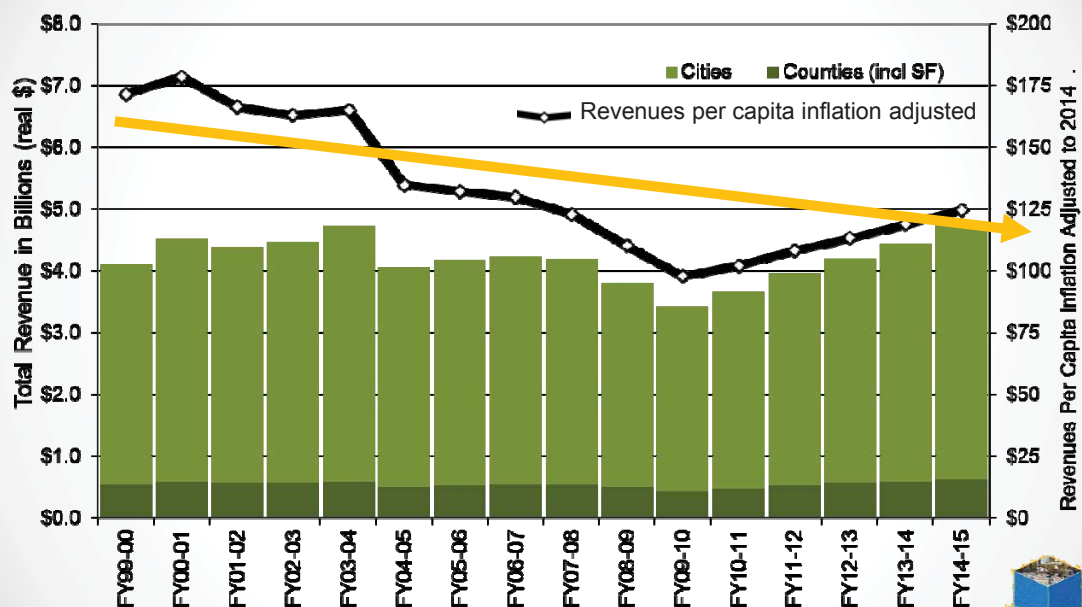
*Includes Property Tax in-lieu of VLF.*



# Where Your Sales Tax Goes

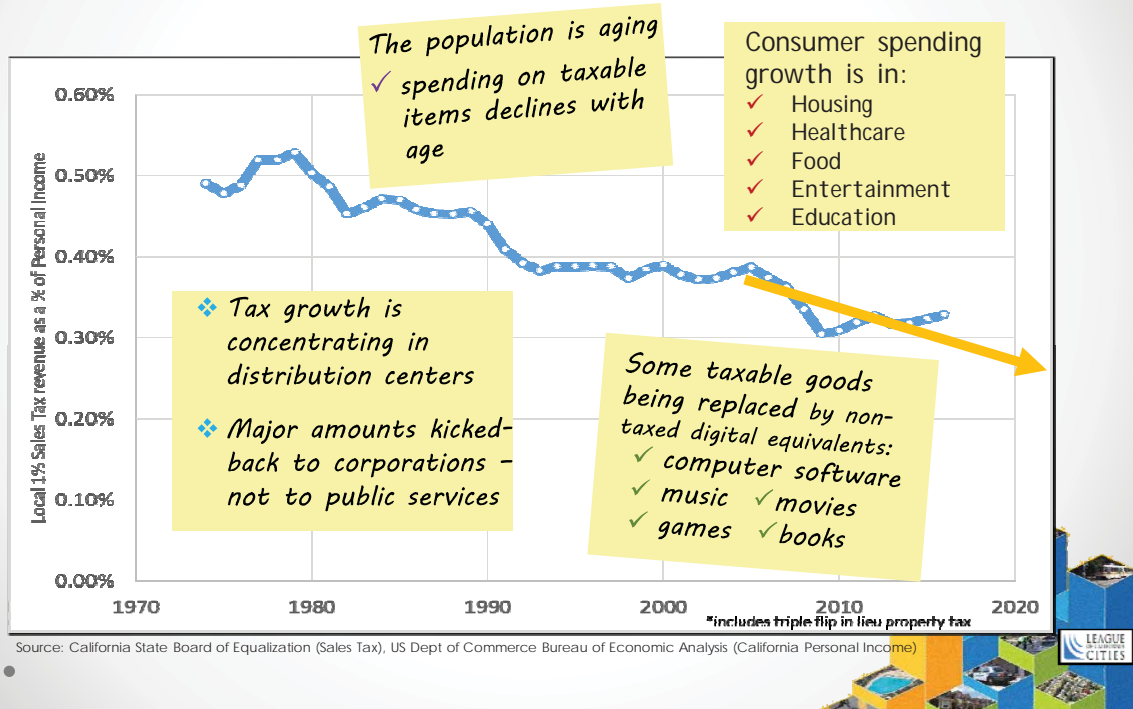


# Sales Tax Collections


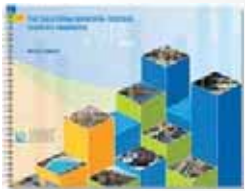



Source: California State Board of Equalization (Sales Tax), CA Dept of Finance (Population), CA Dept of Industrial Relations

# Local 1% Sales Tax Revenue as a Percent of Personal Income



## Resources

- ✓ League of California Cities
  - ✓ City Advocate Weekly      Regional Managers
  - ✓ League Alerts              Conferences / Seminars
- ✓ Institute for Local Government (ILG) 
- ✓ Michael Coleman, The California Municipal Revenue Sources Handbook, 2014 Edition. 
- ✓ Coleman, Hampian, Multari, & Statler, Guide to Local Government Finance in California. Solano Press. 
- ✓ *Government Finance Officers Association GFOA.com*
- ✓ *The California Municipal Finance Almanac*  
[www.CaliforniaCityFinance.com](http://www.CaliforniaCityFinance.com)

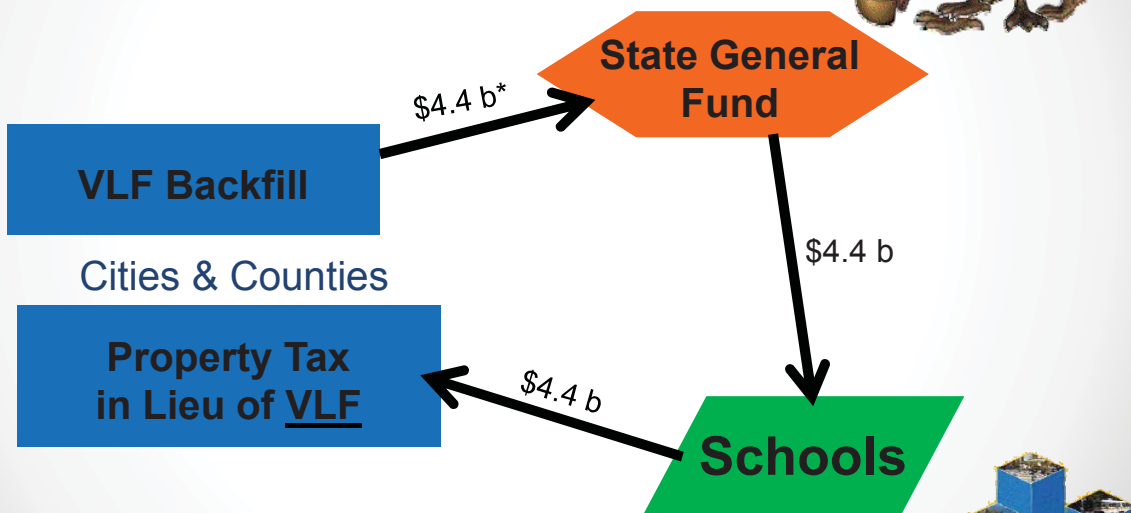


# Are Incorporations and Annexations Extinct?

Pernicious Effects of the  
VLF-Property Tax Swap  
of 2004

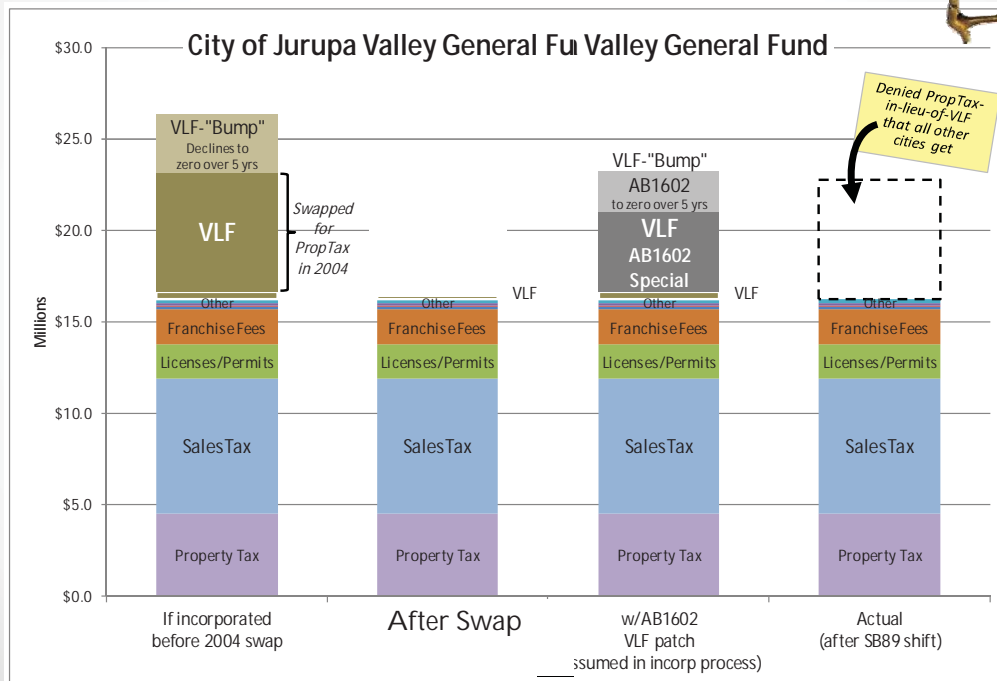
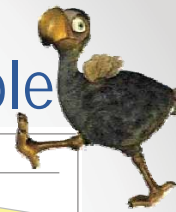


## The VLF-Property Tax Swap of 2004

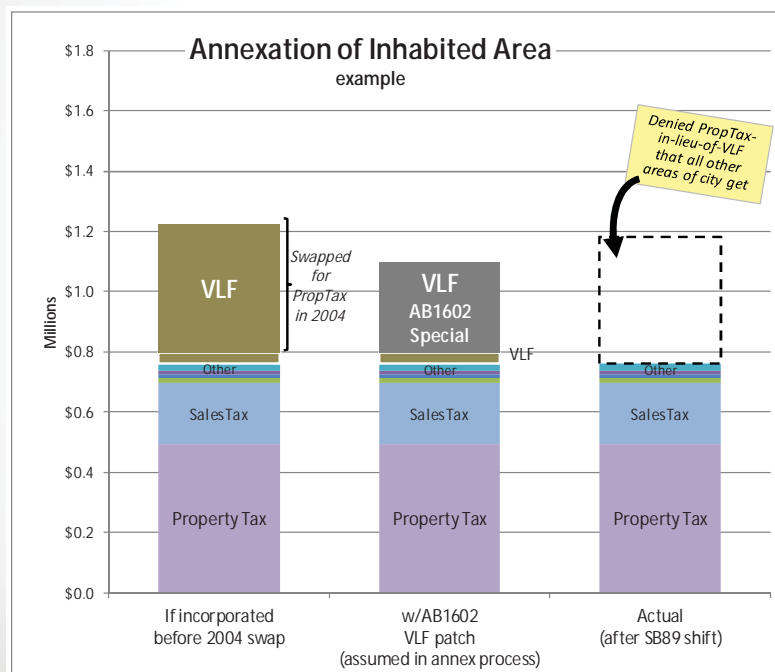


\* in FY2004-05

# The Lack of VLF Replacement Makes New Cities Fiscally Unviable



# The Lack of VLF Replacement Makes Many Annexations Fiscally Unviable

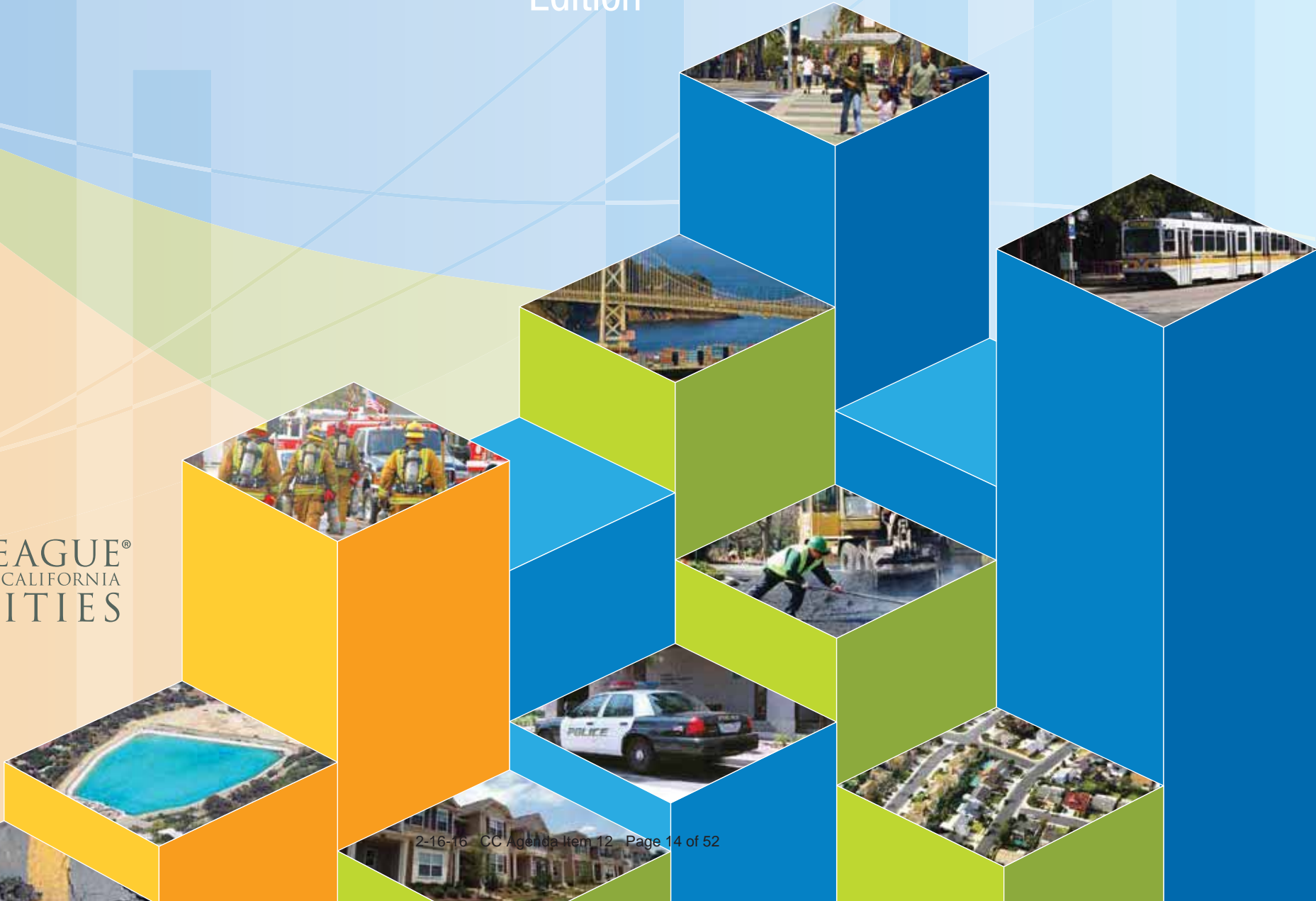




# THE CALIFORNIA MUNICIPAL REVENUE SOURCES HANDBOOK

# 2014

Edition



## THE CALIFORNIA MUNICIPAL REVENUE SOURCES HANDBOOK

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Printed in the United States of America.



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# **MILESTONES IN MUNICIPAL REVENUES:** **A Historical Perspective**

## Chapter 1



The backdrop of any discussion of municipal revenues must be the state-local relationship and the provisions of the California Constitution that govern the relationship. This relationship has evolved over time, marked in recent decades by several landmark constitutional amendments. Consequently, today's municipal revenue landscape is not the same as your grandmother's or even your mother's.

In California's early years of statehood, local government authority was strictly controlled by the state government, and local affairs were the frequent subject of meddling by the Legislature. California governors and legislators often displayed a deep distrust of local affairs, while local officials sought more latitude in municipal policy and public services.

# Chapter 1: Milestones in Municipal Revenues

## ■ The 1879 California Constitution

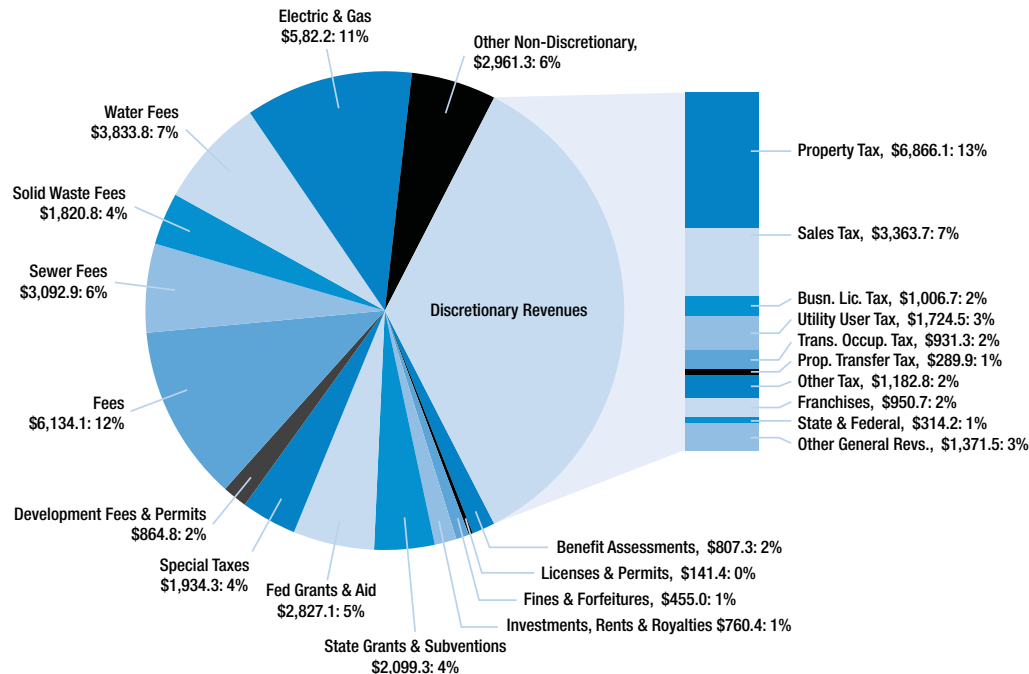
Thirty years after California's admission to the union, the second (and current) California Constitution was adopted by the Constitutional Convention during a turbulent period in the state's political history. That adoption created, for the first time, substantial and meaningful home rule for California's local governments. The 1879 Constitution included five provisions limiting the power of the Legislature to interfere with the affairs of cities and vested in cities extensive powers of self-government. This Constitution prohibited the state from imposing a tax for local purposes, but enabled the state to authorize local governments to impose them.

Over the next several decades, local taxation authority was expanded to general law cities. In 1903, in a case upholding the city of Los Angeles' business license tax, the California Supreme Court stated unequivocally that local taxation is a municipal affair under article XI, §5 of the California Constitution. Later, in 1982, the Legislature conferred on general law cities by statute the authority to adopt any tax that could be adopted by a charter city.

A 1910 ballot measure known as the "Separation of Sources Act" made the property tax a local government revenue source and established the principle of separate revenue sources for state and local governments. The property tax was ideally suited to fund critical local general services such as law enforcement, jails, fire protection, parks, libraries, schools, hospitals and public health. This concept of the property tax as the largest, most durable and essential source of local government funding would stand for 68 years, until Proposition 13 drastically altered California local government finance.

## California City Revenues

FY2010-11 (excluding the City and County of San Francisco)



Source: CaliforniaCityFinance.com computations of data reported to California State Controller.  
Does not include data from the following cities that failed to report: Beaumont, Hawthorne, Imperial, La Habra, Lindsay, Placerville, Stockton, Taft, and Westmorland

In 1914, the California Constitution was amended to provide charter cities with the authority to "make and enforce laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters." It established the power of charter cities to adopt their own laws with respect to municipal affairs, including flexibility in organizational and program design, latitude to regulate certain activities and the authority to determine spending levels and priorities. But local authority in municipal affairs remained subject to state pre-emption as to matters of statewide concern. In the event of a conflict between a charter city law and state law, the court must decide whether the state law prevails (because it is a matter of statewide concern) or the local law prevails (because it is a municipal affair). Thus, the dynamic interpretation of "matters of statewide concern" and "municipal affairs" controls the scope of home rule.

## ■ Statewide Concerns and Municipal Affairs

Although cities achieved greater local fiscal authority to determine service levels and levy local taxes and charges, state fiscal rules and constraints have often dominated. In 1935, the state pre-empted the local taxation of motor vehicles as real property and established a statewide uniform value-based tax on motor vehicles, known as the “motor vehicle in-lieu tax” or Vehicle License Fee (VLF), which it then allocated to cities and counties based on their share of county population.

In 1955, the Legislature passed the Bradley-Burns Uniform Sales and Use Tax Act, pre-empting then-existing local sales taxes and providing for a uniform, statewide system of sales taxation and collection. The Bradley-Burns Act authorized cities to adopt local sales and use tax rates up to 1 percent of taxable sales transacted in their jurisdictions to be administered and allocated by the state. The amounts of revenue remained intact, and the use of those revenues remained at local discretion.

These changes attempted to strike a balance between accommodating the needs of the modern industrial economy for uniform practices and procedures with California’s continuing commitment to meaningful local control of local government finance. They also attempted to address the important issues of taxpayer ease, uniformity and simplicity, but had the accompanying effect of centralizing fiscal authority with the Legislature and Governor while constraining local fiscal authority.

Through both Democratic and Republican administrations in the 1950s and 1960s, federal and state policy initiatives meant additional money and additional incentives, but also additional mandates for municipalities. In 1972, the Legislature responded to the vocal concern of local government over the costs of state mandates by passing SB 90 (Chapter 1406), requiring the reimbursement of costs to local agencies for state mandated programs. The following year, the Legislature required cost estimates of all legislation having a financial impact on local government. In 1979, mandated reimbursement, as required in SB 90, was added to Article XIII B of the California Constitution as a part of Proposition 4. The obligation to reimburse was further strengthened by Proposition 1A in 2004.

## ■ Property Tax Limits and Voter Approval of Special Taxes: Proposition 13 (1978)

In 1978, a simple majority of California voters approved Proposition 13, seeking property-taxpayer relief and uniformity, but with far-reaching consequences, some unintended. Proposition 13 reduced property tax revenues by more than half and effectively abolished any local control with regard to the property tax. Local governments still have wide latitude on the spending of the remaining revenues they receive, but the allocation of the tax is controlled by the state Legislature. Occasional proposals by the Legislative Analyst or individual policymakers to delegate more authority over property tax allocation to local governments tend to be met with resistance from local officials who fear the local conflicts and power struggles that would ensue in nearly any discussion of revenue reallocation.

### Six Provisions of Proposition 13 Affecting Local Finance

- 1. One percent rate cap.** Proposition 13 capped, with limited exceptions, property tax rates at 1 percent of full cash value at the time of acquisition. Prior to Proposition 13, local jurisdictions independently established their tax rates and the total property tax rate was the composite of the individual rates.
- 2. Assessment rollback.** Proposition 13 rolled back property values as determined for tax purposes to their FY1975–76 level.
- 3. Reassessment upon change in ownership.** Proposition 13 replaced the practice of annually reassessing property at full cash value with a system based on cost at acquisition. Under Proposition 13, property is assessed at market value for tax purposes only when it changes ownership. Subsequent annual values are limited to this “base year” amount plus an annual growth factor of 2 percent or CPI, whichever is less.
- 4. Responsibility for allocating property tax transferred to the state.** Proposition 13 gave state lawmakers responsibility for allocating property tax revenues among local jurisdictions. Prior to Proposition 13, jurisdictions established their tax rates independently and their property tax revenues depended on the rate levied and the value of the property located within the boundaries of the jurisdiction.
- 5. Voter approval for special taxes.** Proposition 13 requires two-thirds voter approval for taxes raised by local governments for a designated (“special”) purpose.
- 6. Taxes imposed by the Legislature require a two-thirds vote of the Legislature.**

## Chapter 1: Milestones in Municipal Revenues

Prior to Proposition 13, effective total property tax rates varied, but averaged about 2.5 percent of market value. The 1 percent limitation and the rollback to FY1975–76 assessed values resulted in an immediate 57 percent reduction in property tax revenues statewide.

In FY1979–80, the Legislature used its authority to allocate property tax revenues to cushion the fiscal impact of Proposition 13 on local governments. In what is often called the “bailout,” the state was able to shift about \$2.7 billion of annual ongoing financial resources to local governments in part because of the state’s \$5 billion surplus (about 40 percent of annual revenues) and the \$1 billion-plus annual revenue boost it received from higher personal income taxes due to

lower taxpayer deductions for property taxes. As a result, city property tax losses from Proposition 13 were about 28 percent less than they might have been.

In addition to the bailout, the Legislature established a system for allocating property taxes. In what was intended as a permanent resolution to the issue of how to distribute significantly reduced property tax revenues, this solution, AB 8, reduced school shares of property tax revenues and gave cities counties and special districts greater shares. In return, the state assumed a larger financial responsibility for K-14 schools. The state also increased its share of costs for a number of social service and health programs operated by

counties.

Effects of Proposition 13	Trends in California Municipal Finance
<ul style="list-style-type: none"><li>■ Lowered tax burden for elderly and low-income homeowners (proportionate to income)</li><li>■ Disparate treatment of similarly situated properties</li><li>■ Disconnect between service costs and revenues deters balanced planning</li><li>■ Local agency property tax revenues cut by nearly 60 percent</li><li>■ Tax rates and shares out of sync with service demands</li><li>■ Greater reliance on state General Fund for county and school spending</li><li>■ Greater reliance in cities and counties on user fees and local taxes</li></ul>	<ul style="list-style-type: none"><li>■ Decline in predictable discretionary funding for key services</li><li>■ Sales tax revenues decreasing in service-oriented economy</li><li>■ Population growth increasing service demands</li><li>■ Public safety and homeland security costs increasing</li><li>■ Infrastructure cracking under neglect</li><li>■ New technologies leading to new infrastructure demands</li><li>■ Environmental degradation (air and water pollution) requiring expensive mitigation</li><li>■ Continued fragmentation of local finance among overlapping agencies</li></ul>

Despite these efforts to cushion its impact, Proposition 13 dealt a major blow to local fiscal autonomy. As the California Supreme Court noted in a 1991 decision upholding AB 8's property tax apportionment system, Proposition 13 "prevails over the preexisting taxing power" of cities. In a 1994 ruling upholding the state's shift of property tax revenues from local governments (the infamous ERAF shift), the court noted that the taxing powers of local governments are "derived from the Constitution upon authorization by the Legislature." The state was handed the authority to determine each local agency's share within the 1 percent umbrella for all taxing agencies. There is no local authority to reallocate property tax revenue among local agencies (even those providing "city" services such as fire, parks or libraries). Thus, where once a community could devote more or less property tax revenue to fire services versus libraries versus schools, now all communities are constrained by taxing decisions made by leaders of a generation ago when California was a very different place socially, economically and politically.

By capping the property tax rate at 1 percent, Proposition 13 denied even local voters the authority to impose a higher property tax. The only exception to the 1 percent cap in Proposition 13 was for indebtedness approved prior to July, 1, 1978. This effectively repealed the authority of a local agency to, with two-thirds voter approval, levy a rate to repay bonded indebtedness, authority which was established in the 1879 California Constitution. In 1986, California voters altered that aspect of Proposition 13 with the passage of Proposition 46, restoring the authority of local agencies, with two-thirds voter approval, approve a property tax rate override to repay bonded indebtedness issued for the acquisition or improvement of real property.

## ■ The Gann Limit

Following up on their success at limiting taxes, taxpayer advocates in 1979 convinced California voters to approve a measure aimed at limiting government spending. Conceived by tax activist Paul Gann, Proposition 4 set tax expenditure limits on the state and local governments based on the proceeds they received from taxes in FY1978–79, increasing with changes in population and inflation. In any year, an agency may not appropriate tax proceeds in excess of this

limit unless an override, lasting a maximum of four years, is approved by a majority of voters. In 1990, voters approved Proposition 111, which, among other things, altered the spending limit, making the limit more accommodating of local revenue growth.

## ■ The 1980s: State Fiscal Retrenchment, Local Fiscal Innovation

In the years following Proposition 13, local governments faced substantially constrained revenues both from reduced property tax revenues but also from substantial reductions in state and federal aid. The state, after shifting resources to cushion the local impact of Proposition 13 found itself at times in fiscal trouble and repealed various state aid programs and even shifted local revenues to state coffers. Over the fiscal years 1981–82, 1982–83, and 1983–84, the state shifted more than \$700 million of Vehicle License Fee (VLF) revenues from cities, revenue that had never before gone to the state General Fund.<sup>1</sup> During these years, the state also repealed an assortment of local aid subventions including: the Highway Carriers Uniform Business Tax, Liquor License Fees, Financial Aid to Local Agencies (bank in-lieu subvention), and Business Inventory Exemption Reimbursements. Most of these payments had been put in place to reimburse locals for the state establishing a uniform statewide tax in lieu of local taxes or the state exempting some category of taxpayers.

Local governments responded by increasing various fees to recover full costs and eliminate subsidies. They sought out ways to raise existing taxes such as business licenses and hotel taxes. Many adopted new taxes such as utility user taxes, admission and parking taxes. With statutory authorization from the Legislature, they adopted new forms of assessments to provide needed funds for such things as streets, parks, lighting and landscaping.

## ■ The Courts Weaken Local Fiscal Authority

Meanwhile local control over fiscal matters continued to weaken. Proposition 13 had shifted the power to allocate what had been the number one source of discretionary local revenue, property taxes, to the state Legislature. Subsequent court decisions further weakened local fiscal autonomy. In 1991, the California Supreme Court gave



the state wider latitude to define a “matter of statewide concern” at the expense of home rule authority in fiscal affairs. In *California Federal Savings & Loan v. Los Angeles*, the court acknowledged that local taxation is generally a municipal affair, but declared the state’s system of taxation of financial institutions to be a matter of statewide concern. The court concluded that the conflicting charter city measure ceased to be a municipal affair and the Legislature was not prohibited by the Constitution from addressing the statewide dimensions of its own enactments. Assuming that financial institutions should be subject to a limited amount of taxation, the state decided that permitting local governments to receive a portion of these revenues through local taxation would interfere with the state’s ability to raise revenues for its own purposes.

### ■ Majority Vote for Taxes in General Law Cities and Counties: Proposition 62 (1986)

Reacting to the various forms of new local taxes and increases in fees in the wake of Proposition 13, the Howard Jarvis Taxpayers Association and other taxpayer groups responded with several follow-up initiatives. Proposition 62, a statutory initiative, passed in November 1986, restating the super-majority vote requirement for special taxes, imposing a majority vote requirement for general taxes, and prohibiting the imposition of taxes on the transfer of real estate. For nearly a decade, the applicability of Proposition 62 remained uncertain in the face of various court cases. Most provisions were eventually superseded by Proposition 218 in 1996.

### ■ E.R.A.F.: Educational Revenue Augmentation Funds

The most dramatic example of the shift of power from local governments to the state is the Legislature’s use of local property tax to balance the state’s budget troubles beginning in the early 1990s.

Despite major changes in local priorities and needs, the apportionment formulas for property taxes had remained largely unchanged since AB 8. In 1978, neither the pundits nor the authors of Proposition 13 envisioned the state Legislature using the power to allocate local property tax revenue given to it by Proposition 13 as

a means to take local tax revenues to meet its own financial needs. But in 1992, facing a serious state General Fund deficit, the state Legislature turned to these powers as a remedy.

To meet its obligations to fund education at specified levels under the Proposition 98 educational funding formulas, the state enacted legislation that shifted partial financial responsibility for funding education to local government (cities, counties and special districts). The state did this by instructing county auditors to shift the allocation of local property tax revenues from local government to “educational revenue augmentation funds” (ERAFs), directing that specified amounts of city, county and other local agency property taxes be deposited into these funds to support schools.

In FY2011–12, the annual impact of the ERAF shift was a shortstopping of some \$7.3 billion from cities, counties, special districts and the citizens those entities serve. Counties have borne some 74 percent of this shift; cities have borne 16 percent.

The state has provided some funding to local governments that it is considered by most to be mitigation of ERAF. However, the vast majority of these funds are earmarked for particular purposes. Moreover, a relatively small portion of these funds has gone to cities. In 1992, California voters approved Proposition 172, which provided sales tax funding for police, fire and other public safety programs. See Section 6.05 of Chapter Six. In FY2011–12, Proposition 172 funds provided only \$2.5 billion annually to local government, leaving a \$4.8 billion net ERAF gap. Considering all state subventions that the Legislative Analyst defines as “ERAF mitigation,” the net ERAF impact on cities was nearly \$800 Million in FY2011–12.<sup>2</sup>

As a part of the budget agreement that put Proposition 1A of 2004 on the ballot to protect city revenues from additional shifts and state takeaways, cities, counties and special districts agreed to contribute an additional \$1.3 billion per year in FY2004–05 and FY2005–06. Although these ERAF III shifts ended in FY2006–07, the original ongoing shifts that began in FY1992–94 have not been reduced.<sup>3</sup>



### ■ Voting on Taxes, Assessments and Property Related Fees: Proposition 218 (1996)

In November, 1996, California voters approved Proposition 218, expanding restrictions on local government revenue-raising by adding Article XIII C and XIII D to the California Constitution. The measure allows voters to repeal or reduce taxes, assessments, fees, and charges through the initiative process; reiterates the requirement for voter approval for both “special taxes” and “general taxes;” and imposes procedural and substantive limitations on benefit assessments imposed on real property and on certain types of fees.

Proposition 218:

- Establishes a clear constitutional standard distinguishing locally imposed general taxes from special taxes and imposing a majority voter requirement for general taxes (which had already existed for general law cities under Proposition 62) and a supermajority requirement for special taxes (which had already existed under Proposition 13);<sup>4</sup>
- Provides citizens with the power to repeal taxes, assessments, fees and charges that are subject to Proposition 218;
- Establishes a formal balloting procedure for the adoption of benefit assessments imposed on property;
- Requires a distinction between special benefits and general benefits with regard to assessments and prohibits the funding of general benefits from property assessments;
- Requires the assessment of public property within an assessment district;
- Places the burden of proof for demonstrating special benefit on the local agency imposing the property assessment; and
- Establishes a new category of fees called “property-related fees” and requires new approval procedures and substantive provisions for those fees.

### ■ Constitutional Protection of Local Revenues: Proposition 1A (2004) and Proposition (2010)

Reacting to continued state shifts of local property tax revenues, the deterioration of local control of fiscal matters and the substantial limitations imposed by Proposition 218, the League of California Cities, the California State Association of Counties (CSAC) and the California Special Districts Association (CSDA) crafted a local revenue protection initiative and garnered enough signatures to qualify the proposition for the November 2004 ballot. Governor Arnold Schwarzenegger, who had recently taken office in the November 2005 recall of Gray Davis, immediately signaled his opposition to the measure but a willingness to support a new mutually crafted local revenue protection measure as a part of a larger state-local fiscal restructuring package to include local contributions to assist the state budget problem over two years.

With the active involvement of Legislative leadership, the Schwarzenegger Administration, the League, CSAC and CSDA worked on an alternative to Proposition 65 that became Proposition 1A. The Legislature placed the measure on the November ballot. As part of the 2004 state-local agreement, the state shifted \$1.3 billion of local property tax revenues in FY2004–05 and again in FY2005–06 (the so-called ERAF III). In addition, the state General Fund backfill to cities and counties for state cuts of the Vehicle License Fee was eliminated and instead cities and counties were given additional annual property tax revenues See Section 6.01 of Chapter Six. Finally, local government associations agreed to abandon support of Proposition 65 and the Governor agreed to actively support Proposition 1A.

In November 2004, the voters of California approved Proposition 1A with an unprecedented 84 percent of the yes vote, Constitutionally protecting major city revenues from additional shifts to the state and strengthening local government’s ability to get reimbursement for unfunded mandates. In 2010, voters passed another measure to protect local government finances. Proposition 22 prohibits the state

from borrowing, delaying or taking certain funds allocated to local governments and eliminated a provision of Proposition 1A allowing the state to borrow a limited amount of property tax revenue under certain conditions. Together, these measures:

- Strengthen prohibitions against unfunded state mandates by requiring the state to suspend state mandates in any year the Legislature does not fully fund those laws.<sup>5</sup>
- Expands the definition of state mandate to include transfer of responsibility of a program for which the state previously had full or partial responsibility.
- Prohibit the state from:
  - Reducing the local Bradley-Burns Uniform Sales and Use Tax rate or altering its method of allocation. Exception to comply with federal law or an interstate compact;
  - Decreasing VLF revenue from the 0.65 percent rate without providing replacement funding to cities and counties;
  - Shifting property taxes from cities, counties or special districts;
  - Failing to reimburse to cities and counties for the 0.25 percent local sales tax shifted under the triple flip; and
  - Borrowing, delaying or taking motor vehicle fuel tax allocations, gasoline sales tax allocations, public transportation account funds or redevelopment agency property tax increment.

**Sales and Use Tax Rate and Allocation Method.** Generally revenue from the 1 percent Bradley-Burns Local Sales and Use Tax is allocated to the city in which the sale occurs, or, if in an unincorporated area, the county. Proposition 1A prohibits the Legislature from reducing the local sales tax rate, or changing the method of allocation of local sales tax revenues. Proposition 1A permits the Legislature to change the method of allocation in order to comply with federal law or an interstate compact.

**Local Transactions and Use Tax Authority.** Proposition 1A prohibits the state from restricting the authority of a local government to impose a transactions and use tax pursuant to Revenue and Taxation code Section 7251 or altering the method of allocation of these tax revenues.

**Local Sales Tax Reduction Under the Proposition 57 Triple Flip.** In March 2004, California voters approved Proposition 57, the California Economic Recovery Bond Act. Legislative provisions implementing Proposition 57 provide for a swapping of 0.25 cent to be used by the state to repay the bonds effective July 1, 2004. The so called “triple flip” comprises:

1. Reducing the Bradley-Burns Local Sales and Use Tax Rate by 0.25 percent and 0.25 percent to the state’s sales tax rate to fund fiscal recovery bond repayment;
2. Repayment to cities and counties with additional local property tax previously allocated to local schools; and
3. Repayment to local schools with state General Fund.

Proposition 1A prohibits the Legislature from extending this reduction in local authority to impose the full Bradley-Burns Sales and use tax rate beyond the period necessary to repay the Proposition 57 bonds. In addition, it constitutionally protects the reimbursement to cities and counties under the triple flip. The Proposition 57 Sales Tax Triple Flip ends when the economic recovery bonds are fully paid, which is expected in 2016.

**Vehicle License Fee.** Proposition 1A requires the Legislature to provide replacement revenue to cities and counties if it reduces the VLF rate below 0.65 percent. California Constitution Article XI §15 requires that VLF revenue be allocated to cities and counties. The state may charge for administrative costs (DMV, Controller) and the Legislature retains the power to change state law allocating the VLF among cities and counties. See Section 6.01 for more on the VLF.

**Property Tax.** Proposition 1A prohibits the Legislature from reducing the share of property tax revenues going to the cities, county and special districts in any county, and shifting those shares to the schools or any other non-local government function. However, the Legislature may alter the allocation of property taxes among cities, counties and special districts within a county with two-thirds approval in each house. Proposition 1A also contained provisions allowing the state to borrow up to 8 percent of city, county and special district property tax revenues in one year under specific conditions. The Legislature invoked this option as a part of the 2009 Budget Act. The loan, used to finance annual operations in FY2009–10 was fully repaid with interest according to law in June 2013. Proposition 22 (2010) prevented this from occurring again by eliminating this property tax loan option. See Section 2.01 for more on the property tax.

Proposition 1A did not provide local governments with any new revenue nor reduce or alter the ERAF I and II shifts.

### ■ Refining the Definition of “Tax”: Proposition 26 (2010)

In November, 2010, California voters passed Proposition 26, which added a definition of “tax” to the California Constitution. The new provisions state that a government-imposed charge, levy or exaction of any kind is a tax unless it falls into one of seven express exceptions. The effect of the measure was to particularly tighten the definition of regulatory fees and certain assessments.

### ■ The Great Recession and the Dissolution of Redevelopment

Despite the substantial protections provided to local governments by Propositions 1A and 22, threats to local finances continued. Local budgets struggled from the impacts of the great recession, mounting costs of pensions and unfunded public employee retiree health benefits. Three large cities, unable to balance their budgets without violating legal payment obligations and unable to garner sufficient concessions from labor and other creditors, entered into bankruptcy proceedings. Others cut public services to unprecedented low levels.

Meanwhile, the State Budget Act of 2011 included a major realignment of corrections and law enforcement programs to counties with potential crime impacts in local communities. Counties sought assurances that adequate funding would also be provided. In late “gut-and-amend” legislation, all remaining city VLF funds were shifted to pay for state law enforcement grants to locals that had previously been funded by the state general fund. This wiped out allocations to new cities and annexations that had compensated for a flaw in the 2004 VLF-Property Tax swap.

With the 2011 Budget Act, Governor Jerry Brown also signed into law two bills aimed at extracting revenues from Redevelopment Agencies help remedy the State’s ongoing budget deficit. The legislation provided that each redevelopment agency must agree to make substantial annual payments to aid the state or dissolve as of October 1, 2011.

On December 29, 2011, the California Supreme Court upheld the constitutionality of dissolution of redevelopment while striking down the payment scheme. Approximately 400 redevelopment agencies dissolved on February 1, 2012, with the assets and liabilities transferred to Successor Agencies and Successor Housing Agencies.

## Chapter 1: Milestones in Municipal Revenues

But in November 2012, the state's fiscal woes took a major turn for the better. Following substantial cuts in state programs, voters approved Proposition 30 temporarily increasing state sales and income tax rates. The state budget was more easily balanced and the Legislature began fully paying down over \$30 billion in accumulated budgetary debt.

### ■ The Road Ahead for California Local Finance

Local revenues are now more stable and protected than ever before. Substantial constitutional limits have been placed on the Legislature's ability to take or shift local revenues. The state's fiscal condition has improved thanks to major program reductions in many areas, an infusion of temporary taxes that will pay off a mountain of accumulated budgetary debt, and a gradually improving economy.

But major risks and uncertainties persist. While Proposition 30 has seemingly provided a reprieve for as many as seven years, the state continues to struggle with the funding of corrections, health care, education, public employee benefits and major infrastructure. Substantial unbudgeted liabilities loom in teacher and state employee retirement systems. The state's long term budgetary balance remains cloudy.

The finances of local agencies face similar challenges. Many local agencies are grappling with major unbudgeted liabilities in the areas of post employment benefits (especially healthcare) — pension plan cost increases due to lower investment earnings, greater longevity and unsustainable benefit levels previously granted especially in the areas of police and fire. Local public works systems face major improvement needs in many areas.

Threats to the ability of communities to finance local services through locally levied taxes and other sources of revenue are likely to continue. Local governments will continue to grapple with evolving local public service needs and a local revenue portfolio that fluctuates with economic and socio/technical changes. Rather than make necessary effective reforms, the Legislature usually chooses expedient, ineffective “band-aid” remedies to serious local finance issues.

While local revenues are returning on the heels of a slowly recovering economy, public employee pensions and retiree health care costs are outpacing this revenue growth. The specter of more municipal insolvencies or bankruptcies persists. Municipal fiscal sustainability is a critical issue.

As always, skilled finance and management is essential to move forward through this. This handbook is designed to help you find your way.

### For More Information:

*Proposition 218 Implementation Guide*, 2007 Edition, League of California Cities, 2007 Edition. [www.cacities.org/resource\\_files/newCybrary/2007/legalresource/26003.PROP%20218%20final.pdf](http://www.cacities.org/resource_files/newCybrary/2007/legalresource/26003.PROP%20218%20final.pdf).

*California Municipal Law Handbook*, Chapter V., League of California Cities, 2013 Edition. [www.amlegal.com/ca\\_handbook/](http://www.amlegal.com/ca_handbook/).

Silva, J. Fred, and Elisa Barbour, *The State-Local Fiscal Relationship in California: A Changing Balance of Power*. Public Policy Institute of California, 1999. [www.ppic.org/main/publication.asp?i=57](http://www.ppic.org/main/publication.asp?i=57).

*Proposition 26 Implementation Guide*, League of California Cities, 2011 Edition. [www.cacities.org/Prop26Guide](http://www.cacities.org/Prop26Guide).

Multari, Michael, Michael Coleman, Kenneth Hampian, and Bill Statler, *Guide to Local Government Finance in California*. Solano Press Books, 2012.

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### Endnotes.

- 1 Subsequently, in 1986, the voters approved Proposition 47 which requires that VLF revenues be allocated to local governments.
- 2 Cities not including the city and county of San Francisco.
- 3 Subsequent to the transfer of these funds, they are reallocated within each county back to cities and counties to compensate for the state's repeal of the VLF backfill in 2004 and the temporary one-quarter cent sales tax shift to support the state deficit reduction bonds. However, this mechanism does not alter the existence or real effect of the ERAF I and II shifts.
- 4 In 1982, the state Supreme Court decided *City and County of San Francisco v. Farrell*, which defined the term special tax as any tax earmarked for a specific purpose. Under Proposition 13, a special tax requires the approval of two-thirds of voters.
- 5 Proposition 1A does not apply to mandates affecting local schools or mandates related to employee relations and collective bargaining.

# TAXES

## Chapter 2



A tax is a monetary imposition by a government on persons or property for the purpose of raising revenue to support the purposes of the government.<sup>1</sup> In contrast to an assessment or a fee, a tax need not be levied in proportion to specific benefit to a person or property. Fees or charges will be considered taxes to the extent they exceed the reasonable cost of the service, commodity or facility for which they are imposed.

California cities do not have an inherent power to tax. Charter cities are given the power to tax pursuant to Article XI, §5 of the California Constitution and may levy taxes for municipal purposes without specific authorization from the Legislature. As authorized in state statute, a general law city, with certain exceptions, may levy any tax that a charter city may levy.<sup>2</sup> State law may set certain limits and procedures and may exempt certain activities from taxes levied by general law cities. These laws apply to charter cities in matters that the courts have determined are of statewide concern.

*"The nation should have a tax system that looks like someone designed it on purpose."*

— WILLIAM SIMON



## ■ General and Special Taxes

The passage of Proposition 13 in 1978 created a distinction between “general” and “special” taxes. Proposition 218, in 1996, further defined and established procedures for general taxes.<sup>3</sup>

- A *general tax* is a tax imposed for general governmental purposes, the proceeds of which are deposited into the General Fund. A majority vote of the electorate (those voting on the measure) is required to impose, extend or increase any general tax.
  - An election on a general tax must be consolidated with a regularly scheduled general election of city council members, except in cases of emergency declared by a unanimous vote of the city council.<sup>4</sup>
  - Single-purpose special districts (“special purpose districts”) may not impose general taxes.

	General Tax	Special Tax
Use of Revenues	■ Unrestricted	■ Specific purpose
Governing Body Approval	<ul style="list-style-type: none"> <li>■ General law cities: two-thirds</li> <li>■ Charter cities: Majority</li> <li>■ Counties: two-thirds</li> <li>■ Transactions and Use Taxes: two-thirds See Section 2.03 of this chapter.</li> </ul>	■ Majority
Voter Approval	■ Majority	■ Two-thirds
Other Rules	■ A general tax election must be consolidated with a regularly scheduled general election of members of the governing body, unless an emergency is declared by unanimous vote (among those present) of the governing body.	<ul style="list-style-type: none"> <li>■ Special tax funds must be deposited in a separate account. The taxing agency must publish an annual report including: 1) the tax rate; 2) the amounts of revenues collected and expended and 3) the status of any project funded by the special tax.<sup>5</sup></li> </ul>

- A *special tax* is a tax that is collected and earmarked for a specific purpose and deposited either into a separate account or the General Fund. A two-thirds vote of the electorate is required to impose, extend or increase any special tax.

## ■ Proposition 26: Defining a Tax By What it is Not

California voters approved Proposition 26 in November, 2010, placing new rules into the California Constitution stating that a government-imposed charge, levy or exaction of any kind is a tax unless it falls into one of seven express exceptions.

1. *A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.*

**Specific Benefit Exception** examples include fees for planning permits, restricted neighborhood parking permits, and entertainment and street closure permits.

2. *A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.*

**Government Service or Product Exception** examples include user fees for parks and recreation classes, utilities (other than those covered under #7), public records copying fees, DUI emergency response fees, emergency medical and ambulance transport service fees.

3. *A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.*

**Permits and Inspections Exception** examples include health and safety permits, building licenses, police background checks, pet licenses, bicycle licenses and permits for regulated commercial activities (such as massage establishments, card rooms, taxicabs and tow-truck operators).

For exceptions 1 through 3, the fee imposed must not exceed the agency's reasonable costs.

4. *A charge imposed for entrance to or use of local government property or the purchase rental or lease of local government property.*

**Local Government Property Exception** examples include facility room rentals; equipment rentals; park, museum and zoo entrance fees, golf greens fees, on and off-street parking, and tolls.

5. *A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government as a result of a violation of law, including late payment fees, fees imposed under administrative citation ordinances, parking violations, etc.*

**Penalty for Illegal Activity Exception** examples include parking fines, code enforcement fees and penalties, late payment fees, interest charges and other charges for violation of the law.

6. *A charge imposed as a condition of property development.*

**Property Development Exception** examples planning fees, building permit fees, construction and grading permits, development impact fees, fees imposed by California Environmental Quality Act mitigation requirements, and Quimby Act and park mitigation fees.

7. *Assessments and property related fees imposed in accordance with the provisions of Article XIII D. (Proposition 218).*

**Proposition 218 Exception** examples include assessments on real property for special benefit conferred, fees imposed upon a parcel or a person as an incident of property ownership, and fees for a property related service such as many retail water and sewer fees.

### ■ When is a Tax Imposed, Increased or Extended?

Under Proposition 218, no local government may impose, extend or increase any general tax until such tax is submitted to the electorate and approved.<sup>6</sup>

A tax is "imposed" when the local tax ordinance is adopted, and each time a tax is collected.<sup>7</sup> "Extend" means a decision by an agency to extend the stated effective period for the tax or fee or charge, including amendment or removal of a sunset provision or expiration date.<sup>8</sup>

A tax is "increased" when an agency either 1) increases the rate used to calculate the tax; or 2) revises the methodology by which the tax is calculated if that revision results in an increased amount being levied on any person or parcel.<sup>9</sup> A tax is not "increased" if 1) it is imposed at a rate no higher than the maximum rate previously approved, or 2) it is adjusted in accordance with a schedule of adjustments, including a clearly defined formula for inflation that was adopted prior to November 6, 1996.<sup>10</sup> However, a tax which is calculated by using a percentage is "increased" when it is adjusted for inflation even if the voters approve the tax.<sup>11</sup>



*"The power of taxing people and their property is essential to the very existence of government."*

— JAMES MADISON,  
U.S. PRESIDENT

## ■ Additional Aspects of Municipal Taxation in California

- A local tax can be reduced or repealed by initiative unless it supports bonded debt. Many taxes can be imposed or increased by initiative as well.
- Certain types of local taxes are specifically pre-empted by state law. These include taxes on: cigarettes, alcohol and personal income.<sup>12</sup>
- State law provides various additional procedural requirements for the enactment of some taxes depending on the type of tax.
- If a local agency wants to collect a previously approved tax at a rate lower than was authorized by the voters, the agency should make it very clear in its official actions that the rate is being "suspended" for a certain period of time and not being permanently lowered. An agency that collects a previously approved tax at a rate lower than was authorized by the voters without a statement clarifying the intent and purpose of the suspension may trigger a Proposition 218 vote requirement when it begins collecting the tax at the previously approved rate.<sup>13</sup>

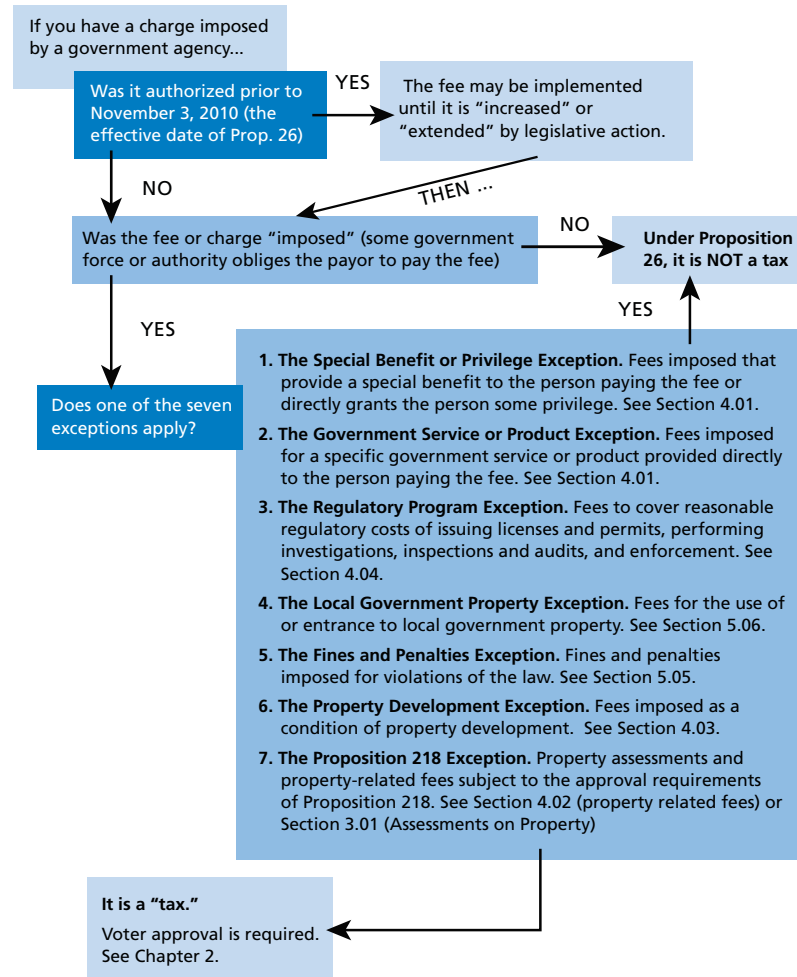
### For More Information:

*Proposition 218 Implementation Guide*, League of California Cities, 2007 Edition.

*California Municipal Law Handbook*, Chapter V, League of California Cities.

*Proposition 26 Implementation Guide*, League of California Cities, 2011 Edition. [www.cacities.org/Prop26Guide](http://www.cacities.org/Prop26Guide).

## Applying Proposition 26



# BENEFIT ASSESSMENTS

## Chapter 3



Benefit assessments (also called “special assessments”) are levied to pay for specifically identified public improvements or services that specially benefit the properties or businesses subject to the assessment.

A number of state laws permit the imposition of assessments for various purposes. General law cities may impose an assessment under one or more of these laws, following the procedures and limitations set forth in that law. Charter cities may also use state laws, but often choose to enact and proceed under their own assessment laws. Local assessment laws adopted by charter cities are typically drafted to incorporate one or more of the statewide laws, but may include revisions to the incorporated law streamlining procedures or permitting the financing of additional improvements or services.<sup>1</sup> Generally, such local laws must comply with California Constitution Article XVI, Section 19.

## ■ Assessments Versus Fees and Taxes

The key distinction between a benefit assessment and other types of revenue measures, such as fees and taxes, is that an assessment is based upon the special benefit that a property (or business) will derive from the improvement or service provided by the assessment.

Benefit assessments may also be distinguished from “nuisance abatement assessments,” which are legally a form of regulatory fee (see Chapter Four, Section 4.04) or other “assessments” which are in the nature of a fine or penalty (see Chapter Five, Section 5.05).

## ■ Proposition 218

Proposition 218 (California Constitution Article XIID), passed by the voters on November 5, 1996, affects most special assessments imposed since the passage of the act that are imposed on real property, in five principal ways:

1. Subjects assessments to repeal or reduction by initiative unless they have been bonded, triggering the protection of the federal Constitutional contract clause;

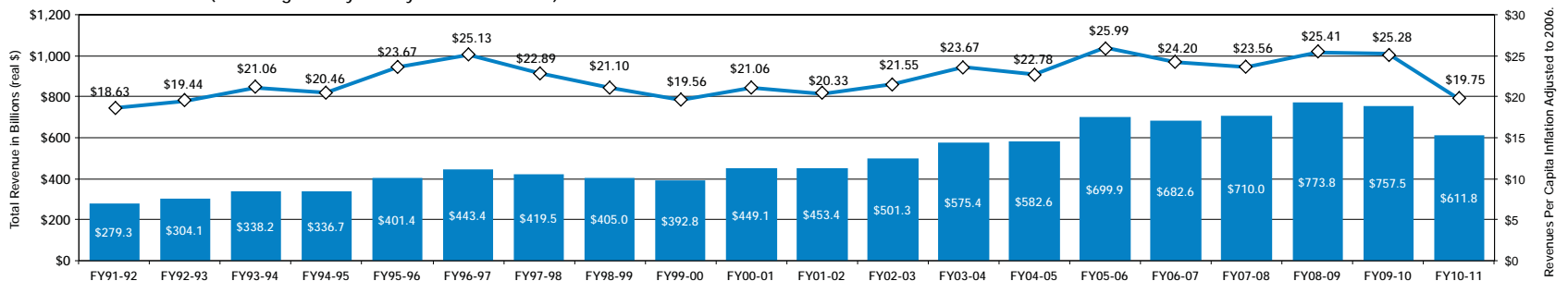
2. Establishes procedural requirements for the levy of assessments, including the requirement for majority property owner approval by a mail ballot process;
3. Requires the local agency to separate the general benefits from the special benefits conferred on a parcel, and to only assess for the special benefit;
4. Forbids the use of assessments on private property to fund the portion of the special benefit of a project or program which accrues to public agency property and can be argued to limit the general rule of intergovernmental tax immunity to allow assessment of government property; and
5. Shifts the burden of proof in legal actions to contest the validity of an assessment to the assessing government.

## ■ Use of Initiatives to Reduce or Repeal Assessments

Proposition 218 provides that the initiative power may be used to reduce or repeal any local tax, assessment, fee or charge.<sup>2</sup>

### Benefit Assessment Revenues

California Cities (excluding the city/county of San Francisco)



Source: CaliforniaCityFinance.com computations from data from California State Controller (revenues), California State Dept of Finance (population, CPI)

# FEES, CHARGES AND RATES

## Chapter 4



*A fee may not exceed the estimated reasonable cost of providing the service or facility for which the fee is charged.*

*Thanks to Betsy Strauss, Dan Hentschke and Michael Colantuono for their contributions to this chapter.*

Fees comprise a broad category of locally imposed revenues generally intended to recover all or a portion of a government's costs for providing a service or access to public property, or for mitigating the impacts of the fee payer's activities on the community. A fee may not exceed the estimated reasonable cost of providing the service or facility for which the fee is charged. Fees are sometimes called charges and are often called rates in the context of utility services. The term "fee" is used in this chapter.

The list of fees is extensive, and includes: user fees, such as park admission fees or fees charged for recreation programs; enterprise service fees, such as water, sewer or refuse collection fees; regulatory fees, such as plan check fees, inspection fees, permit application fees and other fees imposed on regulated activities; and mitigation fees, such as those imposed to off set impacts resulting from new development. Fees in one category may have attributes of fees in another. Certain fees imposed for a property-related service are subject to specific procedural and substantive requirements of Proposition 218.

Generally speaking there are two broad categories of fees and charges: user fees and regulatory fees. User fees are charged for the use of a public service or program such as fees charged for recreation programs or public document retrieval. User fees for property-related services are referred to as property-related fees.

Regulatory fees are charged either to pay for the cost of a government program which regulates the activities of the fee payers or to mitigate the impact of the fee payer's activities on the community. A development impact fee is a common regulatory fee which imposes a charge to defray the cost of the development on a public facility such as streets or schools.

All user fees and regulatory fees are subject to the same limitation: The amount of the fee may not exceed the "estimated reasonable cost" of the providing the service, facility or program or (as in the case of regulatory fees) of mitigating the impact of the fee payer's activity." Estimated reasonable cost" may include reasonable administrative expenses and overhead. Revenues collected in excess of the service cost may be categorized as "taxes," which require voter approval.<sup>1</sup>

Regulatory fees must be reasonable, fair and equitable in nature and proportionately representative of the costs incurred by the regulatory agency for administrative enforcement and related adjudicatory activities.

The distinction between fees and taxes is frequently blurred, especially in the media and common discussion, but generally fees are imposed in return for a benefit conferred or privilege granted, while taxes are simply intended to collect revenue (see Chapter Two for taxes). The legal distinction is important, however, because adoption procedures and other rules vary depending on the proper classification of the revenue. Fees must also be distinguished from assessments, which are levied strictly based on "special benefit" conferred, and fines, which are collected because of a violation of a law (see Chapter Three for assessments).

Although they are often called "fees," charges for the use of public facilities such as for off-street parking, marina berth rates and facility rental are paid for the use of public property and are more similar to rent. Fees for the use of public property are considered rent, and are generally set at the discretion of the public agency and are not subject to the requirement that revenues not exceed the costs of service. See Chapter Five, Section 5.06.

### ■ Proposition 26: Defining a Tax By What it is Not

Proposition 26, approved by the voters on November 2, 2010, provides further distinctions among these categories of revenues. The constitutional measure stipulates that a government-imposed charge, levy or exaction of any kind is a tax unless it falls into one of seven express exceptions.

1. *A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.*

**Specific Benefit Exception** examples include fees for planning permits, restricted neighborhood parking permits, and entertainment and street closure permits.

2. *A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.*

**Government Service or Product Exception** examples include user fees for parks and recreation classes, utilities (other than those covered under #7), public records copying fees, DUI emergency response fees, emergency medical and ambulance transport service fees.



3. *A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.*

**Permits and Inspections Exception** examples include health and safety permits, building licenses, police background checks, pet licenses, bicycle licenses and permits for regulated commercial activities (such as massage establishments, card rooms, taxicabs and tow-truck operators).

For exceptions 1 through 3, the fee imposed must not exceed the agency's reasonable costs.

4. *A charge imposed for entrance to or use of local government property or the purchase rental or lease of local government property.*

**Local Government Property Exception** examples include facility room rentals; equipment rentals; park, museum and zoo entrance fees, golf greens fees, on and off-street parking, and tolls.

5. *A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government as a result of a violation of law, including late payment fees, fees imposed under administrative citation ordinances, parking violations, etc.*

**Penalty for Illegal Activity Exception** examples include parking fines, code enforcement fees and penalties, late payment fees, interest charges and other charges for violation of the law.

6. *A charge imposed as a condition of property development.*

Property Development Exception examples planning fees, building permit fees, construction and grading permits, development impact fees, fees imposed by California Environmental Quality Act mitigation requirements, and Quimby Act and park mitigation fees.

7. *Assessments and property related fees imposed in accordance with the provisions of Article XIII D. (Proposition 218).*

**Proposition 218 Exception** examples include assessments on real property for special benefit conferred, fees imposed upon a parcel or a person as an incident of property ownership, and fees for a property related service such as many retail water and sewer fees.

Fees enacted prior to November 3, 2010 are unaffected by Proposition 26 until they are extended or increased. That is, even if a fee enacted prior to November 3, 2010 does not fit within any of the tax exceptions under Proposition 26, it may nonetheless be valid provided that the legislation authorizing it is not amended so as to extend or increase the fee.

Laws governing fees vary based on the particular type of fee imposed. It is extremely important to discuss any new fee, or increase or adjustment of any existing fee with the city attorney or agency counsel. In this manual, the categories of revenues are organized as follows:

Revenue Category			See
Fees	User Fees	Utility Rates	Section 4.01
		Service and Program Fees	Section 4.01
		Property-Related Fees	Section 4.02
	Regulatory Fees	Development Impact Fees	Section 4.03
		Regulatory Program Fees	Section 4.04
Rents		Franchises	Chapter Five, Section 5.01-5.03
		Facility Use Fees	Chapter Five, Section 5.06
Fines, Penalties			Chapter Five, Section 5.05
Assessments			Chapter Three
Taxes			Chapter Two

## For More Information:

*The California Municipal Law Handbook*, 2007, League of California Cities.

*Proposition 218 Implementation Guide*, 2007, League of California Cities.

*Proposition 26 Implementation Guide*, 2011, League of California Cities, [www.cacities.org/Prop26Guide](http://www.cacities.org/Prop26Guide).

## Admissions Tax

Tax is imposed on the consumer for the privilege of attending a show, performance, display or exhibition. See Chapter 2, Section 2.08.

## Advance Refunding

When restructuring or retiring outstanding bonds, the refunding is an "advance refunding" if the outstanding bonds will not be paid off until later than 90 days after sufficient funds have been deposited with a trustee. Generally, federal law limits advance refundings to one occurrence. See also "current refunding."

## Ad Valorem Tax

A tax assessed based on the dollar value of an item or activity. Typical examples are property and sales taxes. Ad valorem taxes contrast with per-unit taxes, such as alcoholic beverage and cigarette taxes, which are assessed at a fixed dollar per unit purchased.

## Appropriation

A legal authorization granted by the city council to expend monies, and incur obligations for specific purposes.

## Appropriations Limit

A maximum amount of revenues that may be appropriated by a government agency determined under California Constitution Article XIII B and implementing legislation. See Chapter 10.

## Appropriations Subject to Limit

Revenues defined as "proceeds of taxes" under California Constitution Article XIII B and implementing legislation. See Chapter 10.

## Arbitrage

A technique used to take advantage of price differences in separate markets. This is accomplished by either by selling debt instruments at a low interest rate and investing the proceeds at a higher rate or by purchasing securities, negotiable instruments or currencies in one market for immediate sale in another market at a better price.

## Assessed Valuation

The value of real property for the purpose of taxation. See page 14, Section 2.01.

## Assessment District

Not a separate governmental entity, but rather a defined area of land which will be benefited by the acquisition, construction or maintenance of a public improvement.

## BANs

See bond anticipation notes.

## Benefit Assessment

Charges levied on parcels to pay for public improvements or services provided within a pre-determined district or area according to the benefit the parcel receives from the improvement or services.

## Benefit Assessment Act of 1982

The 1982 Act lets cities, counties and special districts finance a variety of improvements. The Act requires majority voter approval if the proposed assessment area has 12 or more registered voters. If less than 12, the owners of at least 60 percent of the land in the assessment area must give written consent to the assessment.

## Benefit Assessment Bonds

Bonds levied by cities, counties and special districts to acquire or construct public improvements which convey a special benefit to a defined group of properties.

## Block Grant

Federal grant allocated according to pre-determined formulas and for use within a pre-approved broad functional area such as the CDBG (Community Development Block Grant).

## Bond Anticipation Notes (BANs)

BANs are short-term borrowings by a public entity appropriate to obtain financing for a project for which bonds are authorized but not yet issued. BANs permit the issuance of debt in increments as work on a project progresses and before some or all of the bond proceeds are available.

## Bond Resolution

A legal order or contract by a governmental unit to authorize a bond issue. A bond resolution carefully details the rights of the bondholders and the obligations of the issuer.

## Bonds

A certificate of debt issued by an entity, guaranteeing payment of the original investment, plus interest, by a specified future date.

## Broughton Act

Restricts city collection of franchise payments to 2 percent of the franchise's gross annual receipts arising from use of the franchise.

## Business Improvement District

A public-private partnership in which businesses in a defined area pay special taxes, fees and/or assessments to fund public facility improvements and programs in the area. See section 3.02.

## Business License Tax

A type of excise tax imposed on businesses for the privilege of conducting business within the city. The tax is most commonly based on gross receipts or levied at a flat rate.

## California State Board of Equalization (BOE)

California state agency responsible for the collection and administration of the state's sales and use, alcohol, tobacco, and other taxes. In addition, the BOE determines the assessed value of certain properties and oversees property tax assessment practices of county assessors.

## California State Controller

The Controller is the chief fiscal officer of the state and is elected every four years. The Controller is responsible to: account and disburse all state funds; determine the legality and accuracy of claims against the state; pay the state's bills; audit and process all personnel and state payroll transactions; audit various state and local government programs; administer the Unclaimed Property Law; and inform the public of financial transactions of city, county and district governments.

## Capital Improvement Program (CIP)

Annual appropriations in the city's budget for capital improvement projects such as street or park improvements, building construction, and various kinds of major facility maintenance.



## Capital Outlay

Expenditures which result in the acquisition of, or addition to fixed assets.

## Categorical Grant

Grant typically allocated either to qualifying applicants according to a formula or to applicants competing for project grants through an application process. Categorical grants are the most common form of federal aid.

## Certificates of Participation (C.O.P.)

Debt instrument, commonly called C.O.P., that provides long-term financing through a lease (with an option to purchase) or through an installment agreement.

## Charter City

Charter cities have authority over "municipal affairs," trumping state law governing the same topic. In contrast, general law city is a city that has not adopted a charter and is therefore bound by the state's general laws, even with respect to municipal affairs.

## Citizens Option for Public Safety (COPS)

A state subvention for local law enforcement initiated in 1996. See section 6.04.

## Community Facilities District (CFD)

See Mello-Roos Community Facilities District.

## Community Rehabilitation District Law of 1985

Allows cities and counties to fund the renovation and repair (but not maintenance) of an existing structure.

## Concessions

Revenues received from concessionaires for privilege of operating a concession on city property.

## Construction/Development Tax

Excise tax imposed on the privilege or activity of development and/or the availability or use of municipal services. See section 2.10.

## Consumer price Index (CPI)

A statistical description of price levels provided by the U. S. Department of Labor. The change in this index from year to year is used to measure the cost of living and economic inflation.

## COPS

See Citizens Option for Public Safety.

## C.O.P.

See certificates of participation.

## County Assessor

An elected official whose main duty is to set values on real property for the purpose of taxation within the county. The Assessor is responsible for the creation and maintenance of assessor parcels from final subdivisions, parcel maps, lot line adjustments, record of survey, deeds and miscellaneous documents.

## County Auditor-Controller

The chief accounting officer of the county established to provide various accounting and property tax administration services to the county and other local governments within the county. The Auditor Controller is responsible for budget control, disbursements and receipts, financial reporting, and for audits of certain agencies within the county. Auditor-Controllers are nonpartisan elected officials serving four year terms, except in four counties with appointed officers: San Francisco, Santa Clara, Los Angeles, and San Diego.

## County Treasurer-Tax Collector

Administers the billing, collection, and reporting of property tax revenues and conducts Tax Defaulted Property Sales for real property tax delinquencies remaining after five years. Treasurer-Tax Collectors are nonpartisan elected officials serving four-year terms except in three counties with appointed officers: Los Angeles, Sacramento, and Santa Clara.

## Countywide/Statewide Pools

A system used to allocate local sales and use tax payments that cannot be identified with a specific place of sale or use in California. Local tax reported to the pools is distributed to the local jurisdictions in proportion to taxable sales.

## Current Refunding

When restructuring or retiring outstanding bonds, if bonds are paid off within 90 days of depositing either cash on hand or refunding bond proceeds, the refunding is a "current refunding." See also "advance refunding."

## Debt Financing

Issuance of bonds and other debt instruments to finance municipal improvements and services.

## Debt Instrument

Written pledge to repay debt such as bills, notes and bonds.

## Debt Service

Payment of principal and interest on long-term indebtedness.

## Dedication

The donation "dedication" of certain lands (or money) to specific public uses as a requirement for the approval of a development project. The dedications are typically justified as an offset to the future impact the development will have on existing infrastructure. Also called an "exaction." See section 4.03.

## Development Impact Fees

Fees placed on the development of land or conditions required for the approval of a development project such as the donation "dedication" or "exaction" of certain lands (or money) to specific public uses. The fees are typically justified as an offset to the future impact that development will have on existing infrastructure. See section 4.03.

## D.I.V.C.A.

"The Digital Infrastructure and Video Competition Act of 2006" [AB 2987 (Nunez/Levine)] effectively replaced locally issued franchise agreements for video service with a system of state-issued franchises subject to certain limited locally imposed conditions and requiring franchise fees to be paid to local agencies where services are provided. See section 5.01.

## Documentary Transfer Tax

Tax imposed on documents recorded in the transfer of ownership in real estate as distinguished from a Real Property Transfer Tax which may only be imposed by charter cities. See section 2.07.

## Encumbrance

An anticipated expenditure committed for the payment of goods and services not yet received or paid for.

## Earmarked funds

Funds that have been tagged or “earmarked” for a specific purpose.

## ERAF: Educational Revenue Augmentation Fund

Accounts established by the state Legislature to receive shifts of property tax revenues from cities, counties, special districts, and redevelopment agencies. The additional ERAF property tax revenues to schools enable the state general fund to reduce support from the state general fund, thereby saving the state billions of dollars annually.

## Exactions

See dedications.

## Excise Tax

Tax placed on a person for a voluntary act, making the tax avoidable. Includes sales and use tax, business license tax, transient occupancy tax, utility users tax, etc. Phrase “excise tax” is most commonly used to refer to a parcel tax.

## Exemption

The exclusion from the tax base of certain types of transactions or objects. For example, federally-owned land is exempted from property tax.

## Expenditure

The actual payment for goods and services.

## Fee

A charge to the consumer for the cost of providing a particular service. California government fees may not exceed the estimated reasonable cost of providing the particular service or facility for which the fee is charged, plus overhead.

## Forfeiture

See fines, forfeitures and penalties.

## Fines, Forfeitures and Penalties

Revenues received and/or bail monies forfeited upon conviction of a misdemeanor or municipal infraction.

## Fiscal Year

The period designated by the city for the beginning and ending of financial transactions. Nearly all city fiscal years begin on July 1 and end June 30 of the following year.

## Franchise Act of 1937

Like the Broughton Act, restricts franchise collections to 2 percent of gross annual receipts, but includes a minimum fee of 1/2 percent of gross annual receipts for electric franchises or 1 percent of gross annual receipts for gas or water franchises operating within the city limits.

## Franchises

Fee paid to a municipality from a franchisee for “rental” or “toll” for the use of city streets and rights-of-way.

## Functional Revenue

Revenues that can be associated with and allocated to one or more expenditure function and which meet one of the following criteria: 1) the revenue is generated from direct services, such as revenues from fees or charges; 2) the revenue is associated with a specific service by external requirements, such as grant conditions, bond sale agreements, or statutory or charter requirements.

## Fund

Accounting entity with a set of self-balancing revenue and expenditure accounts used to record the financial affairs of a governmental organization.

## Fund Balance

Difference between the assets (revenues and other resources) and liabilities (expenditures incurred or committed to) of a particular fund.

## Full Faith and Credit

Pledge by issuer of general obligation bonds to bondholders that issuer guarantees “all available funds” be used to pay bondholders should the project go into default.

## Full Service City

A city that is financially responsible for the major categories of municipal services including police, fire, planning and parks services.

## GANs

See grant anticipation notes.

## Gann Initiative

See Appropriations Limit and Chapter 10.

## Gann Limit

See and Chapter 10.

## Gasoline Tax

See Motor Vehicle Fuel Tax.

## General Fund

Fund used to account for all financial resources except those required to be accounted for in another fund (e.g., enterprise or grant funds). Usually, the General Fund is the largest fund in a municipality.

## General Law City

A city that has not adopted a charter and is therefore bound by the state's general laws, even with respect to municipal affairs. In contrast, charter cities have authority over “municipal affairs,” trumping state law governing the same topic. See also “charter city.”

## General Obligation (G.O.) Bonds

Bonds issued through a governmental entity which have the legal authority to levy a tax on real and personal property located within the governmental boundaries at any rate necessary to collect enough money each year to pay for principal and interest due.

## General Revenue

Those revenues that cannot be associated with a specific expenditure, such as property taxes (other than voter approved indebtedness), sales tax, and business license tax

## General Revenue Sharing Program

Federal program established in 1972 to share federal monies with state and local governments. The program was extended in 1976 and again in 1980, but was ended in 1986.

## General Tax

A tax imposed for general governmental purposes, the proceeds of which are deposited into the general fund. A majority vote of the electorate is required to impose, extend or increase any general tax. See also “special tax.”

## **GO Bonds**

See general obligation bonds.

## **Grant Anticipation Notes (GANs)**

GANs are short-term borrowings of a public entity to eliminate cash flow deficits in anticipation of the receipt of a federal or state grant or loan. By issuing GANs, the public entity is better prepared to pay all project costs, particularly up-front processing and managerial costs.

## **Grants**

Contributions of cash or other assets from another governmental agency to be used or expended for a specified purpose, activity or facility.

## **Highway Users Tax**

See Motor Vehicle Fuel Tax.

## **Homeowner's Property Tax Relief**

Revenue from the state to offset city loss of property tax for state-imposed \$7,000 per dwelling homeowner exemption.

## **Improvement Bond Act of 1915**

Act which lets cities, counties, and "public" districts issue assessment bonds and bond anticipation notes. The 1915 Act does not authorize assessments.

## **Investment Earnings**

Revenue earned from the investment of idle public funds.

## **Joint Powers Authority**

The Joint Exercise of Powers Act authorizes local public agencies to exercise common powers and to form joint powers authorities (JPAs) for purpose of jointly receiving or providing specific services.

## **JPA**

See joint powers authority.

## **Landscaping and Lighting Act of 1972**

The 1972 Act lets cities, counties and special districts levy assessments for land purchase and the construction, operation, and maintenance of parks, landscaping, lighting, traffic signals and graffiti abatement.

## **Lease Revenue Bonds**

Bonds similar to certificates of participation and used for the same types of projects with main exceptions that: 1) lessor must be either a governmental entity with the power to issue revenue bonds or a nonprofit corporation that issues bonds on behalf of a political subdivision; and 2) the bonds constitute a direct debt of the lessor.

## **Levy**

(Verb) To impose taxes, special assessments or service charges for the support of governmental activities; (noun) the total amount of taxes, and/or special assessments and/or service charges imposed by a governmental agency.

## **Library Services Special Tax**

Special tax for providing public library facilities and services.

## **Licenses and Permits**

Charge designed to reimburse city for costs of regulating activities being licensed, such as licensing of animals, bicycles, etc.

## **Lien**

A claim on assets, especially property, for the payment of taxes or utility service charges.

## **Limited Obligation Bonds**

Similar to general obligation bonds except that security for the issuance is limited exactly to the revenues pledged in the bond statement and not to the full faith and credit of the city.

## **Liquidity**

The ability to convert a security into cash promptly with minimum risk of principal.

## **LAIF**

Local Agency Investment Fund. A special fund in the state treasury. Local governments may deposit in this fund through the state treasurer for investment purposes. See section 5.07.

## **Maintenance of Effort (MOE)**

A requirement, often as a condition of an intergovernmental subvention or supplemental tax, to maintain a level of spending at a certain level. Maintenance of Effort requirements are intended to prevent or limit the use of the additional revenues to supplant existing revenues such that the new revenues result in an increase in the level of program spending and services.

## **Marks-Roos Bonds**

Bonds authorized by the Marks-Roos Local Bond Pooling Act of 1985 which provide local agencies with extremely flexible financing powers through participation in joint powers authorities.

## **Market-Based Pricing**

Recent trend in pricing public services which uses the marketplace to regulate individual consumer behaviors consistent with overall societal goals by including the true cost of the service on society.

## **Mello-Roos Bonds**

Bonds allowing cities, counties, school districts and special districts to finance certain public capital facilities and services, especially in developing areas and areas undergoing rehabilitation. Property owners in the Mello-Roos district pay an annual special tax which is included on the property tax bill.

## **Mello-Roos Community Facilities Tax**

Special non ad valorem tax imposed to finance public capital facilities and services in connection with new development. See Chapter Two section 2.11.

## **Mello-Roos Community Facilities District**

A distinct entity of government for the purpose of imposing and collecting the Mello-Roos Community Facilities Tax. The governing body and the boundaries of the district may be the same as for the city. See section 2.11.

## **Motor Vehicle Fuel Tax.**

18 cent per gallon tax on fuel used to propel a motor vehicle or aircraft. Use of tax is limited to research, planning, construction, improvement, maintenance, and operation of public streets and highways or public mass transit guideways. Also called Highway Users Tax and Motor Vehicle Fuel Tax.

## Motor Vehicle License Fee (VLF)

VLF is fee for privilege of operating vehicle on public streets. VLF is levied annually at 2 percent of the market value of motor vehicles and is imposed by the state "in lieu" of local property taxes. VLF is also called Motor Vehicle in-Lieu Tax.

## Municipal Improvement Act of 1913

1913 Act allowing cities, counties, and special districts to fund everything included in the 1911 Act plus power and public transit facilities; assessments can be levied before construction begins.

## Off-Highway Motor Vehicle License Fee

Fee imposed for the issuance or renewal of identification for every off-highway motor vehicle.

## Nexus

In general, a minimum threshold of connection necessary within a taxing jurisdiction to allow taxing authority over out-of-state individuals or businesses. Requirement of Government Code Sections 66000 et seq. that there be a reasonable connection "nexus" between required development impact fees and the development project in question.

## Ordinance

A formal legislative enactment by the governing board of a municipality. If it is not in conflict with any higher form of law, it has the full force and effect of law within the boundaries of the municipality to which it applies.

## Parcel Tax

Special non ad valorem tax on parcels of property generally based on either a flat per-parcel rate or a variable rate depending on the size, use and/or number of units on the parcel.

## Parking Tax

General tax imposed on occupant of off-street parking space for privilege of renting the space within the city. See section 2.09.

## "Pay As You Use"

Concept that debt financing enables the public entity to spread the cost of a capital project over time, as the project is being utilized.

## "Pay As You Go"

Concept of paying for capital projects when the initial cost is incurred, rather than over time through the use of debt financing.

## Penalties

See fines, forfeitures and penalties.

## Police and Fire Special Tax

Special tax on parcels of property in support of police and/or fire protection services.

## Portfolio

The collection of securities held by an individual or institution.

## Possessory Interest

Taxable private ownership of interests in tax-exempt public property.

## Property Related Fee

A levy imposed on a parcel or upon a person as an incident of property ownership for property-related service.

## Property Tax

An ad valorem tax imposed on real property (land and permanently attached improvements) and tangible personal property (movable property).

## Property Tax In Lieu of VLF

Property tax shares and revenues allocated to cities and counties beginning in FY 2004–05 as compensation for Vehicle License Fee (VLF) revenues previously allocated to cities and counties by the State. Referred to in statute as "Vehicle License Fee Adjustment Amounts." See section 2.01, page 19.

## Property Tax Increment

See Tax Increment Financing.

## Proposition 1A (2004)

Voter approved state constitutional amendment protecting most major city county and special district revenues from reduction or shifting by the state Legislature. See Chapter 1, page 7.

## Proposition 1A (2006)

Voter approved state constitutional amendment protecting the local allocation of state transportation sales tax revenues under Proposition 42 from reduction or shifting by the state Legislature. See section 6.03, page 114.

## Proposition 4 (1979)

Also called the Gann Initiative, this initiative, now Article XIII B of the state Constitution, was drafted to be a companion measure to Proposition 13, California Constitution Article XIII A. Article XIII B limits growth in government spending to changes in population and inflation. See Chapter 10.

## Proposition 8 (1978)

An amendment to Proposition 13, passed in November 1978 to allow Assessors to recognize declines in value for property tax purposes. Revenue & Taxation Code §51 requires the Assessor to annually enroll either a property's Proposition 13 base year value factored for inflation, or its market value as of January 1st, whichever is less. See section 2.01, page 17.

## Proposition 13 (1978)

Article XIII A of the California Constitution, commonly known as Proposition 13, which limits the maximum annual increase of any ad valorem tax on real property to 1 percent of the full cash value of such property.

## Proposition 26 (2010)

A voter approved amendment to articles VIII A and XIII C of the California Constitution defining the term "tax" to mean all government imposed charges, levies or exactions are taxes except for seven specified exceptions. Any locally imposed charge that falls outside of the exceptions is a tax and requires voter approval.

## Proposition 30 (2011)

Voters approved temporary increases in the state personal income tax and sales tax. Proposition 30 also provides certain guarantees of funding to counties for programs realigned from the state.

## Proposition 42 (2002)

Voter approved measure that directs the Legislature to allocate revenues derived from the taxable sales of gasoline to certain transportation programs including to cities and counties. See section 6.03.

## Proposition 62 (1986)

A 1986 proposition which, among other things, implemented a majority vote requirement for general taxes. This portion of Proposition 62 was later ruled unconstitutional.

## Proposition 98 (1990)

This measure establishes a minimum level of funding for public schools and community colleges and provides that any state revenues in excess of the appropriations limit be spent on schools.

## Proposition 111 (1994)

Voter approved measure that increased the state Motor Vehicle Fuel Tax by 9 cents per gallon and made certain adjustments to the spending limits under Proposition 4 (1979). See section 6.02 regarding the Motor Vehicle Fuel Tax and Chapter 10 regarding Proposition 4 spending limits.

## Proposition 172 (1993)

A 1993 measure which places a one-half cent sales tax for local public safety in the constitution effective January 1, 1994. The tax is imposed by the state and distributed to cities and counties.

## Proposition 218 (1996)

A voter approved state Constitutional amendment, self-titled "Right to Vote on Taxes Act" expanded restrictions on local government revenue-raising, allowing the voters to repeal or reduce taxes, assessments, fees, and charges through the initiative process; reiterating the requirement for voter approval for both "special taxes" and "general taxes," and imposing procedural and substantive limitations on assessments of real property and on certain types of fees.

## Principal

"Face" or "par value" of an instrument. It does not include accrued interest.

## Rating

The designation used by investors' services to rate the quality of a security's creditworthiness.

## Real Property

Land and permanently attached improvements.

## Real Property Transfer Tax

Tax imposed on the transfer of ownership in real estate. Typically imposed instead of a Documentary Transfer Tax. Only Charter cities may impose a Real Property Transfer Tax. See Chapter Two Section 2.07.

## Reimbursement for State Mandated Costs

Article XIII B, Section 6 of the California Constitution which requires the state to reimburse local agencies for the cost of state-imposed programs. Process is commonly called "SB 90" after its original 1972 legislation.

## Regulatory Fee

A charge imposed on a regulated action to pay for the cost of public programs or facilities necessary to regulate a business or other activity or mitigate the impacts of the fee payer on the community. A regulatory fee does not include a charge on a property or a property owner solely due to property ownership.

## Rents

Revenues received through the rental of public properties to private parties such as convention space and library facilities.

## Resolution

A special or temporary order of a legislative body requiring less formality than an ordinance.

## Revenue

Annual income received by the city.

## Revenue Bonds

Bonds issued to acquire, construct or expand public projects for which fees or admissions are charged. Bonds are repaid solely from the income generated by use of that project.

## Rough Proportionality Test

Specific determination by the city for a specific development project that the dedication to be required is related both in nature and extent to the development's impact. (*Dolan v. City of Tigard* (1994) 94 D.A.R. 8803).

## Royalties

Revenues received from private companies for privilege of extracting natural resources from city property. Also revenues from bets placed at horse racing tracks that are located within the city, currently set by statute at one third of one percent.

## Sales Tax

A tax imposed on the total retail price of any tangible personal property. See also "use tax." See section 2.02.

## SB 90

Reimbursement process for state mandated costs, named after its original 1972 legislation.

## SB 1977

1992 bill (Government Code, Section 54945.6 as amended) requiring local officials to mail notice of new and increased benefit assessments and to hold public hearings prior to imposing benefit assessments.

## Secured Property

As the property tax is guaranteed by placing a lien on the real property, secured property is that real property in which the value of the lien on the real property and personal property located thereon is sufficient to assure payment of the tax.

## Secured Roll

That property tax list containing all assessed property secured by land subject to local taxation.

## Securities

Investment instruments such as bonds, stocks and other instruments of indebtedness or equity.

## Service Charges

Charges imposed to support services to individuals or to cover the cost of providing such services. The fees charged are limited to the cost of providing the service or regulation required (plus overhead).

## Short-Term Financing Methods

Techniques used for many purposes, such as meeting anticipated cash flow deficits, interim financing of a project, and project implementation. Using these techniques involves issuance of short-term notes. Voter approval is not required.

## Special Tax

A tax that is collected and earmarked for a special purpose and deposited into a separate account. A two-thirds vote of the electorate is required to impose, extend or increase any special tax. See also "general tax."

## Standby Charge

A compulsory charge levied upon real property to defray in whole or in part the expense of providing, operating or maintaining public improvements. The charge is "exacted for the benefit which accrues to property by virtue of having water [or other public improvement] available to it, even though the water might not be used at the present time." Proposition 218 classifies standby charges as "assessments" which must be imposed in compliance with Section 4.25 of California Constitution Article XIII D.

## Street Lighting Act of 1919

Act authorizing cities to fund the maintenance and operation of street lighting.

## Subvention

Subsidy or financial support received from county, state or federal government. The state and county currently levy certain taxes that are "subvened" to cities, including motor vehicle license fees, state mandated costs and motor vehicle fuel tax.

## Supplemental Law Enforcement Services Fund

County level fund to contain moneys from the Citizens Option for Public Safety state subvention for local law enforcement initiated in 1996. See section 6.04.

## Supplemental Property Tax

In the event a property changes ownership, the county collects a supplemental property tax assessment in the current tax year by determining a supplemental value. In future tax periods, the property carries the full cash value.

## Tangible Personal Property

Movable property.

## Tax

Compulsory charge levied by a government for the purpose of financing services performed for the common benefit.

## Tax Allocation Bonds

Bonds issued by redevelopment agencies to revitalize blighted and economically depressed areas of the community and to promote economic growth.

## Tax Base

The objects or transactions to which a tax is applied (e.g. parcels of property, retail sales, etc.). State law or local ordinances define the tax base and the objects or transactions exempted from taxation.

## Tax Equity Allocation (TEA)

Supplemental property tax allocations shifted to certain "no and low property tax cities" from counties. TEA is also used in reference to other supplemental allocations of Vehicle License Fee (VLF) revenues provided to certain no and low property tax cities. These VLF-TEA allocations now flow to those cities as a part of Property Tax in lieu of VLF payments.

## Tax and Revenue Anticipation Notes (TRANS)

TRANS are short-term borrowings by a public entity to meet cash flow needs in the general fund and other unrestricted funds of a public entity. TRANS are issued before expected receipt of taxes and other revenues during the same fiscal year.

## Tax Increment Financing

A tax incentive designed to attract business investment by dedicating to the project area the new property tax revenues generated by redevelopment. The increase in revenues (increment) is used to finance development-related costs in that district.

## Tax Rate

The amount of tax applied to the tax base. The rate may flat, incremental or a percentage of the tax base, or any other reasonable method.

## Teeter Plan

Enacted in 1949, an alternative method for allocating delinquent property tax revenues, authorized by Revenue and Taxation Code section 4701, in which in which the county Auditor allocates property tax revenues based on the total amount of property taxes billed, but not yet collected. The county government then collects and keeps the delinquency, penalty and interest payments.

## Traffic Safety Fund

All fines and forfeitures received as a result of arrests by city officers for Vehicle Code violations must be deposited in a special city "Traffic Safety Fund" to be used for traffic control devices; maintenance of equipment and supplies for traffic law enforcement and traffic accident prevention; the maintenance, improvement or construction of public streets, bridges or culverts; and the compensation of school crossing guards who are not regular full-time members of the police department.

## TRANS

See tax and revenue anticipation notes.

## Transactions and Use Tax

Also, known as an "add-on local sales tax," a tax imposed on the total retail price of any tangible personal property and the use or storage of such property when sales tax is not paid. See section 2.03.

## Transient Occupancy Tax

Tax levied by cities on persons staying 30 days or less in a room(s) in a hotel, inn, motel, tourist home, non-membership campground or other lodging facility. Also called Transient Lodging Tax or Hotel Tax. See section 2.06.

## Triple Flip

A mechanism used to repay state fiscal recovery bonds pursuant to Proposition 57 of 2004. Under the Triple Flip, the local sales and use tax rate is reduced from 1.00 percent to 0.75 percent with the 0.25 percent diverted to repay state fiscal recovery bonds. Cities and counties are reimbursed for the lost revenue from a shift of property tax revenue. See section 2.02 page 26.

## Tideland Revenue

Revenues granted by the state for use of city tideland in production of oil, gas and other hydrocarbons.

## Transportation Tax

Special tax imposed by counties for county transportation needs. Typically collected with the sales and use tax, some cities receive a portion of the transportation tax usually in .25 percent tax rate increments.



**Unsecured Property**

As the property tax is guaranteed by placing a lien on the real property, unsecured property is that real property in which the value of the lien is not sufficient to assure payment of the property tax.

**Use Tax**

A tax imposed on the use or storage of tangible personal property when sales tax is not paid. See also "sales tax." See section 2.02.

**User Fee**

Fees charged for the use of a public service or program such as for recreation programs or public document retrieval. User fees for property-related services are referred to as property-related fees. See Chapter 4.

**Utility Connection Fee**

Utility connection fees or capacity fees are imposed on the basis of a voluntary decision to connect to a utility system or to acquire the right to use additional capacity. See Chapter 4.

**Utility Rate**

A category of user fee paid by the user of utility services. See Chapter 4.

**Utility Users Tax**

Tax imposed on the consumer (residential and/or commercial) of any combination of electric, gas, cable television, water, and telephone services. See Chapter 2, Section 2.05.

**Vehicle Parking District Law of 1943**

The 1943 Act lets cities and counties purchase land for parking structures, construct and maintain parking lots, and pay for related planning.

**VLF**

See Motor Vehicle License Fee.

**VLF — Property Tax Swap**

The trade of most city and county Vehicle License Fee revenue for additional property tax share and revenue. See section 2.01, page 19 and Section 6.01, page 103.

**Vehicle Registration Fees**

See Vehicle Registration Taxes, Section 2.13 of Chapter Two.

**Vehicle Registration Taxes**

A special tax on vehicle registration imposed countywide for specific purposes authorized in state law. See section 2.13 of Chapter Two.

**Voter Approved Property Tax for Indebtedness**

Includes ad valorem property taxes levied in addition to the 1 percent rate for voter approved debt, approved prior to July 1, 1978 or after July 1, 1986.

**Williamson Act and Open Space Subvention**

State subvention to foster preservation of open-space by lowering cost of property tax.

**Yield**

The total amount of revenue a government expects to receive from a tax, determined by multiplying the tax rate by the tax base. Also, the annual rate of return on an investment, expressed as a percentage of the investment.

# **An Introduction to California's Open Meeting Law: The Ralph M. Brown Act**

The Ralph M. Brown Act is California's open meeting law (sometimes known as a "sunshine law") for local public agencies. Operating under the requirements of open meeting laws can sometimes be frustrating for local officials. Confining discussions among decision-makers to public meetings can seem inefficient and an unnatural way to communicate with colleagues and reach sound decisions.

It is helpful to acknowledge that the goal of open meeting laws is not efficiency. Consistent with our society's approach to local government and government decision-making processes, open meeting laws are designed to sacrifice some efficiency for what are considered more important values.

In the case of open meeting laws, those more important values include having the public be able to monitor, participate in, and have trust in the decision-making process. In general, from the time of this nation's founding, we have believed that government decisions are to be made for the benefit of the public, and that this goal is furthered by having decision-making processes be open to the public. Simply put, some efficiency is sacrificed for the benefits of greater public participation, greater public benefit, and ensuring trust in each public agency's decision-making processes.

## **Meetings**

A key goal of the Brown Act is to ensure that the discussions and decisions of every local legislative body are made in public. A majority of the members of the body cannot communicate (in person, by e-mail or other electronic means, or through others) on matters coming before them outside of noticed public meetings.

*Meeting Defined*—Any noticed and agendized gathering of a quorum of a legislative body to discuss or transact business under the body's jurisdiction; serial meetings are prohibited.

### *Exempts:*

- ❖ Individual contacts between members of the body and others that do not constitute serial meetings;
- ❖ Attendance at conferences and other gatherings that are open to the public, so long as members of legislative bodies do not discuss among themselves business of a specific nature under the body's jurisdiction;
- ❖ Attendance at social or ceremonial events where no business of the body is discussed.

*Locations of Meetings*—A body must conduct its meetings within the boundaries of its jurisdiction unless it qualifies for a specific exemption.

*Teleconference Meetings*—Teleconference meetings may be held under carefully defined conditions. The meeting notice must specifically identify all teleconference locations, and each such location must be fully accessible to members of the public. In addition, all votes must be by roll call.

## **Public Rights**

*Public Testimony*—The public must be provided the opportunity to comment on agenda items before or during consideration by the legislative body. Time must also be set aside for the public to comment on any other matters under the body's jurisdiction.

*Non-Discriminatory Facilities*—The public may insist that meetings not be conducted in a facility: that excludes persons on the basis of their race, religion, color, national origin, ancestry, or sex; that is inaccessible to disabled persons; or where members of the public may not be present without making a payment or purchase.

*Public Vote*—All votes, except for those cast in a permissible closed session, must be cast in public. No secret ballots, whether preliminary or final, are permitted. No proxies.

*Closed Meeting Actions/Documents*—At an open session following a closed session, the body must report on final action taken in closed session under specified circumstances. Where final action is taken with respect to contracts, settlement agreements, and other specified records, the public may receive copies of such records upon request.

*Taping or Broadcasting*—Meetings may be broadcast, audio-recorded, or video-recorded, so long as the activity does not constitute a disruption of the proceeding.

*Copy of Recording*—The public may obtain a copy, at cost, of an existing audio or video recording made by the legislative body of its public sessions, and to listen to or view the body's original tape on a play-back or viewing device provided by the agency.

*Conditions to Attendance*—The public may not be required to register or identify themselves, or to pay fees in order to attend public meetings. The body may request that a member of the public offering public comment identify him/herself for the record, but may not require it.

*Public Records*—Materials provided to a majority of a body that are not exempt from disclosure under the Public Records Act must be provided, upon request, to members of the public without delay.

### **Required Notices and Agendas**

*Regular Meetings*—An agenda containing a brief general description (approximately twenty words in length) of each matter to be considered or discussed must be posted at least 72 hours prior to a meeting in a location accessible to the public 24/7.

*Special Meetings*—Twenty-four hour notice must be provided to members of the legislative body, the public, and media outlets, including a brief general description of matters to be considered or discussed.

*Emergency Meetings*—One-hour notice in case of work stoppage or crippling disaster.

*Closed Session Agendas*—All items to be considered in closed session must be described in the notice or agenda for the meeting. Prior to each closed session, the body must orally announce the subject matter of the closed session. If final action is taken in closed session, the body generally must report the action at the conclusion of the closed session.

*Agenda Exception*—Special procedures permit a body to proceed without an agenda in the case of emergency circumstances, or where a need for immediate action came to the attention of the body after posting of the agenda.

## City of Paso Robles Successful Board and Commission Decision Making

*The Challenge.* We are used to making decisions in our personal lives. Most of us are used to working in a hierarchical organization, in which unity of command ensures all understand who makes the decisions. We are also used to voting in a representative democracy, in which our vote is symbolically important, but has very little chance of making the difference.

Decision making in a small board or commission requires a different attitude and an entirely different set of skills and norms than does decision making in all of these other situations. In order to do that effectively, all members of a given board or commission will need to ensure they have developed and practiced those skills and norms.

*Meeting the Challenge.* High-quality decision making is the primary means by which a small group in a knowledge-intensive field can move towards its goals. Research shows that, under the right conditions, small groups can consistently make sound decisions, even better decisions than the most-capable individuals in them would make on their own.<sup>i</sup> Decisions should be made in good faith and only after receiving all input and completing due deliberation. “Coming together” can result when the board or commission members share the facts, take the time to understand each other’s perspectives, and utilize an agreed-upon joint-reasoning process.

To make the consistently wise decisions of which it is capable, a board or commission will need to meet five basic conditions on an ongoing basis<sup>ii</sup>:

- ❖ **Diversity**—bringing the greatest possible variety in the levels and types of knowledge, experiences, contacts in the constituency, and perspectives;
- ❖ **Collaborative norms**—adopting and adhering to norms that stimulate all members’ creativity and intuition, and aggregate their knowledge in beneficial ways;
- ❖ **Reasoned analysis guided by informed intuition** —using sound techniques to define and understand a problem, develop a broad range of alternative solutions, determine the pros and cons for each alternative, and select the best alternative or alternative mix;
- ❖ **Blended interdependence and autonomy**— taking advantage of the individual experiences and expertise of every member, while ensuring that each member makes up his or her mind independently;
- ❖ **Mutual gain**—making decisions that best serve the entire constituency’s common interests.

To achieve and sustain these five conditions, and thereby produce the high-quality decisions that the City deserves, requires spending effort not only on *what* to decide (the

content), but *how* to decide (the process). It is useful to examine in turn key practices vital to a small group's ability to meet each of the five conditions.

### ***Diversity***

*A mix of perspectives*—small groups should, to the extent possible, reflect the diversity of knowledge and experience available. Research shows that five may be the optimum-sized small group for most situations, for several reasons:

- ❖ Five is about the maximum number of members that still allows every member to fully participate in the dialogue or discussion and find enjoyment in it;<sup>iii</sup>
- ❖ There are enough members to represent virtually all major perspectives on most issues;
- ❖ Each person can develop an appreciation and understanding of the other four members' perspective, tendencies, and style;
- ❖ All members can develop trust in each other and in the group;<sup>iv</sup>
- ❖ A five-member group is large enough so that members can usually find others with whom to cooperate in the achievement of their respective objectives.<sup>v</sup>

*Reach out and listen to citizens and other stakeholders on an ongoing basis*—the small group needs to constantly solicit input from staff and other stakeholders, recruiting perspectives that otherwise would not be heard. Building these links can help keep the City's constituencies from becoming fragmented,<sup>vi</sup> mend previous fractures, and ensure that all perspectives have been taken into consideration. Take advantage of as much knowledge as possible, seeking information and counsel from outside sources. Routinely find out what others have tried in addressing similar problems, as well as the level of success they have had.

Surveys and polls are expensive, but can be extremely helpful. Holding town hall meetings can also provide an effective way to garner a sense of public views.

### ***Collaborative norms***

Collaborative norms are practical guidelines for productive group meetings when decision-making responsibilities are shared. To be effective, small groups require mutual trust and respect, both of which are built over time, reinforced by interactions based on such principles as the "platinum rule" and actions that match our words. As with individual virtue, group excellence is developed by reinforcing good habits and learning from our mistakes.

*Be hard on the issue and easy on the person.* Practice empathy and respect. Each member can assertively seek to persuade the other members while also being empathetic with their perspectives. Empathy requires only the willingness to view the issue from the other person's perspective, to stand in his (or her) shoes. A useful technique is to occasionally require that members argue each other's position on an issue. It sounds like a time luxury we don't generally have; it often ends up, however, saving time, as it rapidly advances members' overall understanding of an issue.

*Everyone participates enough, but no one dominates*—some group members love to talk, have much they wish to share, and prefer to frame the discussion by being the first to speak. Others make up their minds more slowly, are naturally quiet, and usually want to wait and hear what others have to say before sharing their views. Both extremes pose equal risks to small group success. Therefore, it is important to vary the order of when people speak, letting those who are uncertain and not as far in their thought process, speak first. They are more likely to ask questions and identify uncertainties. This helps ensure the group doesn't go far down one road, not realizing until much later that it is headed towards a dead end, and must then back up to get it right.

The chair can help ensure that presentations are short and to the point, and that contributions of all members are valued equally. Make sure the room is conducive to creative and free-flowing discussion and meeting aids such as flip charts or white boards are readily available. The table should not focus attention on one person, but all members equally. Move empty chairs out of the way, as they are energy sinks and send a message of separation, not group integrity.

*Don't stifle positive dissent; ensure all perspectives have been heard and, even more importantly, considered*—There is often great real and perceived pressure on the small group as a whole or on individual members to make a decision quickly, to avoid “analysis to paralysis.” It is certainly important that decisions be made on a timely basis, even if there is no crisis. The small group's decision, however, has little chance of being sustainable if all perspectives have not been considered and incorporated into the recommended approach.

*Don't end the dialogue too soon*—Insights and understanding do not come according to a pre-set schedule. Just as with brainstorming, it is often after the first round of contributions is over when the true insights appear. As we said on the ranch where I once worked, “A chicken doesn't stop scratching just because worms are scarce.” An experienced chair or facilitator can often sense when to wait, letting members extend their thoughts, before closing off discussion.

### ***Reasoned analysis guided by informed intuition***

*Look where you want to go, not where you are going.* Bicyclists know that if they focus on a pinecone or rock in the road, they are likely to hit it. Instead, they look beside it, where they need to ride. So too, with small groups. Keep the agreed-upon vision on the wall, visible to all. Make sure the discussion of every issue moves you toward, not away from, the achievement of your vision.

*Dig deep to surface the real problem to be solved or opportunity to be addressed*—an issue as it is first raised may in fact not be the true problem deserving of attention. As humans, when confronted with an apparent problem, most of us will tend to immediately jump to solutions. Highly functioning small groups, however, take a few minutes to ensure they identify and truly understand the real problem that needs attention, and look at it from the perspective of each of the constituency's interests. Asking “Why?” several times in succession often helps a small group drill down to the real problem.



*Use emotions and intuition productively*—Many counsel that emotions have no place in decision making. Not true. Our emotions are often based on an entire lifetime of experiences, much of which can be very relevant. By ignoring our emotions, we waste much of what we have learned from those experiences. The problem arises when we let those emotions get in the way of the process, rather than contributing to wiser decisions.

*Diverge first; then converge*—once the small group has identified the real problem, it should next brainstorm or otherwise elicit a range of alternative solutions. If you would get three different bids for a paving contract as a matter of course, why not analyze at least three different options for solving other problems you face?<sup>vii</sup> Discussion of each option opens up people's thinking and increases the likelihood that the small group will implement a solution that truly addresses the problem or opportunity. Only once a set of strong options has been identified, should the small group start winnowing down to those actions best able to satisfactorily address the issue at hand<sup>viii</sup>.

*Analyze options simultaneously, not sequentially.* Many small groups fall into the trap of discussing one option at a time, deciding whether to accept or reject it. This often means that the small group selects the first reasonable-sounding alternative presented, not the best alternative. Instead, wise small groups recognize that decision making is choosing between alternative courses of action. They consider the pros and cons of the leading set of alternatives simultaneously, which allows them to select the one alternative (or mix of alternatives) that best meets the constituency's interests.

A great technique here is posting one flip chart page for each option, and listing in two columns, the pros and cons for that option. This “+/- T chart” creates an analysis, combining everyone's ideas in a way that is visible to all, that may help the best option become readily apparent. (In addition, by using the flip charts, everyone is focused on the creative process, rather than also trying to take their own notes.) It also helps to upload photos of each chart into a folder on a shared drive, or e-mail them to each member, so that all members can refer to the analysis and, for example, re-examine it if problems arise later with the selected option.

*Conduct two or more sessions*—Contentious issues tend to be considered over at least two meetings. This ensures all information that is elicited can be included in the analysis, which often will require research between the meetings. Both meetings do not need to be at the small group level. Even better is for the small group to not address a contentious issue until it has first been addressed by a committee, a task force, or another group taking public input, as long as this group operates its meetings by these same principles.

### ***Blended interdependence and autonomy***

Some decisions can be based on the hard evidence. Others, however, require a judgment call. The best small-group judgment calls take advantage of the individual experiences and expertise of every member, while ensuring that each member makes up his or her mind independently.

*Separate facts and opinions in time*—Sharing information helps each individual in the group make a better decision. Sharing opinions too early in the process, however, can inhibit members from making their own judgment. After hearing the basic issue to be addressed, the small group should first ask any and all questions, ensure the full set of facts are in the open, available for all members to consider, before beginning their deliberations. Even then, initial deliberations should conduct reasoned analysis before sharing the members' opinions. As Colin Powell instructed his subordinates, "Tell me what you know. Then tell me what you don't know. Only then can you tell me what you think. Always keep the three separated."

*Resist the illusion of unanimity*—Powerful pressures arise in any cohesive group when a non-member voices objections to the group's direction. These pressures tend to bolster morale and cohesiveness at the expense of critical thinking, and can result in "groupthink," the mode of thinking that makes concurrence so important that it overrides a realistic appraisal of the options.<sup>ix</sup> As Alfred P. Sloan noted, when we all agree on a decision, we should probably take the time to talk to others in order to gain an understanding of what the decision is really all about. Different backgrounds and different knowledge bases lead to different perspectives, which lead to different understandings of the problem, which then lead to very different solutions. In support of this, every member should be willing to play the devil's advocate.<sup>x</sup>

*Make simultaneous individual decisions*—one of the paradoxes of a sound group process is that, in making their individual decisions, members should not be initially concerned about what the group decision will be. Each member must make up his or her own mind, based on all of the information that has been developed and analyses that have been conducted. The entire group conducts the analysis; each member makes the decision.

In those cases where no one has any greater expertise than anyone else does—such as deciding on what day to hold a major event—it is best if members do not even know each other's preferences before deciding on their own. Every member must be willing to keep his or her mind open until the very end, or even change it as many times as it takes to get it right.

*Consensus vs. voting.* For most boards and other small groups, some decisions should be made by consensus and others by voting. The challenge is knowing when to use which.

Consensus means reaching a decision that all members can actively support, even if the chosen option was not their preferred choice. Thus, each member needs to be able to recognize that, given the needs of the City and the differing perspectives represented on the board, he or she agrees that this is the best choice at this time. Consensus may require full discussion, but it assumes that members are prepared to cooperate. When trying to achieve consensus, the people at the meeting discuss each topic until the chair believes that all agree. If the members have one purpose, plenty of time, and a shared goal of cooperation, consensus works very well. Consensus tends to yield greater solidarity around the final choice. Although it may take more time to reach a decision, earnestly

laboring for clarity and agreement through the consensus-development process very often results in profound leaps of commitment and group growth.

However, if the board consists of very busy people with strong opinions and varied interests, if the issue under discussion is complex and of many facets, you will probably find that most members will want to make decisions by voting.

*If there is an instance in which you have to vote, don't count votes; weigh views*—the normal process of up-or-down voting elicits very little information. It does not tell us how strongly each small group member may support or oppose a given alternative. Instead, each member can indicate the strength of support (or opposition) he or she has for each option being considered by rating all options rather than just selecting the apparently preferred option. Members can vote by rating the level of support for the alternative, using a scale of 1 to 10 (or 1 to 100, or A through F, etc.)<sup>xi</sup>. Options not rated highly by any member can be eliminated, allowing the discussion to focus on just those presenting the dilemma.

The confidence each member has in the alternative, based on the degree of knowledge, expertise, and insight that has been brought to bear, determines the weight that vote should carry. If the option receiving the most votes commands only weak support, and strong reservations, the entire matter needs further consideration. Ask two questions: Can everyone support this decision (or course of action)? Is there anyone who cannot? Ensure everyone answers; don't assume that silence means assent.

*Be flexible.* Flexibility isn't a weakness; changing your mind isn't giving in or losing. Instead, it is an acknowledgement that, in a complex world with many different perspectives, our community has a multiplicity of interests to be balanced and, as we learn more about these interests, we may come to agree that another way of achieving those interests may be more effective or more acceptable.

### ***Mutual Gain***

*Seek what is best for the entire community.* Members have a duty to maintain undivided loyalty to the entire community, in order to further the interests of the entire Paso Robles community, not just a part of it.

Within that, the small group should select the course of action that its reasoned analysis and dialogue has indicated will provide the greatest net benefit for the entire constituency over the long term. This may be what a clear majority of citizens want, but not always.

*Create winners, not losers*—all too often, majority rule means the winners take all and the losers get nothing. That is seldom the best decision for a City of such diverse interests and perspectives. Optimally, the costs of a decision should be borne proportionately to the gain. People generally do not make decisions that are best for the overall City, when they receive the benefits but others bear the costs of those decisions.

Most citizens will accept—and even support—a decision they don’t agree with, as long as they know that their perspectives and concerns were heard and considered (as discussed above). Ensure program staff and interested constituency members understand the logic used in making the decision. Detail the criteria. Share how each person’s and each interested group’s perspective helped shape the decision. If appropriate, develop “findings” and make them available.

- <sup>i</sup> Much of the research is becoming readily available on the internet. See, for example: <http://search.rand.org/>; or <http://welch.som.yale.edu/cascades/>
- <sup>ii</sup> See: Surowiecki, James, *The Wisdom of Crowds: Why the Many Are Smarter than the Few and How Collective Wisdom Shapes Business, Economies, Societies, and Nations*, New York: Doubleday, 2004 and at <http://www.randomhouse.com/features/wisdomofcrowds/Q&A.html>; Susskind, Lawrence E. and Jeffrey L. Cruikshank, *Breaking Robert’s Rules: The New Way to Run Your Meeting, Build Consensus, and Get Results*, Oxford: Oxford University Press, 2006; Buchanan, J. M. and Tullock, G., *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, Ann Arbor, MI: University of Michigan Press, 1962; Axelrod, Robert, *The Evolution of Cooperation*, New York: BasicBooks, 1984.; Panel on the Nonprofit Sector, *Principles for Good Governance and Ethical Practice: a Guide for Charities and Foundations*, Convened by Independent Sector, Washington, D.C., October, 2007, [http://www.nonprofitpanel.org/report/principles/Principles\\_Guide.pdf](http://www.nonprofitpanel.org/report/principles/Principles_Guide.pdf), principles 9-11.
- <sup>iii</sup> Macionis, John J., *Society: The Basics* (10th Edition) New York: Prentice Hall, MySocLab Series, 2008, p. 107
- <sup>iv</sup> Begley, Sharon, “Critical Thinking: Part Skill, Part Mindset and Totally Up to You,” *Wall Street Journal*, October 20, 2006, p. B1.
- <sup>v</sup> Axelrod, Robert, *The Evolution of Cooperation*.
- <sup>vi</sup> Buchanan, Mark, *Nexus: Small Worlds and the Groundbreaking Theory of Networks*, New York: W. W. Norton & Company, 2002, p. 37.
- <sup>vii</sup> Martirossian, Jasmine, *Decision Making in Communities: Why Groups of Smart People Sometimes Make Bad Decisions*, Alexandria, VA: Community Associations Press, 2001, p. 81.
- <sup>viii</sup> Fisher & Ury, *Getting to Yes: Negotiating Agreement without Giving in*, Boston: Houghton Mifflin Company, 1981, pp. 3-14, 41-52.
- <sup>ix</sup> Janis, Irving, *Groupthink: Psychological Studies of Policy Decisions and Fiascoes*, Boston: Houghton Mifflin Company, 1982.
- <sup>x</sup> De Bono, Edward, *Six Thinking Hats*, Boston: Little, Brown and Company, 1985.
- <sup>xi</sup> Poundstone, William, *Gaming the Vote: Why Elections Aren’t Fair (and What We Can Do about It)*, New York: Hill and Wang, 2008, pp. 231-249.