



## SUSTAINABILITY COMMITTEE REGULAR MEETING

City Hall Conference Room  
1000 San Pablo Avenue  
October 20, 2010 – 7:30 p.m.

### 1. CALL TO ORDER

### 2. ROLL CALL

### 3. APPROVAL OF MINUTES

#### 3-1. Approve minutes from September 2010 meeting (attached)

### 4. PUBLIC COMMENT

For persons desiring to address the Commission/Committee/Board on an item that is not on the agenda please note that each speaker is limited to three (3) minutes. The Brown Act limits the Committee's ability to take and/or discuss items that are not on the agenda; therefore, such items are normally referred to staff for comment or to a future agenda.

### 5. ANNOUNCEMENTS/COMMUNICATIONS

#### 5-1. Introduction of Americorps Interns

#### 5-2. Arts & Green Festival Update

### 6. DISCUSSIONS AND POSSIBLE ACTION ON MATTERS RELATED TO THE FOLLOWING ITEMS:

#### 6-1. Bicycle & Pedestrian Master Planning – confirm attendees for planning workshop on 10/23

#### 6-2. Climate Action Plan implementation – review implementation plan, identify tasks for subcommittees

#### 6-3. Climate Action Plan implementation funding

### 7. FUTURE AGENDA ITEMS

(Commission/Committee/Board Member announcement of requests for future agenda items. No public comment will be taken on announcement of future agenda items).

#### 7-1. Next meeting – November 17, 2010 - planning project review

### 8. ADJOURNMENT

#### Attachments

#### 1. CAP Implementation – projects for SC assistance/lead

#### 2. Funding background

*The Committee packet is available for public inspection at the Albany Library, Fire Department and City Hall. The agenda and supporting staff reports, if available, can be found on our web page at [www.albanyca.org](http://www.albanyca.org).*

*Please note that if you provide your name and address when speaking before the Committee it will become part of the official public record, which will be posted on the Internet. Agenda related writings or documents provided to a majority of the Sustainability Committee regarding any item on this agenda will be made available for public inspection in the Community Development Department, 1000 San Pablo Avenue, Albany CA.*



**SUSTAINABILITY COMMITTEE  
REGULAR MEETING  
MINUTES**

**City Hall Conference Room  
1000 San Pablo Avenue  
September 15, 2010 – 7:30 p.m.**

**1. CALL TO ORDER**

The meeting was called to order by Chair Cooper at 7:30 p.m.

**2. ROLL CALL**

Members Present: Cooper, Kitahara, Lieberman, Price, Schrifft, Smith Heimer, Yang

**3. APPROVAL OF MINUTES**

**3-1. Approve minutes from May, 2010 meeting (attached)**

Minutes approved unanimously.

**4. PUBLIC COMMENT**

For persons desiring to address the Commission/Committee/Board on an item that is not on the agenda please note that each speaker is limited to three (3) minutes. The Brown Act limits the Committee's ability to take and/or discuss items that are not on the agenda; therefore, such items are normally referred to staff for comment or to a future agenda.

**5. ANNOUNCEMENTS/COMMUNICATIONS**

**5-1. Program update – grants, staffing, Albany Farmers Market, CaliforniaFIRST**

Almaguer provided a program update.

**5-2. Events update – 10/10/10 Albany Climate Protection Contest, Arts & Green Festival**

Almaguer announced 10/10/10 event. Cooper provided status on Arts & Green Festival to be held May 1.

**6. DISCUSSIONS AND POSSIBLE ACTION ON MATTERS RELATED TO THE FOLLOWING ITEMS:**

**6-1. Advisory Bodies Study – receive update regarding proposed changes to Sustainability Committee**

The Committee discussed the findings and recommendations within the study. The Committee agreed that they would like to remain the Sustainability Committee, and not merge with SEJC, particularly to ensure the effectiveness of CAP implementation. The Committee will work to further engage the public regarding sustainability/CAP items including educational events, public study sessions, and other venues.

**6-2. Climate Action Plan implementation – funding, staff update & next steps, reports from subcommittees**

Almaguer provided an overview of the request from City Council that the Committee research funding opportunities for CAP implementation and provide information back to City Council in six months. This item will be discussed in detail over the next several Committee meetings.

**7. FUTURE AGENDA ITEMS**

(Commission/Committee/Board Member announcement of requests for future agenda items. No public comment will be taken on announcement of future agenda items).

**7-1. Select next meeting date & location**

The next meeting will be held on October 20<sup>th</sup> in the Conference Room at City Hall. Agenda items to include: CAP implementation – identify tasks for Committee assistance/lead, CAP implementation funding, and an Arts & Green Day update.

**8. ADJOURNMENT**

*The Committee packet is available for public inspection at the Albany Library, Fire Department and City Hall. The agenda and supporting staff reports, if available, can be found on our web page at [www.albanyca.org](http://www.albanyca.org).*

*Please note that if you provide your name and address when speaking before the Committee it will become part of the official public record, which will be posted on the Internet. Agenda related writings or documents provided to a majority of the Sustainability Committee regarding any item on this agenda will be made available for public inspection in the Community Development Department, 1000 San Pablo Avenue, Albany CA.*

**CAP Implementation**

**Primary Projects for SC Assistance/Lead**

Measure#	Measure Description	Specific Action	Discussion
BE- 2.1	Develop comprehensive outreach programs to encourage energy efficiency and renewable energy investments in the community	B - Work with community organizations to facilitate energy audits in the community	<p>City will be developing an incentive program (approx. \$15,000) for energy efficiency upgrades. – Promote.</p> <p>Coordinate with COA or TA to promote simple energy efficiency upgrades such as “Project Porch light” – Lead.</p> <p>Develop a “green homes tour” for Albany. – Lead.</p>
		D- Develop outreach program to encourage property owners to install renewable energy systems	<p>Promote Smart Solar audit program.</p> <p>Assist with planning &amp; implementation of a solar workshop (with Smart Solar), other workshops as identified.</p>
BE - 2.2	Identify and develop low-cost financing products and programs to encourage investment in energy efficiency & renewable energy		Assist with promotion of City’s programs as developed (commercial & residential incentives).
BE -2.3	Develop & implement residential & commercial energy efficiency upgrade requirements	A-Adopt RECO point of sale ordinance	Lead study sessions on RECO. Coordinate with real estate group as needed.

BE -4.3	Research the feasibility of joining/creating a CCA		Lead research, identify other jurisdictions with a CCA or other in place, determine feasibility at this time.
TL- 4.4	Create and implement a voluntary TDM program to reduce weekday peak period single occupancy commute & school trips	SC's preference	Select action that seems most workable for the subcommittee to engage in – Lead.
GI-1.1	Enhance the community's urban forest and other landscapes to maximize carbon sequestration, reduce stormwater runoff & augment neighborhood aesthetics	A/F – Green Albany Plan/Green Streets Program  B – Seek funding  C/D – Plant 500 new trees annually/outreach program to encourage additional planting & carbon sequestration plants	Assist with planning process for A&F pending grant award.  Assist with grant research/other funding sources.  Assist with planting/promoting.
WC-1.1/WC 1.2	EBMUD water audit program /50% reduction in outdoor potable water usage	Outreach component	Coordinate with EBMUD, develop outreach program.
City Council	Funding – “CAP Implementation Fee”	Research & formulate recommendations for funding CAP implementation (tax, fees, other)	Initial recommendations due to CC December 2010. Assign/develop subcommittee?

### PROPERTY TAX

The property tax is based upon the value of real and tangible personal property.

#### Key things to know

- Property tax revenue is collected by counties and allocated according to state law within the county to cities, counties, special districts and school districts.
- The tax rate is constitutionally limited to 1 percent of the property's assessed value, plus rates imposed to fund indebtedness approved by voters prior to 1978.
- For the purpose of taxation, appraised real property values are limited to 1975-76 "full cash value" plus an annual adjustment for inflation not to exceed 2 percent.
- Property is reassessed at current full cash value upon a change in ownership.
- Property that declines in value may be reassessed.
- Cities may not increase the property tax, nor impose additional property tax, transaction tax or sales tax on the sale of real property.

### SALES AND USE TAX

The sales tax is imposed on retailers for the privilege of selling tangible personal property in California. A use tax is imposed on purchasers whenever sales tax does not apply, such as for goods purchased out of state for use in California.

#### Key things to know

- The state sales tax rate is 6.25 percent. This includes one-quarter of one percent that is dedicated to repayment of the fiscal recovery bond issued in 2004.
- Counties may impose a sales and use tax at the rate of 1.25 percent. Cities may impose a sales and use tax at the rate of 1 percent. Payment of the city sales tax is credited against payment of the county sales tax. The .25 percent remaining in the county rate is dedicated to transportation. While the fiscal recovery bond is outstanding, one-quarter of one percent of the city/county sales tax has been suspended. Cities and counties receive additional property tax in an amount equal to the sales tax loss.
- One-half of one percent of the state sales tax rate is allocated to counties for use by the county and distribution to counties and cities for public safety. (Proposition 172).
- Cities and counties may impose additional transaction and use taxes in increments of one-quarter of one percent if the ordinance proposing the tax is approved by a two-thirds vote of the governing body before it is submitted to the voters.
- A city may impose more than one transaction and use tax for specified purposes. One might be for a general purpose; a second might be for a special purpose. The combined rate of these transaction and use taxes may not exceed 2 percent.

### BUSINESS LICENSE TAX

Business license taxes can be imposed on persons or entities doing business within the city.

#### Key things to know

- Business license taxes are most commonly based on gross receipts or levied at a flat rate, but are sometimes based on the quantity of goods produced, number of employees, number of vehicles, square footage of the business or some combination of factors.
- Rates are set at each city's discretion but may not be discriminatory or confiscatory.
- In the event a business operates in more than one city, a city may only tax that portion of the business conducted within its incorporated boundaries.

### UTILITY USER'S TAX

Utility user's taxes can be imposed on the consumer (residential or commercial) of any combination of electric, gas, cable television, water, telephone and other utility services.

#### Key things to know

- Utility user's taxes are usually collected by the utility as part of its regular billing procedure and then remitted to the city.

### TRANSIENT OCCUPANCY (BED) TAX

A transient occupancy tax is imposed on persons staying 30 days or less in a hotel, inn, or other lodging facility.

#### Key things to know

- Most cities use transient occupancy tax revenues for general purposes, but some budget a portion of them for tourism, business development or related purposes.
- Although collected by the hotel operator, the tax is imposed on the guest.

### REGULATORY AND USER FEES

#### REGULATORY FEES

Regulatory fees are imposed to pay for the cost of programs or facilities that a business or other activity requires. Examples include a fee to pay for the cost of administering the licensing of massage parlors, or a fee to fund graffiti removal from businesses that do not maintain their property free of graffiti.

#### Key things to know

- Regulatory fees are charged to ensure that those benefiting from an activity pay their fair share of costs related to their activity. Costs may include issuance of a license or permit, investigation, inspection, administration, and maintenance of a system of supervision and enforcement.
- Regulatory fees are charged to fund programs or facilities that reduce negative impacts of an activity or business on the community.

### DEVELOPMENT IMPACT FEES

Development impact fees are imposed to pay for improvements and facilities required to serve new development or otherwise reduce the impacts of new development on a community.

#### Key things to know

- Development impact fees cover one-time capital improvements and community amenities. Procedure for imposing, accounting for, and using development impact fees is regulated by state statute.
- The ordinance or resolution establishing the fee must explain the connection (nexus) between the development project and fee.
- The amount of the fee must not exceed the cost of providing the service or improvement for which the fee is imposed.

### USER FEES

Cities have authority to impose fees, charges and rates for services and facilities they provide. Use of these revenues is limited to paying for the service for which the fees are collected. Examples include plan checking fees or recreation classes.

#### Key things to know

- The fee amount may not exceed the cost of providing the service but may include overhead, capital improvements and debt service.

### PROPERTY-RELATED FEES

Property-related fees are charges imposed on a parcel or a person as an incident of property ownership.

#### Key things to know

- Property-related fees include user fees or charges for public services having a direct relationship to property ownership.
- A written protest by a majority of owners who will pay the fee, submitted at a public hearing, will prevent imposition of the fee.
- Fee approval requires a majority vote of the property owners of the property subject to the fee, or at the option of the agency, a two-thirds vote of the electorate in the area subject to the fee.

### UTILITY RATES

Utility rates are charged to users of city-provided water service, sewer service, and electric service or other utilities.

#### Key things to know

- Utility rates cover the cost of providing the service, which may include operations, overhead, capital improvements and debt service.

### ASSESSMENTS

Assessments are charges on real property or businesses levied to pay for facilities or services within a predetermined area according to the benefit to real property or businesses resulting from the improvements.

#### Key things to know

- Benefit assessments are a common financing tool.
- Assessment approval requires a majority vote of the owners of the properties subject to the assessments with the votes weighted according to the assessment amount of each property.
- State law authorizes bond financing for some assessment districts.
- Property-owner approval is required to impose benefit assessments.

### RENT FOR USE OF CITY PROPERTY RENTS, ROYALTIES AND CONCESSIONS

Cities may receive revenue through rental or use of city property. For example, cities may collect royalties from natural resources taken from city property, sell advertisements in city publications or receive a percentage of net profits from concessionaires operating on city property.

#### Key things to know

- The First Amendment limits cities' ability to control advertising content.
- State law limits the maximum term of many types of leases.

### FRANCHISE FEES

Franchise fees are collected in lieu of rent for use of city streets.

#### Key things to know

- Examples of businesses that pay franchise fees include refuse collectors, cable television companies, electric utilities and oil and natural gas pipelines. The amount of some franchise fees are limited by statute (for example, cable television franchise fees).
- Telephone companies and railroads are exempt from local franchise fees.

### FINES, FORFEITURES AND PENALTIES

Cities receive a share of fines collected and bail moneys forfeited following conviction of a misdemeanor or infraction committed within city boundaries.

#### Key things to know

- State law determines the distribution of state-imposed fines and bail forfeitures.
- Cities determine bail amounts for violations of their municipal codes.
- Cities may establish and retain civil penalties for municipal code violations.
- Restrictions may apply to use of funds received from motor vehicle code violations.



## 2. STATE-ADMINISTERED REVENUE SOURCES

### MOTOR VEHICLE LICENSE FEE (MOTOR VEHICLE IN-LIEU TAX)

The Motor Vehicle License Fee (VLF) is a tax on ownership of a registered vehicle. The tax rate is 0.65 percent of the value of a vehicle paid by owners to the Department of Motor Vehicles.



#### Key things to know

- VLF is constitutionally dedicated to cities and counties.
- The Constitution guarantees that the VLF at the 0.65 percent rate goes to counties and cities. State statute specifies the allocation among cities and counties.
- In addition to revenues from the 0.65 percent VLF rate paid by vehicle owners, cities and counties receive additional property tax equal to the difference between revenues from the VLF at the 2 percent rate and the VLF at the 0.65 percent rate.
- After fiscal year 2004-05, the property tax in lieu of VLF for each city and county increases annually in proportion to the growth in gross assessed valuation in that jurisdiction from the prior year.
- City VLF revenues may be used for any purpose.

### GASOLINE TAX (HIGHWAY USERS TAX, MOTOR VEHICLE FUEL LICENSE TAX)

The gasoline tax is an 18-cent per gallon tax on fuel used to propel a motor vehicle or aircraft.



#### Key things to know

- Use of gasoline tax revenue is restricted to research, planning, construction, improvement, maintenance, and operation of public streets and highways or public mass transit guideways.

## 3. INTERGOVERNMENTAL GRANTS

Cities may receive grant funding from other public agencies. The federal and state governments have been significant sources of support in the past, but their contribution to city revenues has declined.



#### Key things to know

- “Categorical” grants support a defined program area. They are typically allocated either to applicants whomeet predetermined funding criteria or to applicants who compete for project funding through an application process.
- “Block” grants provide funding to a broad functional area. For example, federal Community Development Block Grant (CDBG) funds support local housing and economic development activities.

## 4. EXPENDITURES

Revenues that are not designated for a specific expenditure go into a fund called the general fund. General fund revenues include proceeds from property taxes, sales taxes and other revenues that may be used for discretionary purposes. In most cases revenues from special taxes, fees and other limited purpose revenue sources must be deposited special funds associated with their particular purpose.

### PUBLIC PURPOSE

All expenditures of public funds, regardless of their source, must be for a public purpose of the agency making the expenditure.



#### Key things to know

- An incidental benefit to an individual does not make a “public” purpose a “private” purpose.

### GIFT OF PUBLIC FUNDS

A city may not make a gift of public funds. This means that a city may not spend public funds to benefit a private person or business.



#### Key things to know

- Certain expenditures that benefit private entities – such as expenditures for affordable housing – are not considered to be gifts of public funds because of the community benefit of the project being funded.

### DEBT LIMIT

Cities may not incur indebtedness or liability for any purpose in a given year that exceeds the income and revenue they expect to receive that year, without a two-thirds vote of the electorate. This prohibition prevents the pledge of general fund revenues beyond the year in which that revenue is received.



#### Key things to know

- The debt limit does not apply to revenue bonds or other obligations that are paid from a special fund rather than from general revenues.
- An exception applies when not more than one year’s revenue is pledged. *Example: a lease-purchase agreement when agreement does not create an immediate indebtedness for the entire amount of the debt, but instead limits the liability to each installment as it falls due.*

### APPROPRIATIONS LIMIT

Local agencies are subject to annual spending limits.



#### Key things to know

- Annual appropriations subject to limitation may not exceed an appropriations limit based on a calculated limit for fiscal year 1978-79, adjusted annually for population and cost of living increases.
- The limit applies only to tax revenues. The limit does not apply to proceeds from regulatory licenses, user charges, user fees, and assessments to the extent that these revenue sources do not exceed the costs reasonably borne in providing the product or service for which the license, charge, fee or assessment is imposed.



# Municipal Finance Quick Reference

## KEY THINGS TO KNOW ABOUT:



1. Local Revenues
2. State-Administered Revenue Sources
3. Intergovernmental Grants
4. Expenditures

## 1. LOCAL REVENUES

### TAXES

All cities have the power to impose a variety of taxes. All taxes are either general or special taxes. Special taxes must be used for the specific purpose for which they are imposed.



#### Key things to know

- Cities may impose any type of tax not preempted by state law.
- Cities may not tax cigarettes, alcohol or personal income.
- A new or increased general tax requires approval by a majority of voters.
- A new or increased special tax requires approval by two-thirds of voters.
- General taxes and special taxes may be reduced or repealed by initiative.
- Special tax revenues must be accounted for in a separate fund. The city must prepare an annual report that includes (1) the special tax rate; (2) revenues collected and expended and (3) the status of any project funded by the special tax.



OPEN NEXT TWO FOLDS TO  
INSIDE PANELS TO CONTINUE

## GLOSSARY

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

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

**Bonds.** A certificate of debt issued by an entity, guaranteeing payment of the original investment, plus interest, by a specified future date. Interest on bonds issued by a local agency is exempt from state personal income taxes.

**General Fund.** Fund used to account for all financial resources except those required to be accounted for in another fund.

**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.

**Subvention.** Financial support provided by another level of government. The state levies certain taxes that are “subvended” to cities, including motor vehicle license fees and the motor vehicle fuel tax. Local agencies also receive reimbursement for revenue lost as a result of various tax exemptions and reductions, like the homeowners’ property tax exemption.

Special thanks to the following individuals whose time and effort contributed to this publication:

Michael Coleman  
Special Consultant  
League of California  
Cities

Betsy Strauss  
Special Counsel  
League of California  
Cities

Anita Lawrence  
Director of Finance  
City of Camarillo

All final decisions about the content and formatting of this report were made by the Institute for Local Self Government.

Generous support for this publication provided by:



**MuniFinancial**

Providing arbitrage rebate; municipal disclosure; district formation; economic, fee and rate studies; and district administration services to over 600 public sector clients since 1988.

For additional copies of this publication, contact CityBooks at 916.658.8257.

SKU 1750 – \$10 for set of 5

Copyright © 2004 by the Institute for Local Self Government

## Approval Requirements for State and Local Revenues

State Level	Legislative Approval	Voter Approval
Taxes	2/3	None
General obligation bonds	2/3	Majority
Other debt <sup>a</sup>	Majority	None
Fees	Majority	None
Local Level	Governing Body Approval	Voter Approval
City or county “general” taxes (revenues used for unrestricted purposes)	<p>If consolidated with a regularly scheduled election of members of the legislative body:</p> <ul style="list-style-type: none"> <li>• 2/3 for transactions &amp; use taxes</li> <li>• Other taxes: 2/3 for general law cities; majority for charter cities.</li> </ul> <p>If not consolidated, unanimous declaration of “emergency” required.</p>	Majority
City or county “special” taxes (revenues used for specific purposes)	Majority (2/3 for transactions & use taxes)	2/3
All school or special district taxes	Majority	2/3
General obligation bonds	Majority	2/3 <sup>b</sup>
Other debt	Majority	None
Property assessments	Majority	Majority of affected property owners. Votes weighted by assessment liability
Property—related fees	Majority	2/3 of voters or majority of affected property owners <sup>c</sup>
Fees—all other	Majority	None
<p><sup>a</sup> Includes revenue and lease-revenue bonds and certificates of participation.</p> <p><sup>b</sup> Exception: The Constitution specifies that a majority of voters can approve bonds used for repairing or replacing unsafe public school buildings and 55 percent of voters can approve bonds for new school facilities under certain conditions.</p> <p><sup>c</sup> No vote required for gas, electric, water, sewer, refuse, or developer fees.</p>		

Source: Adapted from CALFACTS, Legislative Analyst’s Office

[CaliforniaCityFinance.com](http://CaliforniaCityFinance.com)

2217 Isle Royale Lane • Davis, CA • 95616-6616 • Tel/Fax: 530.758.3952

mc July 10, 2009



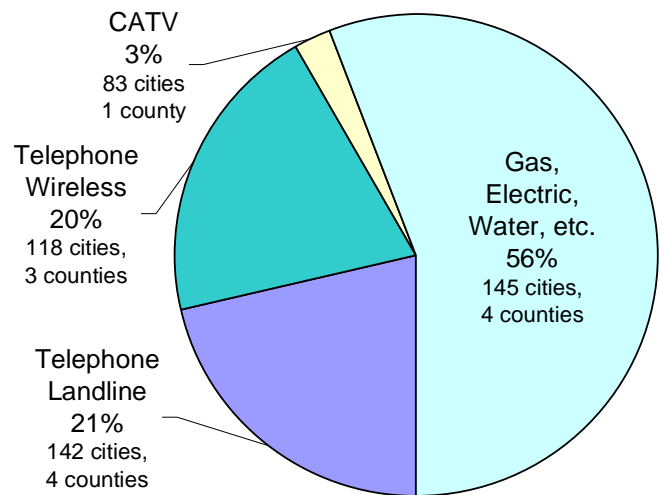
# Utility User Tax Facts

The Utility User Tax (UUT) may be imposed by a city on the consumption of utility services, including (but not limited to) electricity, gas, water, sewer, telephone (including cell phone and long distance), sanitation and cable television.<sup>1</sup> The rate of the tax and the use of its revenues are determined by the local agency. A UUT may be imposed as a special tax, earmarked for a specific purpose, or a general tax to be used for a variety of municipal service needs at the discretion of the city council. The tax is levied by the city, collected by the utility as a part of its regular billing procedure, and then remitted to the city. Statewide, city and county utility user taxes generate about \$2 billion per year.

	Cities <sup>2</sup>	Counties <sup>2</sup>	Total	State Population covered
Number with UUT	146	4	150	46%
Telephone UUTs	142	4	146	45%
Intrastate	142	4	146	45%
Interstate	89	4	93	35%
International	82	4	86	34%
Wireless	118	3	121	40%
Electricity	145	4	149	45%
Gas	145	4	149	45%
Cable TV	83	1	84	19%
Water	82	1	83	18%
Sewer	10	1	11	3%
Garbage	8	0	8	1%
Other	2	0	2	3%

## Voter Approval is Now Required to Levy a New or Increased UUT

Most of the 146 cities and 4 counties<sup>2</sup> with UUTs adopted the taxes by vote of the city council (or in the case of a county UUT, the County Board of Supervisors) prior to 1986. Generally, taxes imposed since then require voter approval. The Constitution (Article XIIC) requires 2/3 voter approval for any new or increased special tax. A special tax is dedicated to a specific purpose. A new or increased general tax requires majority voter approval. In June 2003, voters in the City of Desert Hot Springs approved a UUT which dedicates 50% of the proceeds to resolving the city's bankruptcy related debt. All other UUTs are general taxes.



<sup>1</sup> Authority: General law cities: Government Code § 37100.5; Calif Constitution Article XI § 5 (“municipal affairs”)

<sup>2</sup> The City/County of San Francisco is counted here as a county, not a city.

<sup>3</sup> No UUT on telecom in Azusa, Buena Park, Pacifica, Scotts Valley.

<sup>4</sup> Irvine charges commercial only.

<sup>5</sup> Irvine, Alhambra commercial only.

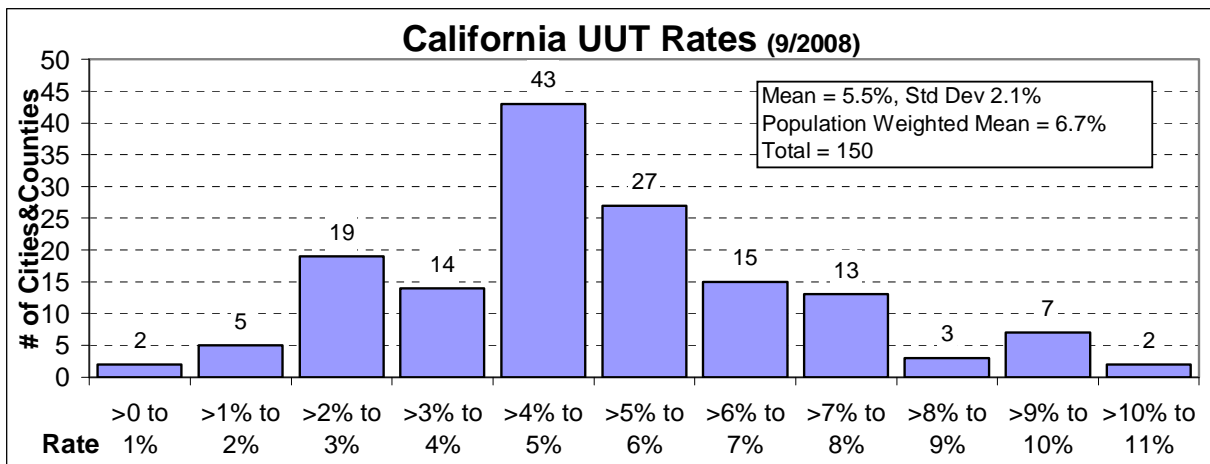
## The UUT is Vital to Funding Essential Municipal Services

City Utility User Tax rates range from 1% to 11%. The particular utilities to which the tax is applied varies. In some cities different rates apply to residential versus commercial users. The most common rate (the mode) is 5%, applied broadly among many types of utilities. The average rate (mean) is 5.5% with a standard deviation of 2.1%. Because most large cities have UUTs, roughly half of California residents and businesses pay a utility user tax.

The UUT is a vital element in the funding of critical city services. On average, the UUT provides 15% of general purpose (i.e. non-earmarked) revenue in cities that levy it. In some cities, the UUT provides as much as 1/3 of the general fund (Holtville, Compton, Richmond). UUT revenues most commonly fund police, fire, parks, library, and long-range land use planning services – and related support services (e.g. accounting, payroll, personnel, information systems, etc.).

## Counties Also Levy UUTs

A county may levy a UUT on the consumption of electricity, gas, water, sewer, telephone, telegraph and cable television services in the unincorporated area.<sup>6</sup> Four (4) of the 58 counties levy a UUT (Alameda, Los Angeles, Sacramento, and San Francisco).



## Some UUTs Result From State Cuts to City Funds

Many city UUT levies and increases have resulted from cuts to city revenues by the state. In 1992, facing massive deficits in the state budget, the Legislature and Governor began the annual transfer of billions of dollars of property tax revenue from cities, counties and special districts to K-14 schools, allowing the state to reduce its general fund spending on education. Cities and counties, who depend substantially on sales tax and property tax revenues for discretionary income, were already experiencing the same recessionary effects as the state. These property tax shifts, using a mechanism called the “Educational Revenue Augmentation Fund” (ERAF),

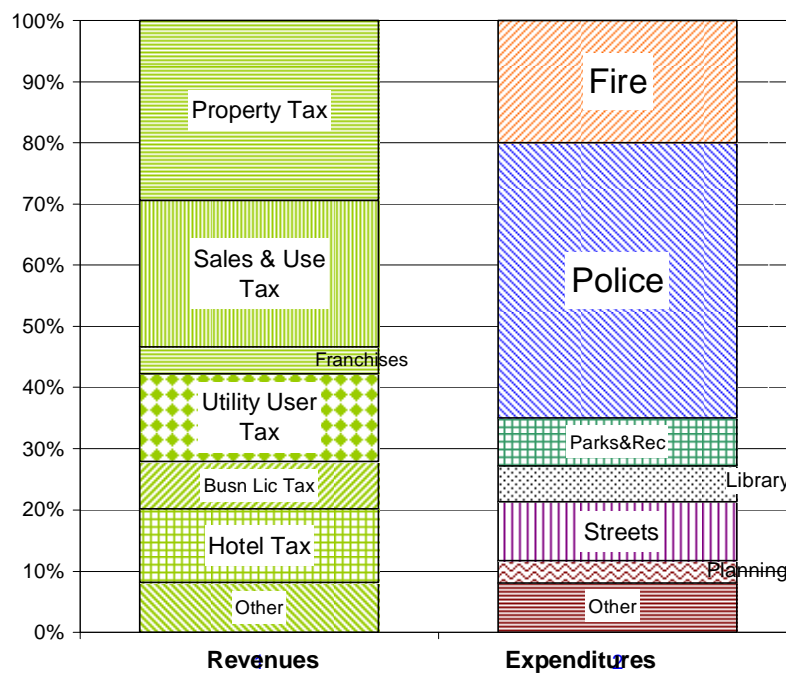
<sup>6</sup> Revenue and Taxation Code Section 7284.2 et seq.

continue today. In FY 2008-09 the annual property tax shift totals \$7.5 billion including over \$1.2 billion from cities.<sup>7</sup>

City property tax revenue, a top source of general purpose revenue for most, was cut from at least 9% and 24% on average. Cities responded by cutting services, deferring infrastructure maintenance, relying more heavily on debt financing, paring down reserves, more aggressively pursuing sales tax generators, and raising taxes and assessments. Within a few years of the beginning of the ERAF property tax shifts, more than fifty (50+) cities increased an existing or levied a new UUT.

## Discretionary Revenues and Spending

*Typical Full Service City*



SOURCE: Coleman Advisory Service computations from State Controller data as reported by cities.

### UUTs on Telecommunications

The application of utility user taxes to certain telephone services has been a topic of substantial legal and legislative turmoil due to changes in technology and federal law.

#### UUTs and the FET

Many Utility User Taxes in California include reference to the Federal Excise Tax (“FET”)<sup>8</sup> commonly limiting the application of the utility user taxes to charges that are “subject to” the FET. Telephone calls which are not charged based on both time and distance — such as those paid by coin in phone booths — are exempt from the FET. By reference, these types of calls are also exempt from some local UUT ordinances. Many cell phone bills

<sup>7</sup> For more information on ERAF, see <http://www.californiacityfinance.com/#ERAF>

<sup>8</sup> 42 U.S.C. §§ 4251 et seq.

are based upon a package which provides a mix of local and long-distance calling for a flat rate.

In 2007, several federal courts and the IRS ruled that telephone service packages which provide a mix of local and long-distance calling for a flat rate or a fixed fee are based on neither time nor distance and are therefore not subject to the FET.<sup>9</sup> The IRS subsequently adopted a regulation incorporating these rulings.<sup>10</sup> That meant that if a city wished to continue to impose its UUT on cell phone or other telephone calls which are not charged on both time and distance, it must amend its ordinance to remove the reference to this exemption to the FET.

A number of cities have amended their UUT ordinances to clarify that they did not wish to adopt the IRS' new practice, but rather wished to continue to impose their UUTs as they had historically been imposed (i.e. on charges based on time or distance). At the time of this writing, several localities are challenging the right of local taxing authorities to amend their ordinances without voter approval, or to continue to collect this revenue without amendment. The lawsuits argue that an amendment to an ordinance to bring it into conformity with the FET ruling is an "increase" subject to voter approval under Proposition 218.

### **UUTs and the MTSA**

Prior to the adoption of the Mobile Telecommunications Sourcing Act of 2000 (MTSA)<sup>11</sup> by Congress, cellular carriers had argued that the federal Constitution forbade the application of a utility user tax to telephone calls which neither originated nor terminated within the taxing agency. The MTSA expanded the permissible nexus for taxation to all cellular telephone charges for accounts with a primary place of use in the jurisdiction. However, carriers have argued in the courts that the California State Constitution Article XIIC prohibits cities and counties from applying the MTSA nexus rules without voter approval.<sup>12</sup>

As a result of these events, doubt has been cast over the application of some outdated local UUT ordinances to certain types of telephone service. Proposition 218 requires voter approval of any change in the "methodology" by which a tax is administered if the change increases the amount of the tax paid by the taxpayer.<sup>13</sup> Many agencies that rely on UUTs on telephony have successfully sought voter approval of an updated ordinance that reflects the realities of the modern telecommunications industry.

### **Recent Voter Approval Record**

From June 2002 through June 2008 there were 83 utility user tax measures placed before voters by cities and counties. Just two of these were county measures; 81 for cities. Proposals for new or increased UUTs did not fare well: Just six of 30 proposals passed. Four of these

---

<sup>9</sup> IRS Notice 2006-50

<sup>10</sup> Revenue Bulletin 2007-5 Section 10

<sup>11</sup> 4 U.S.C. §§ 116 et seq.

<sup>12</sup> *Verizon Wireless v. Los Angeles*, No. B185373, *AB Cellular LA, LLC dba AT&T Wireless v. City of Los Angeles*, 150 Cal.App.4th 747 (2007)

<sup>13</sup> Gov. Code § 53750(h)

new/increase proposals were framed as two-thirds vote special taxes dedicated to police/fire (3) or streets (1); just one passed (Desert Hot Springs, June 2003). Seven attempted an “a/b” advisory vote strategy, proposing a majority-vote general tax with a second companion “advisory measure” regarding the specific use of the funds; three of the seven passed. Of the 19 majority vote UUT general tax increase measures, just two passed (Rialto in June 2003, Menlo Park in November 2006).

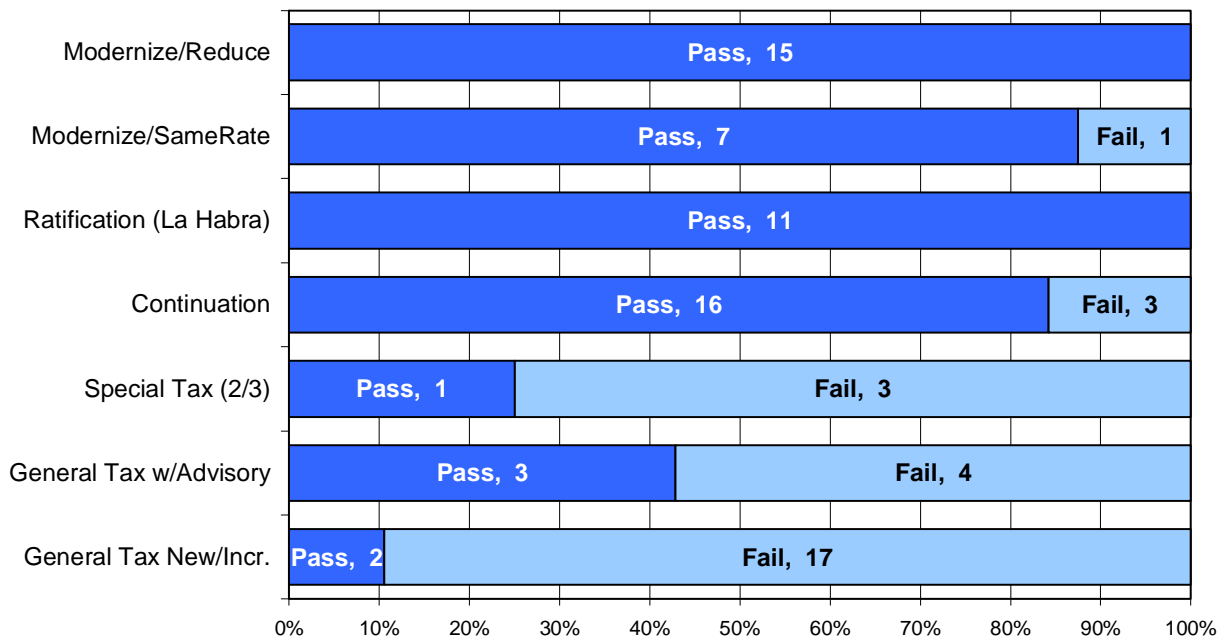
But voters were more accepting of UUTs already in place. Among the 19 measures to continue existing UUTs beyond a sunset date, 16 passed. All 11 measures which asked voters to ratify existing taxes following the 1991 La Habra decision upholding the validity of Proposition 62’s majority vote requirement on general law cities passed.

Over the last couple of years, an increasing number of cities with UUTs have gone to their voters to modernize their ordinances to assure applicability to new technologies (e.g wireless, internet-based, etc.) and billing methods (e.g. flat rate, etc.). In some cases, the measures have proposed small reductions in the UUT rate. All but one of the 23 measures has passed, including seven of the eight which offered no rate reduction.

During this period there were also 14 referenda placed on the ballot by citizens concerning UUTs. All seven measures to repeal a local UUT failed and four out of the five measures to reduce local UUTs failed. Voters in Greenfield (Monterey County) voted to reduce their UUT from 6% to 3% in November 2002. A referendum to restrict the use of UUT revenues to law enforcement services passed in Seaside (Monterey County) in November 2002, but a similar measure failed in Stockton in March 2003.

### Utility User Tax Measures: June2002-June2008

Cities and Counties



## Proposition 26:

# New Supermajority Voter Approvals for Revenues

By Michael Coleman<sup>1</sup>

A statewide initiative on the November ballot would create years of litigation and havoc in municipal finance. Proposition 26 would recategorize a broad swath of state and local fees as taxes, setting up supermajority voter approval hurdles for what are now regulatory and impact fees that can be adopted by simple majorities of the State Legislature, city councils, and boards of supervisors.

Proposition 26 would:

- Recategorize many local government fees and charges as taxes, subjecting them to the approval requirements of special taxes including two-thirds supermajority voter approval. With certain limited exceptions, a tax would include any charge that provides benefits or privileges to those not charged.
- Recategorize many state imposed fees and charges as taxes, subjecting them to the approval requirements as taxes including two-thirds supermajority approval of each house of the Legislature.
- Expand the supermajority approval requirement for state taxes by requiring two-thirds supermajority approval of each house of the Legislature for **“any change in state statute which results in any taxpayer paying a higher tax.”**

### Background

In 1997 the California Supreme Court decided *Sinclair Paint Co. v State Board of Equalization* concerning a fee on businesses that made products containing lead. The proceeds of the fee were used for programs to screen and treat children for lead poisoning and to otherwise mitigate the social and environmental consequences of lead contamination. The paint company argued that the charge was in fact a tax and as such required the approval of two-thirds approval of each chamber of the Legislature under Proposition 13. The Court disagreed, ruling that the proceeds of a fee need not benefit those charged as long as the fee bears a reasonable relationship to the burden imposed by those charged. Fees of this kind are called “regulatory fees.”

Regulatory fees include fees levied on :

- Point-source emitters of air pollution to mitigate those effects.
- Oil manufacturers for public information, oil recycling, and regulatory programs.
- Businesses that treat, dispose of, or recycle hazardous waste to fund toxic site clean-up, pollution prevention, preparation of waster source reduction plans, and certification of new environmental technologies.

---

<sup>1</sup> Michael G. Colantuono of Colantuono & Levin, PC contributed substantially to this paper.



- Alcohol vendors to fund police services and public education on the adverse consequences of alcohol consumption.
- Tobacco products to fund health programs.
- Vehicle registrations for regional transportation programs.
- Heavy trucks to mitigate damage to streets and highways caused by truck traffic and spills.
- Public utilities to mitigate potential damage caused by trenching, including the diminished durability of roads.

**The Measure**

**Charges that Provide Benefits Other Than to the Fee Payers are Taxes.** Proposition 26 would recategorize as taxes many regulatory fees that benefit the public broadly rather than providing a direct and distinct benefit to the business owner or other fee payor. Among these are regulatory fees and assessments to address the health, environmental and other social effects of business activities. Because these charges are used for specific programs, as taxes they would be special taxes requiring supermajority approval.

<b>Approval Requirements: State and Local Fees and Taxes</b>		
<i>Proposition 26 would recategorize as taxes many types of charges currently considered fees</i>		
	Fee	Tax
State	Majority of each house of the Legislature and Governor’s approval.	For measures increasing state revenues,* two-thirds of each house of the Legislature and Governor’s approval or initiative constitutional amendment approved by simple majority of voters.
City	Majority of the city council.	Two-thirds voter approval for a special tax (earmarked), majority voter approval for a general tax.
<i>*Proposition 26 would also change this standard to require 2/3 vote for any law that will increase the taxes of any taxpayer, regardless of the overall effect of the law on state revenues.</i>		

Proposition 26 excludes from its new definition of “tax,” fees imposed:

- for a benefit of privilege conveyed (like a professional license or a land use approval)
- for a service or product (like a recreation class fee)
- to cover stated costs of regulation
- entrance fees for state or local property
- fines imposed by a court or a local government
- development impact fees imposed by local government
- property related fees and assessments governed by Proposition 218

### Examples of Fees That Proponents Say Proposition 26 Will Address

- Health inspection/monitoring fees
- Public safety cost mitigation fees
- Traffic, parking, noise abatement, and air quality impact fees for education, cleanup, health or other programs of general benefit
- Water quality impact fees for education, cleanup, health or other programs of general benefit
- Solid waste, tires, canned beverages, food packaging, computer hardware and toxic waste disposal fees used for education, cleanup, recycling/reuse, health or other programs of general benefit
- Alternative energy fees and energy use surcharges
- Fees on alcohol to litigate public nuisance associated with sale or consumption
- Fees on soda, unhealthy foods, fats, or sugar to mitigate obesity and other negative health effects
- Trenching fees for diminution in durability or longevity of roads, traffic congestion mitigation, mitigate potential damage to existing infrastructure
- Environmental mitigation and eco-impairment fees including carbon consumption fees, oil severance fees, and hazardous waste fees to support programs of general public benefit
- Vehicle registration or gasoline fees for transportation programs or environmental cleanup of general benefit
- Fees on tobacco for mitigating the adverse health effects of tobacco products (including evaluation, screening, and necessary follow-up services who are deemed potential victims of tobacco related injuries) or to discourage consumption (by increasing cost of product) and/or to educate the general public on the consequences of tobacco consumption. Fees to prevent illegal consumption by minors
- Fees on wireless telecommunications to reduce the impacts of DWTs (Driving While Talking), burdens on the 911 system, potential future effects of close proximity radio frequency exposure
- Fees on "altered food" products (chemical, gene, hormone, etc.) for research, screening, testing and treatment or education.
- Fees on television and movie programming to mitigate effects of violence on youth or similar anti-social consequences linked to programming
- Fees on gambling activities to treat compulsive gambling including screening, education, and treatment
- Fees on pharmaceuticals to treat subsequently discovered health risks associated with a particular drug product, for drug education, health research, treatment, emergency care, covering the costs of the uninsured or underinsured or for immunizations for children
- Fees on 4-wheel drive and all-terrain vehicles to offset eco-damage of off-road automobile use
- Fees on pesticides and other chemicals fees to treat the adverse health effects, for chemical use or alternative product education, research, treatment, or emergency response, cleanup or care.
- Fees on property casualty insurers for firefighting, earthquake and flood, uninsured drivers and auto case court costs.

*If a fee is deemed to be a tax, if imposed by the state it would require the approval of 2/3 of each house of the legislature and the governor. A locally imposed tax would be a special tax (because it would be used for a specific purpose) and would require 2/3 voter approval.*

**Two-thirds Vote for Any Action That Results in Any Taxpayer Paying a Higher Tax.** Proposition 26 also broadens the two-thirds state legislative vote requirement for increases in any state tax. The California Constitution currently requires two-thirds approval of each house of the Legislature for laws enacted “for the purpose of increasing revenues.” Proposition 26 substantially expands this supermajority vote requirement by requiring two-thirds approval of each house of the legislature for *any law* that will increase the taxes of *any taxpayer*. This rule could expand the legislative supermajority rule to include such things as state conformity with federal tax structures, revisions to depreciation schedules, changes in building codes or other laws that require the purchase of goods subject to the sales tax, and increases in the minimum wage which increase an individual’s earnings and thus the taxes they owe.

Because Proposition 26 applies retroactively to any state laws passed on or after January 1, 2010, it could invalidate the gas tax swap of 2009 which reduced the sales tax on gasoline and increase the fuel excise tax on gasoline in order to provide the state with more flexibility in the use of those tax revenues. By invalidating the swap, Proposition 26 would eliminate \$1 billion in state General Fund savings.

## **Conclusion**

If Proposition 26 passes, there will be significant impacts on a variety of state and local revenues and the programs and services they fund. These include:

- Fees to mitigate the social and environmental consequences of activities will now be defined as taxes requiring two-thirds voter approval.
- Regional vehicle registration fees for transportation which under current state law (SB83 Hancock 2009) may be approved by a majority of voters will require two-thirds voter approval as special taxes.
- Franchise fees (e.g pipeline, cable television, solid waste, gas, electric, telephone, etc.) may now be defensible only to the extent they are a charge for the use of government property – and this might require the government have the power to exclude users from the property if the fee is not paid.
- The fate of the fees imposed by the California Department of Fish & Game to review documents prepared by local governments under the California Environmental Quality Act (CEQA) might not longer be permissible.
- Senior and low-income discounts or exemptions for various fees and charges might not longer be permitted. The measure requires fees for permits, privileges and services be imposed only when that permit, privilege or service is not provided to those not charged.
- Advance planning and rule making activities of regulatory agencies funded by regulatory fees may no longer be legal.

- Municipal gas and electric utilities will have a cost-of-service limit on fees that their for-profit competitors do not have. Proposition 218 exempted local government fees for gas and electric service from its requirements. Proposition 26 does not include any similar exemption and it therefore appears that such fees will now have to fall within the exemption from the definition of tax for “[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.”
- Many aspects of the measure are unclear and even its proponents are confused or disagree about its effects and application. If it passes there will certainly be many years of uncertainty and litigation.

State and local governments are frequently tasked with mitigating the effects on the public of the social, environmental and economic impacts created by individuals and businesses. By reclassifying certain fees as taxes, Proposition 26 would also limit the ability of state and local governments to place the costs of programs and services on the individuals and businesses responsible for those adverse impacts. Instead, the cost burden would shift to taxpayers as a whole, unless voters, by a two-thirds supermajority, approve of special taxes on those individuals or businesses.

mjgc