

# A City Manager's Guide to the Tax Measure Galaxy

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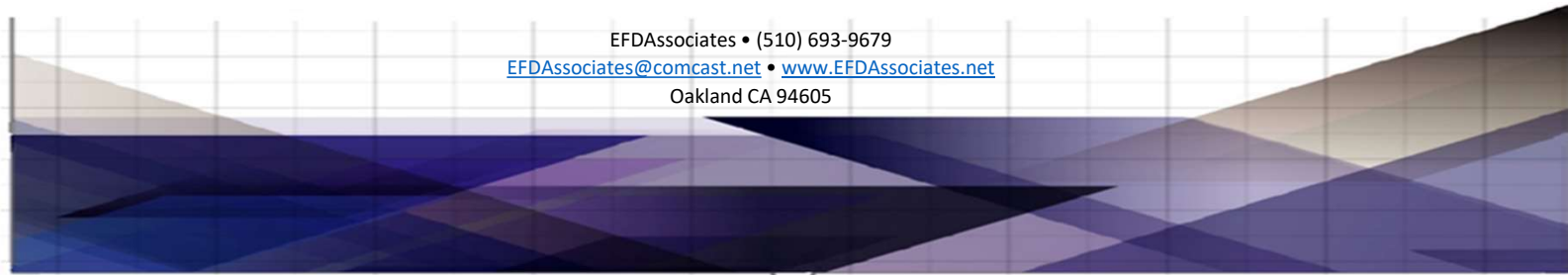


# The Tax Measure Galaxy: Reading the Stars

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# What's Different?



- Failure to Educate
- Lack of Trust
- Price Elasticity

# Failure to Educate

- No civics classes in school
- Ill-informed voters
- Confusing revenue flow in State of California
  - Property tax split
  - Sales tax split
  - Purpose of fees and fees vs. taxes
  - Municipal financing vs. school districts



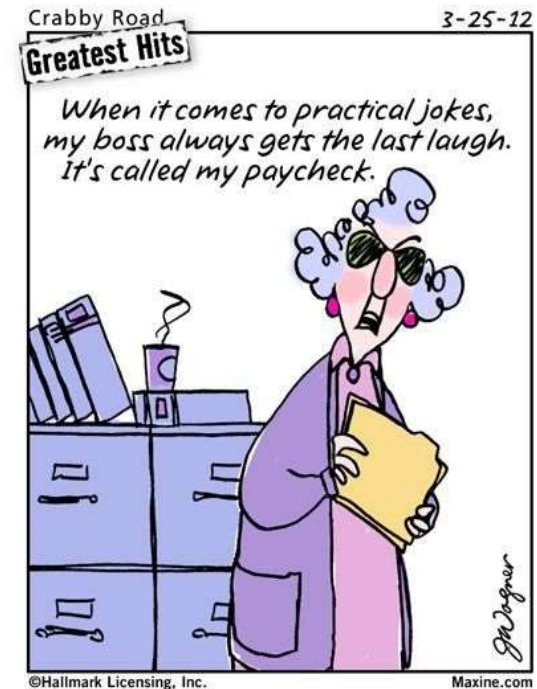
# Lack of Trust



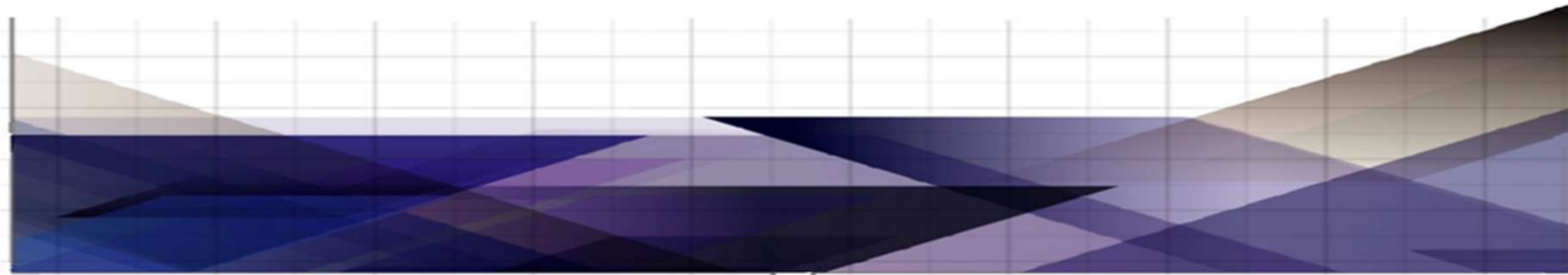
- Corruption
- Incompetence
- Social media
- Incomplete news

# Decreasing Price Elasticity

- CA Ballot Initiatives
  - Jarvis Gann
  - Prop 65 et al
- Cost of Living
- High Taxes
- No/Slow Growth in Wages
- Tax Payers and Rate Payers are the Same People



# The Tax Measure Galaxy: Stories from Planet Hayward



# Ballot Activity – 2010 - 2016

- 2009 – New 10-year UUT at 5.5% on gas, electricity, video, and telecommunications services (fiscal emergency)
- 2014 – 50¢ local sales tax for 20 years
- 2016 – Early renewal of the UUT at same rate for 20 years
- 2018 - ? –



# OUTCOME

- Initial UUT estimated at \$13M/year – actual was just short of \$102.8M in first 7 years.
- Local Sales Tax resulted in \$65.8M bond for capital projects including new, multi-story Library and Community Learning Center
- UUT renewal is bringing in just under \$18M/year

# Proven Process – Walk, Talk, Listen

- Community Ask – Walk, Talk, Listen
- Community Listen – Walk, Listen, Talk
- Community Check-in – Did We Hear You?
- Community Opinion Leaders – Develop Support : Personal endorsements, Money, Public Expression; Neutralize Opposition

# Proven Process – Walk the Walk

- Frame the Ballot Language to Reflect What You Heard
- Do the Work Quickly and Well
- Publicize what their money is doing; Promote the Work
- Report Frequently and with Transparency
- Live up to the Commitment

# The Tax Measure Galaxy: Navigating the Galaxy

**Ben Fay**

**Jarvis, Fay, Doporto & Gibson, LLP**

# Getting a tax measure on the ballot

First important question:

Is it a general tax or a special tax?

- A special tax will require a 2/3 voter approval
- A general tax will only require a majority voter approval

# Special Tax v. General Tax

Revenues from a general tax can be spent on any municipal purpose

Revenues from a special tax can be spent only on specific uses.

- These can be very narrow (purchasing library books) or very broad (parks, police, fire, and libraries).
- It must be a legal restriction.
- A general tax can have a non-binding companion measure that states the voters' preference for the use of the tax proceeds. Provided it is not binding, it does not turn the tax into a special tax.

## The city council can put a tax measure on the ballot

By resolution or ordinance. (Gov. Code § 53724.)

If it is a general tax, the resolution or ordinance must be approved by 2/3 of the city council.

- Does not apply to charter cities. (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37.)

## The voters can put a tax on the ballot by petition

The petition must be signed by 10% of the voters (Elec. Code § 9215)

- 15% for charter provisions. (Elec. Code § 9255.)

The procedural requirements of Proposition 218 do not apply to taxes put on the ballot by petition. (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924.)

- It is a matter of debate whether this applies to the 2/3 voter-approval requirement for special taxes.



# Election Procedures

A general tax must be put to a vote in a regularly scheduled general election for members of the city council. (Proposition 218, Cal. Const. Art. XIII C, § 2(c).)

- Unless the city council unanimously declares an emergency.
- The declaration of emergency should state the facts that are the basis of the emergency.

## Time of the Election

The election cannot be less than 88 days after the city council calls the election. (Elec. Code § 9222.)

If the election is going to be consolidated with a statewide general election, the request must be filed with the county at least 88 days before the election.

Always check with your county to find out its deadlines for ballot measures.

## Ballot Question

Must use the language “Shall the measure (stating the nature thereof) be adopted? (Elec. Code § 13119(a).)

Must state the amount of revenue to be raised annually and the rate and duration of the tax. (Elec. Code § 13119(b).)

Limited to 75 words. (Elections Code §§ 9051, 13217)

## Ballot question (cont.)

New for 2018:

“The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and *shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.*”

(Elec. Code § 13119(b).)

Not clear what impact this will have.

## City Attorney's Impartial Analysis

Must explain the effect of the measure on existing law and how the measure would operate.

Limited to 500 words. (Elec. Code § 9280.)

# Advocacy

Public resources can be used to educate the public, but they cannot be used to advocate for a ballot measure. (Gov. Code § 54964.)

“Public resources” include funds, staff time, materials, equipment, facilities, and communication channels (e.g., website, email, newsletters).

Before a measure qualifies for the ballot,  
advocacy restrictions are looser

A city can hire a communications consultant or pollster to survey voter support.

A city can propose and draft a ballot measure.

These actions are more similar to drafting legislation than to campaigning.

## A city can . . .

- Take a public position for or against a measure.
- Have an opinion about a measure, but it cannot mount a campaign on a measure.
- Issue a report on the probable effects of a measure.
- State what it would do if a measure passes or fails.



## A city cannot . . .

- Produce communications that advocate for or against a measure.
  - A court will look at the “style, tenor, and timing” of a communication.
- Disseminate literature prepared by proponents or opponents of a measure.
- Expend public funds to mount a campaign on the merits of a measure.

## Examples

A city can post a neutral statement on the city's website.

- The city does not have to give opponents space on the website.

Include a neutral article in the city's newsletter, provided

- It is a regular newsletter
- The article is similar to the usual content of the newsletter
- The newsletter is sent to its usual mailing list.

A city cannot distribute bumper stickers or posters, or use billboards or television or radio spots.

# The Tax Measure Galaxy: Getting the Right Crew

**Mike Madrid**

**GrassrootsLab**

# Why Hire a Consultant?

## **A seasoned political consultant...**

- Will provide a roadmap to success by demonstrating how to move public opinion
- Is familiar with transitioning policy talking points to messages that (1) resonate with specific target demographics and (2) drive the target audience to a desired action
- Maintains an extensive professional network to augment campaign reach (e.g. data vendors, video producers, members of the media, pollsters etc.)

# Polling Firms

**The backbone of any campaign is quality data.**

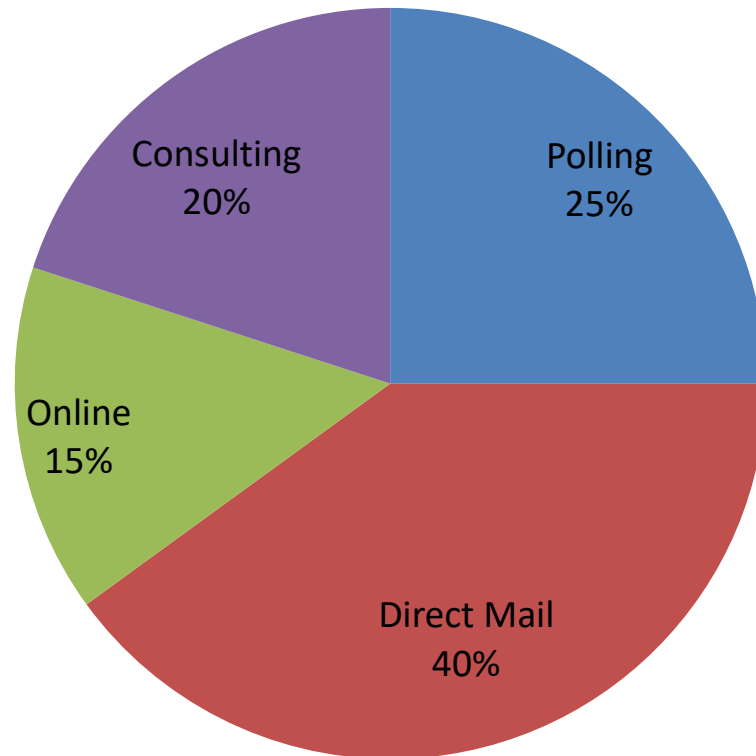
Conducting adequate polling will:

- Inform the consultant and team on the campaign's leading talking points – and allow the team to prepare for potential counter-arguments
- Identify the campaign's natural constituents and opponents
- Provide statistically significant indication of how well known the issue is and its current level of support/opposition

# Campaign Timeline

- 12 Months Out:** Identify & select consultant & campaign team; ID lead talking points & draft campaign plan
- 9 Months Out:** Draft & Field Poll #1 (permitting 2-4 weeks for administration, results & analysis); revise campaign plan accordingly
- 8-5 Months Out:** Engage with target demographics
- 5 Months Out:** Draft & Field Poll #2; revise campaign outreach based on movement between Poll #1 and Poll #2

# Campaign Budget





# A City Manager's Guide to the Tax Measure Galaxy – Contact!

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