

## President's Message

Dear Colleagues,

Thanks so much to all of you who attended the City Managers Department meeting in Monterey this February. It was an excellent meeting with interesting and stimulating keynotes, valuable breakout sessions, and many opportunities to network. Many thanks to President-Elect Bruce Channing and his planning committee: Marcia Raines (City Manager of Millbrae), Rob Braulik (ICMA, City Manager of Benicia), Greg Larson (City Manager of Los Gatos), Karen Brust (City Manager of Del Mar), Tony Butzlaff (City Administrator of Placentia), Julie Yuan-Miu (Assistant City Manager of Pleasanton), June Catalano (City Manager of Pleasant Hill), Joy Forbes (Deputy City Manager of Burbank), Krista Dietrich (Administrative Analyst, Burbank), Mike Shellito (City Manager of Roseville), Bill Garrett (Executive Director CCMF), and Brett Channing (Chair of the MMASC Orange County Division and Management Assistant for Yorba Linda).

We are also very grateful to our sponsors California City Management Foundation (CCMF), ICMA RC, PG&E, Burke, Williams & Sorensen, LLP, Chevron Energy Solutions, Hinderliter, de Llamas, & associates, Jones Hall, Keenan & Associates, Piper Jeffray, Stone & Youngberg, Urban Futures Inc., Wedbush Securities, Willdan, Woodruff, Spradlin & Smart, Consolidated Disposal Service/Allied Waste LLC, CSG Consultants Inc., Liebert Cassidy Whitmore, Meyers Nave, Rutan & Tucker LLP, Sheppard, Mullin, Richter, & Hampton LLP, and Goldfarb & Lipman LLP. Their generous contributions allow us to have top quality keynote speakers, honor retirees and support a wonderful reception in the evening.

I know it is difficult for some of you to justify attending in these difficult economic times, but the sessions provided great value in helping all of us deal with issues such as budgets, pension reform, economic development and the State Budget. I believe that there is great value in hearing from experts on the ideas and options we can learn from, in order to be more effective in this economy.

As you are aware we have two very active committees working on some very important issues for our Department:

The Diversity Committee is working on improving information and marketing of the Diversity Award, developing ways to encourage discussion of diversity issues in Area Manager Groups and developing a Tool Box to help managers enhance diversity on their Executive Teams. The Committee is chaired by Troy Brown, Assistant City Manager of Livermore. Bill Lindsay, City Manager of Richmond, Patricia Martel, City Manager of Daly City, Brian Nakamura, City Manager of Hemet, and Greg Nyhoff, City Manager of Modesto, serve as members of the Committee.

The Pension Reform Committee has also been very busy. They developed and distributed a survey to gather data on what is happening in California communities. This survey will help us assess how much progress has been made and where we need to focus our efforts on this topic going forward. The results of the survey should be available soon. In addition, the committee is currently reviewing the Little Hoover Commission report on public pensions. They will be updating us on the proposals and making recommendations about action we should take. Pension reform has certainly become a focus of discussion everywhere. It is very timely that Rod Gould, City Manager of Santa Monica, Chair of the committee and his committee members - Ron Bates, City Manager of South Gate, Troy Butzlaff, City Administrator of Placentia, Bruce Channing, City Manager of Laguna Hills, Rick Cole, City Manager of Ventura, Fran David, City Manager of Hayward, Michael Flad, City Manager of Burbank, Laura Kuhn, City Manager of Vacaville, Mark Nuaimi, Town Manager of Yucca Valley, Dan Rich, City Manager of Campbell, and Kurt Wilson, City Manager of Ridgecrest, are doing a wonderful job providing some direction for our Department.

As the Legislature continues to discuss the state budget, they have followed the Governor's proposal to eliminate Redevelopment Agencies and take the money from these agencies to help solve the budget shortfall. It is unconstitutional proposal and a violation of Proposition 22. This short term, desperate decision will allow the State to receive \$1.7 million (although most experts believe the number is much smaller), once. In exchange they will totally eliminate the most effective tool for creating jobs, building affordable housing and accomplishing economic development. The League and CRA are doing an excellent job of lobbying on our behalf. However, we all need to argue that this is a clear repudiation of the will of the voters, who voted for Proposition 22 to ensure local dollars to stay local. Together we can be a strong force!

There are many challenges we all face in this difficult economy. Our City Managers Department is providing leadership and direction for positive solutions to move forward. I hope we can all continue to work together to build a strong California and protect local communities.

Linda

## Director's Report

The Board of Directors for the League started the year by establishing its priorities for the year during its League Leaders meeting and annual goal setting session. This year the sessions were facilitated by former City Manager, Frank Benest whom many of us know from his years with the City of Palo Alto and his development of the Next Generation program. Frank did a great job of leading the Board and League Leaders through a workshop that led to the development of this year's Strategic Goals, which were approved by the Board of Directors at their November meeting.

1. Strong Partnerships for a Golden State. Collaborate and partner with other public and private groups and leaders to reform and revitalize the structure, governance, fiscal integrity and responsiveness of our state government and intergovernmental system.
2. Sustainable and Secure Public Pension Systems. Work in partnership with other groups and stakeholders to promote sustainable and secure public pension systems to help ensure responsive and affordable public services for the people of our state and cities.
3. Responsive and Accessible League Services. Implement distance learning, meeting and other cost-effective strategies to deliver even more responsive and accessible League educational, information and advocacy services to the city officials of California.

The election of our new Governor has quickly shifted the focus of the League toward the State Budget and the fight to preserve redevelopment agencies in the State. The League has been cooperating with the California Redevelopment Association in its efforts to preserve redevelopment agencies in the State as important economic development and revitalization tools for local communities. It seems incongruous that our State Government could be considering the elimination of one of the most effective economic development tools available to municipalities while we are challenged by one of the most severe economic recessions in history, record unemployment and the growing demand for local government services.

The City Manager's Department and CCMF brought forward a proposal that was unveiled to Department members at our conference in Monterey for a "Strong Cities – Strong State" social media campaign. The Board of Directors enthusiastically endorsed the concept and asked Executive Director Chris McKenzie to work with the Department, CCMF and League Staff to develop a detailed plan and budget for consideration by the Board of Directors in May. The CCMF article later in the news letter contains more details on the program. This will be a yearlong effort to involve every City in the State in the social media campaign.

The State legislative arena is also very active with bills introduced through the end of February. At least seven of these bills contain provisions that would directly affect City Managers in the State dealing with compensation, reporting requirements, audits, retirement benefit calculations and professional qualification standards for local government managers. It looks like we will be actively engaged in the monitoring of these bills, many of which are responses to the scandals in Bell and Vernon, CA. Please stay in close contact with the League's Regional Managers as these bills begin to move through the committee hearing process later this year.

Rod Gould is leading a league effort to develop data and recommendations for creating more sustainable public pensions in the State. Please make sure that you have completed the survey that was distributed earlier this year so that we get a complete snap shot of the status of retirement reform efforts by local municipalities in the State. By now you have also probably heard about the "Pension Boot Camp" program put on by The California Foundation for Fiscal Responsibility, the advocacy group supporting retirement system reform through the initiative process. Their efforts combined with recent reports from the Legislative Advocates Office and the Little Hoover Commission has served to raise public awareness of the need for pension sustainability and reform in the State. In many areas it feels like the perfect storm is brewing with continuing economic impacts from the recession, increasing rates for pension programs as well as retiree healthcare and a populace that is increasingly concerned about the "excessive" public sector compensation and benefit packages they read about in our local newspapers.

Our record as City Managers is strong in terms of our advocacy for reforms necessary to create a more sustainable pension system. Many agencies across the state have participated in regional efforts to establish white papers that can serve as a blue print for local agency reform efforts and early survey returns indicate that as much as 26% of local government agencies have already created a second tier pension formula for new hires. This will continue to be an important area of focus for the Department and the League Board of Directors. Please share your local developments with your area manager group representatives, the Executive Committee of the City Managers Department, and Rod Gould, City Manager of Santa Monica and the Chair of the Task Force.

Jeff Kolin, City Manager Beverly Hills  
Director, City Manager's Department  
League of California Cities

## **Why Now Is a Smart Time to Consider Updating Your General Plan**

by Eva Spiegel and Jude Hudson

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California law requires every city and county to periodically update its General Plan, the document considered by many to be the Constitution for land-use decisions at the local level. But in today's economic climate, most local officials are focused on budget cuts and balancing their agency's budget. At first glance, updating the General Plan may not seem like a high priority. It's a costly exercise, and finding the necessary funds can be difficult. However, now is an excellent time to begin updating your General Plan.

### **Why a General Plan Update Is Worth Doing Now**

The economic downturn has provided a new opportunity for local governments to focus on their general plans. During periods of economic growth, high volumes of impending or proposed development often create immense pressure on local officials to move ahead quickly. Making decisions under such duress doesn't allow much time for considering the potential impacts that may result later. The current economic downturn gives local officials and their communities the breathing room to think long term about the future, without the constant distractions and pressures of project-driven priorities associated with boom periods. When things are slow and little development is occurring, there are fewer hot issues to fight about — which are exactly the sort of issues that tend to muddy the water and confuse conversations about long-term planning. During this type of lull, it's possible to take the time to develop a General Plan that's carefully crafted with thoughtful community input and expert assistance.

In today's economy, the consulting services that support General Plan updates are priced much more attractively as planning consultants and others who assist with these projects compete for work. The chances of getting high-quality assistance for a good price are greatly improved right now — a plus for cities and counties seeking the best value for their scarce dollars.

Another thing to think about is that the update process offers the chance to re-examine the economic assumptions underlying the General Plan. Many economists expect that the post-recovery economy of the near future will be unlike the booming pre-recession economy. They predict a "new normal."

Cities and counties are well advised to consider these factors when planning ahead. Economic assumptions made just three or four years ago may likely be invalid. For example, one popular way to fund infrastructure has been through Mello-Roos districts, which involve working with a developer and issuing bonds. This approach worked well during past booms in communities where rapid growth appeared to be a given and it seemed safe to assume that ever-expanding, lower-density housing would continue to be developed at a brisk pace. However, not only did the pace of development slow dramatically, but those very types of lower-density developments were subsequently hit hard by waves of foreclosures. Thus, a General Plan that assumes rapid ongoing low-density development in such a community may be outdated, and its assumptions may need to be re-evaluated. In a related vein, communities that are built out and focused on infill may find it timely to re-examine their General Plan's assumptions related to density.

A General Plan is more likely to withstand pressure to change it when it has been updated in a comprehensive way with public input and all the necessary environmental documents have been completed. Such a plan can work well for residents and community activists because they know what they want and have agreed to in terms of their collective vision for the future. When the public is engaged in the planning process and the updated General Plan reflects that, a win-win situation ensues. Not only does the community have a clear picture of its priorities, but developers also benefit from the certainty that community members are essentially on the same page. A solid, updated General Plan also helps entrepreneurs and business people better understand what the community wants. And when the baseline environmental work has been completed as part of the update process, projects consistent with local plans are likely to enjoy broader community support.

### **Going About It the Right Way: Public Engagement**

State law requires local governments to involve the public in developing and updating the General Plan, and it's one of the most significant ways that residents engage in local government decision-making. Using many different techniques and tools throughout the update process helps cities and counties to ensure the participation of the largest possible cross section of the community. The goal is to engage more than just "the usual" people who attend public meetings. Local governments use public noticing, print and broadcast media, the Internet and more to promote and attract public participation. Residents can offer public comments on proposed policies at town hall meetings and other forums, as well as at city council meetings and hearings conducted by the local planning commission.

A broad range of resources on land-use planning ([www.ca-ilg.org/landuse](http://www.ca-ilg.org/landuse)) and civic engagement ([www.ca-ilg.org/engagement](http://www.ca-ilg.org/engagement)) is provided for local officials by the Institute for Local Government (ILG), the nonprofit research arm of the

League and the California State Association of Counties. ILG promotes good government at the local level with practical, impartial and easy-to-use resources for California communities.

“More public engagement occurs in the planning area than in any other activity that cities or counties are involved with,” reports Terry Amsler, ILG’s Public Engagement and Collaborative Governance program director. “Rather than simply using traditional engagement approaches where the public is brought in later in the process to review plans that have already been drafted, now communities involve people early in the process to think through planning issues, consider their priorities and envision what kind of community they want to have.”

In Richmond, the city sent staff out in a van into neighborhoods to reach out with information about the General Plan update process and also used a website to solicit comments from residents. “Community residents typically are not expert planners, but they have information to provide and play an important role,” Amsler observes.

“In updating the General Plan, members of the community partner with experts,” says Steve Sanders, director of ILG’s Land Use and Healthy Neighborhoods programs. “Residents bring to the table their preferences, values and hopes for the community’s future quality of life. Planners and professionals bring a way of translating that into actual plans and processes.”

“It’s a major decision, and it’s appropriate to involve the public in it,” says Tom Pace, long-range planning manager with the City of Sacramento’s Community Development Department. About 4,500 Sacramento residents participated in Sacramento’s recent General Plan update. “While we initially set out to have robust public involvement, the city council really expanded the effort to reach out into every nook and cranny to engage people who aren’t normally involved in local government or planning issues,” Pace explains. The city advertised on Hmong radio stations, made presentations at African-American churches and held 25 town hall meetings, including some that specifically targeted high-school and college students. In addition, when the draft plan was released the city held four open houses throughout the community to solicit feedback.

In Southern California, the City of Ontario is creating an entire new downtown in its airport area where 250 acres of land stand vacant. It will take 20–30 years to fully plan and develop, but it represents Ontario’s vision of its future with high-density mixed-use zoning and access to transit, including a stop on the light-rail system linking the city with Los Angeles.

Ontario used multiple techniques to engage the community in developing this vision, first conducting interviews with council members, city commissioners and department heads to identify issues that will affect the city over the next three decades. City officials met with local business leaders to focus on economic

development aspects and held a five-hour workshop for residents that focused on the future of the new downtown. In the area surrounding the airport, city staff talked to hundreds of residents in meetings about the proposed major land-use changes.

“It’s not just about the built environment but also about what happens in it — the services, social activities and more,” says Ontario Planning Director Jerry Blum. Ontario is committed to revisiting its plan annually. “By ensuring that the council is involved in looking at policy directions each year, it then becomes the community’s plan, not just the Planning Department’s plan,” Blum adds. “It’s important that this plan is sustainable for many future councils and their staff.”

### **Be Prepared for the Costs**

A well-executed General Plan creates a blueprint for the community’s future growth and, ultimately, its quality of life. So it’s not surprising that updating the General Plan is an expensive project for local governments. Some county general plans cost upward of \$10 million, and large cities’ general plans sometimes run into the millions. The City of Sacramento spent about \$4 million on its plan update, and Ontario spent \$3 million, plus staff time for both cities. The City of Santa Monica spent \$2.3 million plus staff time. The more expensive general plans typically take the city in a new direction and include extensive analyses beyond the required environmental impact report (EIR). The cities of Ontario and Sacramento both executed these types of plans.

A city of 100,000 might expect to spend \$800,000–\$900,000 on a General Plan. The EIR is actually one of the most expensive components of the entire process and can cost \$200,000 on the low end. Even a city of just 5,000 may spend at least \$400,000–\$500,000 on its General Plan.

### **The Advantages of Starting Now**

Despite the financial challenges, there are some solid reasons to begin a General Plan update now rather than later. As noted earlier, services are priced more competitively in today’s economy. But just as important, the slower housing market means that local governments are able to operate without the pressure traditionally exerted by a list of pending projects. Making sound, informed decisions is easier in an environment where community discussions can be conducted without the looming prospect of imminent development. It’s a good idea to have the necessary conversations about planning for the future when elected officials and community members alike are not overwhelmed by political pressure and numerous competing development proposals.

While these are hard times, local officials who nevertheless take a proactive stance on updating the General Plan will find their communities better prepared when the economy eventually turns around. Savvy local leaders will look for less

expensive ways to begin the process and take advantage of the free and low-cost resources provided by the Institute for Local Government and others (for additional information, see “More Resources Online” at right). Lay the groundwork now to develop a solid long-term plan that unites your community in realizing its vision for the future.

### **Some Background on General Plans**

A General Plan must include seven specific elements — land use, circulation, housing, conservation, open space, noise and safety. It may also contain other permissive elements related to land-use development, including (but not limited to): urban design; economic and fiscal development; capital improvements and public facilities; air quality; energy; flood management; geothermal resources; and water. Yet the General Plan process offers a great deal of latitude to create a vision for the community that reflects its residents’ unique needs and those of the surrounding region.

State law requires that local governments update their general plans periodically but doesn’t specifically define how often. The housing element, however, which is one of the seven mandatory elements, must be updated every five to eight years, depending on which update requirement applies to the region in question. All general plans must also include an Environmental Impact Report (EIR) to satisfy the California Environmental Quality Act.

Local governments traditionally drafted their general plans focused solely inside the city limits or county lines, but that has changed. Today, taking neighboring cities and the region as a whole into consideration is an essential part of the process. General plans are increasingly



being drafted in the context of regional sustainable communities strategies that address greenhouse gas reduction through land-use, housing and transportation planning (for more information, see [“City Officials Think Regionally to Tackle Transportation, Housing and Environmental Issues.”](#))

A General Plan update typically takes 12–18 months, but can last as long as five or six years depending on the circumstances. The City of Ontario adopted its General Plan, called the Ontario Plan, in 2010 following a four-year process. The previous update was completed in 1992. The City of Sacramento began its General Plan update in 2004 and adopted the plan in March 2009. In both instances, the cities extensively engaged residents in the update and used the General Plan to create a long-term vision going beyond issues of land use.

Experts advise local government officials to examine their General Plan at least every 10 years. Economic and other conditions change, and projects approved by the city or county must be consistent with the General Plan. Regularly updating the plan enables a local government to consider and plan for the community’s needs based on thoughtful analysis, public input and current conditions.

### **Helpful Resources From the Institute for Local Government**

- [SB 375 and Regional Planning](#)
- [Planning Sustainable Communities](#)
- [Understanding the Basics of Land Use and Planning](#)
- [Participating Effectively in the Planning Process](#)
- [Understanding the Basics of Land Use and Planning: A Guide to Planning Healthy Neighborhoods](#)
- [Understanding the Basics of Land Use and Planning: A Glossary of Land Use and Planning Terms](#)
- [Demystifying Land Use Terminology for the Public: Public Hearing One-Pagers](#)
- [Public Engagement and Collaborative Governance \(Intro\)](#)
- [Public Engagement: Planning, Housing, & Redevelopment](#)
- [Principles of Local Government Public Engagement](#)
- [Involving Youth in Local Planning \(Western City\)](#)

### **California Planning Roundtable Launches “Reinventing the General Plan”**

Long-range planning is the key mechanism for communities to identify and pursue great visions for their future. Recently, however, many communities have struggled with significant political, fiscal and legal barriers to effective long-range planning. These challenges are compounded by the requirements of SB 375 and the impact of an ongoing economic downturn.

That is why the California Planning Roundtable, an organization of planners from the public, private and academic sectors, has launched a project called Reinventing the General Plan. It includes an online “incubator” at [www.ReinventingTheGeneralPlan.org](http://www.ReinventingTheGeneralPlan.org) that provides models and examples of outstanding general plans. The incubator’s purpose is to catalyze innovative thinking for staff, city leaders and the public about the potential of the General Plan.

The project's blog, at [www.ReinventingTheGeneralPlan.org/Blog/](http://www.ReinventingTheGeneralPlan.org/Blog/), offers a way to share stories of General Plan experiences and ideas for its reinvention. The California Planning Roundtable also welcomes submissions of other models for inclusion on the site.

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## The California City Management Foundation is Working for You

The CCMF was established to advocate for the city management profession. For many years our work to promote the profession and its members focused on work with local elected officials and professional education and networking amongst ourselves. As we've grown and developed over the years and as new challenges arise, the organization has come to realize that the nature of our advocacy efforts must change if we are to be an effective voice for the profession.

In the wake of the Bell scandal and many of the knee jerk legislative reactions, CCMF leadership has taken a proactive course to protect and promote the profession in two central areas: legislative advocacy and informing the public and community leaders on the benefits of what the city manager provides to communities.

To accomplish these goals your leadership has taken two immediate steps

- **CCMF Legislative Action Program.** CCMF has retained the firm of Joe a Gonsalves & Son to guide our legislative efforts. We are working with Sacramento to promote excellence in city management and stop knee jerk reactions to the Bell scandal. We are scheduling opportunities for City Managers and others to meet with key State leaders to introduce CCMF and our mission. We will also talk about the specifics of our support and concerns about impacts from the legislative package of bills proposed this session. We believe the bills introduced are largely in response to the Bell problems. We have developed a list of CCMF members and City Managers with key links legislative committee chairs, vice chairs and assembly and senate leaders who we will invite to participate. If you are interested in participating in this effort please contact one of our Board Members, send an email to CCMF, or better yet, join us on facebook.
- **Refocusing CCMF.** CCMF is developing a social media and refocusing campaign with ICMA and the League of California Cities. The campaign, ***Strong Cities, Strong State*** was presented at the City Manager's Department meeting in February. Hopefully you had a chance to see my orange hat, if not join me on facebook and get a peak.

The campaign stemmed from a CCMF work group of Ken Striplin (Santa Clarita), Tracey Robinson (Lafayette), Troy Brown (Livermore), Jim Lewis (Atascadero), John Keisler (Long Beach), and Aly Zimmermann (Vista). Thanks to their City managers for supporting this effort. Grassrootslab led by Mike Madrid and Rob Korinke are developing the campaign and Ryder

Smith of Tripepi Smith & Associates is reworking our web page and setting up the facebook effort.

**Strong Cities, Strong State. *The heart of this effort will be a CCMF sponsored and hosted website dedicated to Californians celebrating their community, quality of life and the services they enjoy while also learning about their city manager's role in making that possible in partnership with the city's elected officials.***

The concept of Strong Cities being the building blocks for a Strong State provides an excellent message frame for specific audiences while also allowing us to achieve multiple objectives.

Those objectives include:

1. Positioning Cities as necessary, willing, and equal partners in the desire to fix the state's problems.
2. Allowing cities to highlight their importance in general while also allowing specific city services and community characteristics to be highlighted.
3. Introducing the city manager profession as the "glue" that holds communities together in partnership with elected officials. Emphasizing the partnership between city managers and elected officials will be important in helping the public understand what it is that city managers do.
4. Personalizing the city manager profession by profiling each city manager and their successes in public service.
5. Engage community opinion leaders in the campaign to "support their city" and city manager by joining the social network campaign.
6. Engage youth councils and young residents in the effort, as voices for their community, and use the campaign to explain the city manager profession as a vocation in public service.

We need everyone to make this effort successful, come "friend" CCMF on facebook. Again, the CCMF Board is here to support your efforts in making California Cities great as always, while we are refocusing on new initiatives, we will always remain committed to supporting city managers and encouraging them in tough times.

CCMF Board

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## Proposition 26: An Executive Summary for The Layperson

by Patrick Whitnell

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Much effort has been expended trying to explain and analyze the purpose and effect of Proposition 26, the so-called “Stop Hidden Taxes Initiative.” Wading into the morass of municipal finance is a daunting task even for the expert, and Prop. 26 adds another layer of complexity to an already complicated area. This article provides the non-expert with tools to gain a working knowledge of Prop. 26.

### **The Starting Point: *Sinclair Paint***

Prop. 26’s genesis occurred in 1997 with the California Supreme Court’s decision in *Sinclair Paint v. State Board of Equalization*.<sup>1</sup> In this case, Sinclair Paint challenged a state fee imposed on companies that utilized lead to manufacture paint and other products. The fee was used to fund various state programs to address the impact of lead exposure on children. Sinclair Paint argued that this was not a fee but rather a tax, because Sinclair Paint did not benefit from any of the programs funded by the fee. Why is this distinction important? A fee may be adopted by the Legislature with a simple majority vote. A tax, on the other hand, requires a two-thirds vote of both houses for approval.

The court disagreed and held that the fee was not imposed by the state under its power to tax, but rather was imposed under its power to regulate to protect public health, safety and welfare (commonly referred to as the “police power”). Therefore the court concluded that if the fee bore a reasonable relationship to the burden imposed by those charged the fee and the fee did not exceed the cost of the program it was funding, then the fee was not a tax. It did not matter that the person paying the fee did not receive any benefit from the program being funded.

### **The Aftermath: The Rise of the “Regulatory Fee”**

*Sinclair Paint*-type fees are commonly referred to as “regulatory fees.” After the Supreme Court validated regulatory fees as not being taxes, the state (as well as local agencies) looked to adopt regulatory fees to provide funding for a variety of state and local programs. Environmental review and regulation programs were a popular choice to be funded by regulatory fees. At the local level, regulatory fees were used to provide funding to address the adverse effects of certain types of business activities. For example, a city may impose a regulatory fee on businesses that sell alcohol to address the increased policing and health costs associated with drinking.

## **The Response: Proposition 26**

Business groups have long complained about regulatory fees. After the Supreme Court decision, they continued to argue that regulatory fees were nothing more than taxes, that they placed an unfair burden on businesses and that they were simply a way for the state and local governments to avoid the voting requirements imposed by Prop. 13 and Prop. 218. It's no surprise that the California Chamber of Commerce was the main proponent of Prop. 26.

The best explanation of the proponent's argument for why Prop. 26 was necessary can be found in the initiative's Findings and Declarations of Purpose section, which reads:

This escalation in taxation does not account for the recent phenomenon whereby the Legislature and local governments have disguised new taxes as "fees" in order to extract even more revenue from California taxpayers without having to abide by [the] constitutional voting requirements [imposed by Prop. 13 and Prop. 218]. Fees couched as "regulatory" but which exceed the reasonable costs of actual regulation or are simply imposed to raise revenue for a new program and are not part of any licensing or permitting program are actually taxes and should be subject to the limitations applicable to the imposition of taxes.

Prop. 26 appeared on the November 2010 ballot and was narrowly approved by the voters with 52.5 percent of the vote.

## **The Rule: What Does Proposition 26 Do?**

Prop. 26 is divided into two parts. One part addresses state fees and the other addresses local fees. Although the two parts overlap substantially, there are also significant differences. This article focuses exclusively on the part addressing local fees.

Prop. 26 is a constitutional amendment that introduces, for the first time, a definition of what constitutes a local tax:

As used in this article, "tax" means any levy, charge or exaction of any kind imposed by a local government ...

Therefore, almost any requirement imposed by a local government that results in the local government receiving revenues is a local tax. This means that the local government would need to obtain a majority approval of the voters if the revenues are to be used for general governmental purposes, or a two-thirds voter approval if the revenues are to be used for a particular purpose. In contrast, a fee may be adopted by a majority vote of the city council.

Fortunately for cities, this all-encompassing definition is tempered by seven exceptions set forth in Prop. 26. These exceptions encompass most — but not all — fees or charges that a city may want to impose. Unfortunately, not all the exceptions are models of clear language, and the courts will likely be the final arbiter as to their meaning. The following section provides a brief synopsis of what these exceptions cover.

### **The Exceptions: What Proposition 26 Does Not Apply To**

The seven exceptions temper the broad definition of “tax” in Prop. 26. But the interpretation of these exceptions and their application in particular circumstances will be the focus of future legal arguments. A full discussion of these exceptions is beyond the scope of this article, but here is a synopsis of each exception and a few common examples of what each exception may cover.

1. **The Special Benefit or Privilege Exception** provides that a fee imposed by local government that provides a special benefit to the person paying the fee or directly grants the person some privilege is not a tax. Common examples include fees for planning permits, restricted neighborhood parking permits, and entertainment and street closure permits.

2. **The Government Service or Product Exception** provides that a fee imposed for a specific government service or government product provided directly to the person paying the fee is not a tax. Some common examples are fees for parks and recreation classes.

3. **The Licenses and Permits Exception** provides that the following are not taxes: a fee imposed for issuing licenses and permits; and the costs of administrative enforcement of licenses and permits. Common examples include health and safety permits, building licenses, police background checks and permits for regulated businesses (such as massage establishments, card rooms, taxicabs and tow-truck operators).

For the exceptions set forth in items 1 through 3, Prop. 26 imposes the additional requirement that the fee imposed must not exceed the city’s reasonable costs. If the fee does exceed the reasonable costs, then it is not eligible for any of these exceptions and would be a tax subject to voter approval.

4. **The Local Government Property Exception** provides that fees charged for the use of or entrance to local government property is not a tax. Some common examples are city facility room rentals, equipment rental fees, park entrance fees and golf greens fees.

5. **The Fines and Penalties Exception** provides that fines and penalties imposed for violations of the law are not taxes. Common examples include

parking fines, code enforcement fines, library late return penalties and late payment penalties.

**6. The Property Development Exception** provides that a fee imposed as a condition of property development is not a tax. Some common examples are development impact fees, construction and grading permit fees, fees imposed by California Environmental Quality Act mitigation requirements, and Quimby Act and park mitigation fees.

**7. The Prop. 218 Exception** provides that property assessment and property-related fees that are already subject to the approval requirements of Prop. 218 are not taxes. Common examples include water and sewer rates and special district assessments, such as Landscape and Lighting District Act assessments.

### **A Short Note on Proposition 26's Effective Date**

Prop. 26 was approved by the voters on Nov. 2, 2010. With respect to the part addressing local fees, nothing in Prop. 26 explicitly or implicitly provides that it was intended to apply to local fees that were in place prior to that date. But if a local fee that existed prior to Nov. 2, 2010, is increased or extended after that date, the fee needs to be examined to determine whether it falls within one of the seven exceptions. If it does not fall within any exception, the increased or extended fee is subject to the voter-approval requirement.

### **Conclusion**

Prop. 26 continues the line of initiatives, which began with Prop. 13, that place constraints on cities' ability to raise revenues without first receiving voter approval. The seven exceptions in Prop. 26 help to significantly narrow its application, but its exact contours await future court interpretation. Therefore it is critical for cities to consult with their city attorney whenever they consider adopting a new fee or increasing or extending an existing fee.

### **Footnote:**

<sup>1</sup> 15 Cal. 4<sup>th</sup> 866.

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## News From the Institute for Local Government

### Fiscal Oversight: Ask the Right Questions

One of the most important responsibilities for local officials is overseeing their agencies' finances. Yet local agency finances are complex. What can elected officials do to exercise the kind of careful fiscal stewardship over taxpayer resources that the community expects? How can staff support them in that endeavor?

British management guru Robert Heller has observed that effective management is about asking the right questions. In the spirit of fostering both good questions and good answers, the Institute for Local Government (ILG) publication *Financial Management for Elected Officials: Questions to Ask* ([www.ca-ilg.org/financialmanagement](http://www.ca-ilg.org/financialmanagement)) provides questions for local officials and others to ask about:

- Budget creation and monitoring;
- Financial reporting;
- Financial policies;
- Long-term financial planning;
- Cash management and investments; and
- Capital financing and debt management.

This plain-language guide also includes a handy glossary of finance terminology. In addition to nuts-and-bolts questions related to finance, the guide suggests questions to ponder related to local agency transparency about financial matters. The guide contains references to resources for further reading on specific issues (including, for example, best practices from the Government Finance Officers Association).

The law firm of Aleshire and Wynder provided generous support in 2010 that enabled ILG to develop this resource and make it available to local officials.

Copies of the financial management guide are available at [www.ca-ilg.org/financialmanagement](http://www.ca-ilg.org/financialmanagement). ILG mailed copies to city and county finance directors throughout the state. Additional hard copies can be purchased for \$10 each; quantity discounts and digital licenses are also available (visit [www.ca-ilg.org/financialmanagement](http://www.ca-ilg.org/financialmanagement) for more information). The guide is available in both English and Spanish.

In the spirit of transparency and public engagement, ILG encourages local agencies to post links to the guide on their own website pages related to budget, financial reporting and other finance issues.

### **Another Good Question: Does This Resource Help?**

A pertinent question for the Institute for Local Government (ILG) to ask is whether its publication *Financial Management for Elected Officials: Questions to Ask* hits the mark in terms of serving local officials. ILG always welcomes local officials' feedback on its work to help maximize its responsiveness to their needs.

You can share your feedback with ILG in several ways:

- Rate ILG publications through the website ([www.ca-ilg.org/ilgpubs](http://www.ca-ilg.org/ilgpubs)). This also enables local officials to help their colleagues know whether an ILG resource is helpful. To use the site's rating function, you just need to create a user login.
- Local officials who are Facebook users can "like" or comment on this resource on ILG's wall (at [www.facebook.com/InstituteForLocalGovt](http://www.facebook.com/InstituteForLocalGovt)).

ILG also welcomes personal contact with local officials. Address your comments about the *Financial Management for Elected Officials* publication to JoAnne Speers, executive director, ILG; phone: (916) 658-8233; e-mail: [jspeers@ca-ilg.org](mailto:jspeers@ca-ilg.org).

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## Cal-ICMA Announces 2011 Line-Up of Webinars

At the League of California Cities City Managers Department Conference conducted on February 2-4 in Monterey, Cal-ICMA officially launched its 2011 schedule of webinars. The webinars last 90 minutes and are offered free of charge to agencies and participants. In tough times, these educational and coaching sessions serve as an extremely time- and cost-effective strategy to develop talent in local government.

To receive electronic notices of the webinars and all the other Coaching Program activities, sign up at [www.cal-icma/coachingList](http://www.cal-icma/coachingList). Notices contain instructions for registering for each of the webinars.

The 2011 schedule includes the following events:

### 2011 Webinar Panels

#### **Budget Strategies Amidst California's Continuing Fiscal Crisis**

(CSMFO cosponsor)

2-3:30 p.m., Thurs., March 10

[Target: general managers and finance professionals]

#### **Options for Managing Personnel Costs** (CSMFO cosponsor)

2-3:30 p.m., Thurs., April 7

[Target: general managers, finance professionals, and HR]

#### **Presenting Your Ideas Effectively**

2-3:30 p.m., Wed., May 11

[Target: all employees and managers]

#### **Storytelling as a Leadership Skill**

2-3:30 p.m., Wed., September 14

[Target: all employees]

#### **Courage in Action—Doing What's Needed Even When It's Difficult**

2-3:30 p.m., Wed., October 12

[Target: all employees and managers]

#### **What Would You Do? – Case Studies, Team Responses & Audience Polling**

(special Cal-ICMA interactive webinar with MMASC and MMANC)

2-3:30 p.m., Wed., Nov. 9

[Target: all employees and managers]

Detailed notices for individual sessions -- agendas with topics, panelists, discussion questions, telecommunications connections, and registration

requirements (for webinars) -- appear at "Live Audio & Archives" tab of [www.cal-icma.org/coaching](http://www.cal-icma.org/coaching) two weeks before the date of individual sessions.

Local government staff can participate from their desks or as a group. To maximize the value of the sessions, the Cal-ICMA Coaching Program encourages local government agencies to invite employees to a conference room so that they can participate as a group in the webinars. In its announcement of events, the Coaching Program provides questions for the group to discuss immediately following the session. Some agencies assign a different department director to host each of the sessions.

To emphasize the need for leadership development and succession planning in local government, the new tagline for the Coaching Program is *"Today's Talent, Tomorrow's Leaders."*

According to Frank Benest, Co-Chair of the Cal-ICMA Coaching Program, "The 2011 webinars feature senior managers as well as emerging leaders bringing their different perspectives to a series of significant leadership and career development topics. The free events provide a low-cost strategy for developing talent in tough budget times."

The Coaching Program will also include in the coming year a variety of other elements, such as:

- \*One-to-one coaching match-ups (eighty senior managers are featured on the "Coaches Gallery" and are ready to serve as one-to-one coaches)
- \*Women Leading Government educational and networking events
- \*Speed coaching and networking events hosted by Area City/County Manager Groups
- \*Career advice columns
- \*Accelerated Leadership Series offered by CEPO
- \*Training seminars provided by the CSAC Institute for Excellence in County Government
- \*City/County Managers in Residence at Universities

For more information on the Cal-ICMA Coaching Program, go to [www.calicma.org/coaching](http://www.calicma.org/coaching) or contact one of the three co-chairs:

Frank Benest at [frank@frankbenest.com](mailto:frank@frankbenest.com)

Amy Cunningham at [amy.cunningham@ci.dublin.ca.us](mailto:amy.cunningham@ci.dublin.ca.us)

Tim O'Donnell at [timo@cityofbrea.net](mailto:timo@cityofbrea.net)

## **“Contract City” Energizes Public Safety Services, Reduces Costs and Enhances Local Control”**

Today’s austere fiscal environment is causing cities to rethink organizational models for law enforcement service delivery. Since 2009 the City of Rosemead, a suburban “contract city” of 57,000 residents located 10 miles east of Los Angeles, has successfully implemented an organizational model to energize service delivery and reduce costs. Through a simple organizational change of designating a county sheriff lieutenant to serve as the city’s “chief of police”, Rosemead is realizing the three-fold benefits of: 1) reducing costs; 2) empowering contracted county deputy sheriffs to more effectively police the community; and, 3) providing an added measure of “local control”.

### Financial Benefits

Since its incorporation over 50 years ago, Rosemead operates as a “contract city” with law enforcement services provided through a contract with the Los Angeles County Sheriff’s Department. Inherently, such city-county contractual arrangements for public safety services produce significant cost savings through shared overhead expenses and economies of scale. In comparing its law enforcement costs to those of neighboring cities with police departments, Rosemead realizes annual law enforcement cost savings well in excess of 30%. Also, by virtue of its law enforcement contract, Rosemead’s service levels are enhanced by ready access to the abundant expertise and resources of the Los Angeles County Sheriff’s Department.

The cost savings achieved by cities that contract for law enforcement services versus cities with police departments are widely acknowledged and well documented. However, many local government practitioners in contract cities have rightfully raised questions such as: How can the city empower and emotionally bond contract county deputies to our community? And, how can the city council and city manager exercise local control to address unique challenges in our city? As shown by the Rosemead experience, the designation a county sheriff lieutenant to serve as the city’s chief of police, and the impacts of that decision, can provide answers to these questions.

### Empowering Contract Law Enforcement Personnel

Cities that contract for law enforcement services frequently employ a “civilian” manager to direct the day-to-day operations of contract county sheriff personnel as well as city support staff in a public safety department. Such organizational structures with day-to-day civilian oversight over law enforcement personnel can be effective; however, in some cases this structure can be problematic and fraught with conflicts. Experiences in some cities have resulted in unintended consequences where the contracted county sheriff deputies come to feel that they are regarded as the “hired help” rather than being recognized and

appreciated as the fully empowered law enforcement professionals for the community. In addition, the blending of contract law enforcement and city support staff can sometimes result in lack of coordination and even conflicts between the county deputies and civilian leadership and support personnel.

To avoid such organizational challenges and empower the county sheriff deputies, Rosemead made a strategic decision to designate a Los Angeles County sheriff lieutenant to serve as the city's chief of police. Under this unique model, Rosemead's chief of police (sheriff lieutenant) manages the efforts of county sheriff deputies as well as several other civilian employees in the city's public safety department, including code enforcement officers, crime prevention specialists, school resource officers, probation officers, animal control and administrative support personnel. Through this organizational structure a professional, sworn law enforcement manager is entrusted to direct day-to-day public safety efforts rather than a civilian administrator. The end result is a powerful "unity of command" producing an enhanced and coordinated team effort between contract law enforcement and city civilian personnel. It also sends a powerful signal to the sheriff deputies demonstrating an added measure of confidence in their ability to effectively police the community. The result in Rosemead has been in increase morale and esprit de corps.

#### Local Control Enhanced

For the first time in its history the Rosemead community has a chief of police, a qualified sworn professional law enforcement manager directly responsible to the city council and the city manager. This welcome development has been met all with enthusiasm, energy and a renewed focus on public safety programs by the entire community. Moreover, recent statistics show that crime in Rosemead continues to decrease, while ongoing cost savings are realized. As the first of its kind in Los Angeles County, this "contract city/chief of police" organizational model is currently being replicated or is under consideration in various other cities.

Jeff Allred  
City Manager  
City of Rosemead

## City Manager's Department Diversity Committee

Did you know the City Manager's Department has a standing Committee on Diversity? The *Committee for the Advancement of Diverse Communities'* mission is to “develop and provide the necessary training, tools, and support for effective city management in diverse communities and to develop a recognition program for cities who demonstrate effective management methods and programs.”

Recent census results show diversity in California is continuing to grow throughout the state. Knowing how to effectively manage in a diverse environment can contribute to increased staff retention and productivity. Cities with well thought-out diversity policies and teams within the organization enhance their responsiveness to the progressively more diverse spectrum of residents, improve relations with surrounding communities, increase their organization's ability to manage change, and expand creativity.

Members of your Diversity Committee (Troy Brown/Livermore, Bill Lindsay/Richmond, Brian Nakamura/Hemet, Pat Martel/Daly City and Greg Nyhoff/Modesto) are working hard to help develop tools and Best Management Practices for enhancing diversity in local government. If you would like to be involved, contact Troy Brown, Livermore Assistant Manager at [tbrown@ci.livermore.ca.us](mailto:tbrown@ci.livermore.ca.us) .