



Your Legal Powers and Obligations

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Your Legal Powers and Obligations



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Legal Resources

- Legal Publications
 - The People's Business: A Guide to the California Public Records Act
 - Open & Public V: A Guide to the Ralph M. Brown Act
 - <http://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications.aspx>
- Legal Advocacy
 - <http://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Legal-Advocacy-Program.aspx>

Agenda

- City Powers and Limitations
- General Law Cities v. Charter Cities
- Raising Revenue
- Open Government and Transparency
- Ethics
- Council Member's Role Concerning City Employees

Sources of Law

- California Constitution
- United States Constitution
- State Statutes
- Federal Statutes
- City Charters
- City Ordinances
- Court Decisions



City Powers

- Tax
- Eminent Domain
- Public Works
- Corporate
- "Police Power"



Police Power

- Granted by the California Constitution
- Power to regulate to further the public's health, safety, convenience and general prosperity
- Examples: land use regulations, fire and safety regulations, and fees

Limitations on Powers

- City limits (extra-territorial limitation)
- No gifts of public funds -- expenditures must have a public purpose
- Preemption by state or federal law

Preemption

- The basic rule: when there is a conflict between a federal or state law and a local ordinance, the "higher" government wins
- What is a "conflict"?
- Charter cities have authority over "municipal affairs"

General Law v. Charter Cities

- 121 charter cities
- General law cities are bound by state law
- Charter cities have authority over “municipal affairs”

Raising Revenue

- Taxes
 - General – majority of voters approve
 - Special – 2/3 of voters approve
 - Proposition 26 broadly defines tax unless an exception applies
- Fees – if new, must fit under an exception
- Assessments
- Debt Financing



Open Government and Transparency

- **Brown Act (open meetings)**
 - Open & Public V: Guide to the Ralph M. Brown Act
 - <http://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications.aspx>
- **Public Records Act (open records)**
 - The People's Business: Guide to the California Public Records Act
 - <http://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications.aspx>

Brown Act

- Requires meetings of a legislative body be open and public



“Legislative Body”

- Governing body (city council)
- Newly elected members who have not yet assumed office
- Appointed bodies
- Standing committees (regardless of composition)
- Governing body of a private organization in limited circumstances

NOT a Legislative Body

- Temporary advisory committees composed of less than a quorum
- Groups that advise a single decision maker

“Meetings”

- Any gathering of a majority of the legislative body “to hear, discuss, deliberate, or take action” on a matter within the agency’s subject matter jurisdiction
- Oral collective briefings
- Legislative retreats
- Serial meetings

Serial Meetings



- You cannot do outside a meeting what you should do in a meeting.
- No daisy chains or hub-and-spoke meetings
 - Email Communications and Social Media
- Individual staff briefings OK
- Unilateral written communications OK

NOT Meetings

- Individual contacts
- Conferences
- Community meetings
- Meetings of other legislative bodies
- Social and ceremonial gatherings
- Attending standing committee meeting

“Open and Public”

- Notice: Post Agenda
 - Timing:
 - Regular Meetings: 72 hrs.
 - Special Meetings : 24 hrs.
 - Also on City Website
 - Brief general description
- Teleconferencing

“Open and Public”

- Cannot discuss non-agenda items
 - Exceptions: “Emergency” and “Urgency” Items
- Public comment

Closed Sessions

- Some examples:
 - Litigation
 - Real estate negotiations
 - Public employment
 - Labor negotiations
- Requirements:
 - Agenda – “Safe Harbor” descriptions
 - After the session: public report of specified actions and votes
 - Confidentiality

Public Records Act

- Public records must be disclosed unless there is a legal basis not to do so
- Public record = any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by the agency regardless of physical form or characteristic
- Includes electronic records



Exemptions

- Statutory list of exemptions
- "Catchall" – allows nondisclosure where the public interest in nondisclosure clearly outweighs the public interest in disclosure

Ethics

- Political Reform Act
 - Prohibits a city official from making, participating in, or influencing a governmental decision in which he or she has a financial interest
 - No personal advantages or perks
 - Reporting obligations
 - Gift Limits
- Government Code section 1090
- Incompatible Offices

Council Member's Role with Respect to City Employees

- May have appointing authority over the city's highest officials (e.g., city manager)

City Council-City Attorney Relationship

- City is the client
- Consult the city attorney early and often
- Relay all pertinent facts and objectives
- Recognize that a concrete answer is not always possible

Questions?

Disclaimer: This paper is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues and attorneys should perform an independent evaluation of the issues raised in this paper.

Legal Issues: The Law and Making Things Happen in Your Jurisdiction

Summary and Overview

Legal considerations frequently affect how you are able to pursue the goals that you and your colleagues set for your community. A basic understanding of the legal structure that governs cities will help you provide more effective community service.

This paper highlights some of the laws and legal principles that may impact your decision-making on the city council. You will want to forge a positive relationship with the city attorney in your city, who can help navigate the relevant laws and legal principles and assist in avoiding legal mistakes that could be costly for your city.

SECTION I: Sources of the Law and Municipal Powers

What are the Sources of Law for Cities?

The “law” affecting California cities can be found in a number of places:

- **The California Constitution** specifies the relationship among the various levels and branches of government, and establishes a number of individual rights. Cities derive a number of their powers directly from the California Constitution. Changing the Constitution requires a vote of the people. Proposals to change the Constitution may be placed on the ballot by either the Legislature or by initiative petition.
- **City Charters**, in those cities where citizens have elected to have charters, determine how a city is organized and, in some circumstances, give cities certain home rule prerogatives even in the face of conflicting state statutes. There are two types of cities in California: “charter cities,” which operate under the city's local charter, and “general law cities,” which operate under the general laws of the state.¹ Charters can also contain (self-imposed) limitations on city activities.
- **State Statutes** are typically enacted by the State Legislature and are printed in a series of “codes.” The California Government Code, for example, contains a number of provisions relating to the organization of general law cities, as

¹ See Cal. Gov. Code, §§ 34101 and 34102.

well as land use, planning and employee relations matters. Voters can also amend state statutes through the initiative process.

- **Local Ordinances** represent local agencies' exercise of law-making powers within their respective jurisdictional boundaries.
- **The Federal Constitution and Statutes** apply nationwide and typically act as restrictions on the exercise of power by state and local government.
- **Judicial Decisions** interpret all of the above, frequently resolving ambiguities or conflicts among them.

What Powers Do Cities Have and How Are They Limited?

This section provides a brief overview of the sources of city authority and the factors that may constrain a city's ability to exercise that authority. A relevant consideration is whether your city is a charter or general law city since charter cities may retain local authority even when their enactments conflict with state law.

The "Police" Power

The California Constitution provides that a city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.² This is commonly known as the "police power," and is often referred to as the city's regulatory authority to protect the public health, safety and welfare.

Preemption

A city's regulatory authority may be restricted if the proposed local ordinance or regulation conflicts with federal or state general laws. This is a concept known as "preemption." Federal or state law may preempt a city's ability to legislate in a particular area, either explicitly or by implication.

The test for preemption of local law by federal or state laws is similar. A local ordinance will be preempted by state law when it is in express conflict with state law.³ Preemption may also occur even when there is no express conflict if the state law has fully "occupied the field" of regulation.

Determining what constitutes a "conflict with general laws" is not always easy. Sometimes the Legislature will expressly declare its intent to preempt local regulation. When this has not occurred, the courts may be called upon to make the final determination.

² Cal. Const., art. XI, § 7.

³ Cal. Const., art. XI, § 7. Note, however, that charter cities are exempt from this restriction in regard to "municipal affairs." *Johnson v. Bradley*, 4 Cal.4th 389, 397 (1992).

For example, one court ruled that a city could not enact housing occupancy standards more stringent than the uniform standards contained in state housing law.⁴ Another court held that a city could not regulate the storage of firearms.⁵ On the other hand, courts have found local ordinances allowing mobile home rent increases to fund capital improvements, prohibiting boisterous conduct in card clubs, and regulating nuisances related to the sale of alcoholic beverages not to be preempted by state law on related subjects.⁶

Charter City Powers

Perhaps the strongest expression of home rule or local control in California's Constitution relates to a charter city's authority over municipal affairs.⁷ If a matter is a "municipal affair" (and not a "matter of statewide concern"), a charter city has power to act, even to the extent that the city's action may be at odds with a state statute. The chief restriction on local action under these circumstances is whether the action would be inconsistent with the city's charter or the California or United States Constitutions.

Courts, rather than the Legislature, are the ultimate arbiters of whether a subject is a municipal affair or a matter of statewide concern.⁸ This determination is made on a case-by-case basis, which means that it frequently takes litigation to vindicate a charter city's exercise of its authority. More information on charter cities can be found at www.cacities.org/chartercities.

Operation of Public Works

The California Constitution provides that a city may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication.⁹ It may furnish those services outside its boundaries, except within another municipal utility's boundaries that furnishes the same service and does not consent. Persons or corporations supplying those services may operate within cities upon conditions and under regulations that the city may prescribe.¹⁰

⁴ *Briseno v. City of Santa Ana*, 6 Cal.App.4th 1378, 8 Cal.Rptr.2d 486 (1992).

⁵ *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 67 Cal. Rptr. 2d 420 (1997).

⁶ *Robinson v. City of Yucaipa*, 28 Cal. App. 4th 1506, 34 Cal. Rptr. 2d 291 (1994); *Lowe v. City of Commerce*, 59 Cal. App. 4th 1075, 69 Cal. Rptr. 2d 356 (1997); *City of Oakland v. Superior Court*, 45 Cal. App. 4th 740, 53 Cal. Rptr. 2d 120 (1996).

⁷ See generally Cal. Const., art. XI, § 5.

⁸ The threshold inquiry is whether a conflict exists between a charter city law and state law. If no conflict exists, the charter city law stands. If a conflict exists, the court will find the matter is a municipal affair unless it qualifies as a matter of statewide concern. Even if the subject matter is of statewide concern, the state law must be reasonably related and narrowly tailored to address that statewide concern. See *Johnson v. Bradley*, 4 Cal. 4th 389, 14 Cal. Rptr. 2d 470 (1992); see also *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista*, 54 Cal. 4th 547, 279 P. 3d 1022 (2012).

⁹ Cal. Const., art. XI, § 9(a).

¹⁰ Cal. Const., art. XI, § 9(b).

State and Federal Constitutional Limitations

Local officials' actions must also comply with the United States Constitution and federal law. Areas of federal law that frequently arise for cities include:

- The First Amendment establishment of religion, free exercise of religion and free speech clauses.
- The Fourth Amendment prohibition against unreasonable search or seizure.
- The Fifth Amendment right to remain silent (for example, in police interrogations) and the requirement of just compensation for the taking of property.
- The Fourteenth Amendment's protections of due process, equal protection and property rights.

California's Constitution also contains similar declarations of rights, as well as other provisions that may place limits on city actions. Some examples include provisions relating to water rights,¹¹ workers compensation,¹² alcoholic beverage regulation,¹³ public housing projects¹⁴ and the non-partisan nature of municipal government.¹⁵

City officials should also be aware of the various federal civil rights laws which prohibit public agencies from discriminating against individuals based on a number of protected characteristics (for example, race, gender, physical disability and age). The state also has a number of laws that contain similar—but not always the same—protections.

Indemnity and Immunity

When acting within the bounds of their authority, city council members, as public officials, enjoy a number of statutory immunities that shield them from personal liability and provide immunity under most circumstances.

Except as otherwise provided by law, the city must pay any judgment or any compromise or settlement so long as the following are true: (1) the claim or action arose from an act or

¹¹ See Cal. Const., art. X.

¹² See Cal. Const., art. XIV, §4.

¹³ See Cal. Const., art. XX, §22.

¹⁴ See Cal. Const., art. XXXIV.

¹⁵ See Cal. Const., art. II, §6.

omission occurring within the scope of employment; (2) a request for defense is made in writing at least 10 days before trial; and (3) the employee reasonably cooperates in good faith in the defense of the claim or action.¹⁶ For purposes of this discussion, council members are considered city employees, regardless of whether they are compensated or not.

But the city's duty to defend or indemnify a council member does not apply in the context of alleged conflicts of interest in violation of the Political Reform Act or other conflict of interest laws. Liability for conflicts of interest is personal to the council member. However, a council member is entitled to seek an opinion on conflict of interest issues from the Fair Political Practices Commission ("FPPC"). A written advisory letter from the FPPC will provide immunity to a public official who has requested and obtained such a letter. The same is not true for conflict advice a council member may have received from the city attorney, or for informal advice received from FPPC staff by telephone.

Exercising Power

Taking Legislative Action

Cities usually exercise their regulatory authority by adopting ordinances or resolutions. For general law cities, state law requires that the city attorney draft all ordinances.¹⁷ Further, state law requires that the mayor of a general law city sign the ordinances and that the city clerk attest the ordinances.¹⁸ The city clerk must, within 15 days after its passage, cause the ordinance to be published at least once in a newspaper of general circulation, or post the ordinance if no newspaper of general circulation is published in the city.¹⁹

After the ordinance has been introduced, it cannot be finally passed until the expiration of at least five days. The only exception is an urgency ordinance, which can be finally passed at the same meeting at which it is introduced.²⁰ An ordinance in general law cities must be passed by a majority of the entire city council.²¹ The voting requirement also applies to resolutions.

Acting in a Quasi-Judicial Capacity

The city council is primarily a legislative and administrative body, but often sits in a quasi-judicial capacity. Quasi-judicial matters may include variances, use permits, annexation protests, and personnel disciplinary actions. Quasi-judicial proceedings tend to involve the

¹⁶ Cal. Gov. Code, § 825(a).

¹⁷ Cal. Gov. Code, § 41802.

¹⁸ See Cal. Gov. Code, § 36932.

¹⁹ See Cal. Gov. Code, § 36933.

²⁰ See Cal. Gov. Code, § 36934.

²¹ See Cal. Gov. Code, § 36936.

application of generally adopted standards or rules to specific fact situations, much as a judge applies the law to a particular set of facts.

Those persons subject to a quasi-judicial proceeding must be given meaningful notice and an opportunity to be heard. A record should be kept of the witnesses and their testimony, the evidence introduced on both sides, and the council's findings.

"Findings" are the city council's explanation for its action. Findings are not only important to those interested in the council's decision, but to courts reviewing the council's action in the event of a legal challenge.

To satisfy due process obligations, the decision-maker must be fair and impartial.²² Council members should be careful to listen to the testimony in such hearings if they vote on the matter, leaving biases, prejudices and pre-conceived ideas outside the hearing.²³

SECTION II: The Money to Make Things Happen

Summary of Municipal Revenue Raising Authority

California cities may raise revenue to pay for public facilities and services in a number of ways, including:

- Taxes
- Fees
- Assessments
- Debt Financing

This section briefly explains legal issues related to raising revenue, including requirements for approval by the public and affected property owners.

Taxes

A "tax" is a monetary contribution that individuals or businesses make toward the support of public agency services or facilities. A distinguishing feature of a tax is that it generally need not bear a relationship to the degree to which the taxed individuals or businesses benefit from the public agency services or facilities. All cities, whether charter or general law, have the power to tax.²⁴ Proposition 26, passed by the voters in 2010, amended the state Constitution to define a

²² See *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 56 Cal. Rptr. 2d 223 (1996) (explaining basic requisites of due process in the context of a council's quasi-judicial action on a zoning appeal); *cert. denied*, 520 U.S. 1167, 117 S. Ct. 1430, 137 L. Ed. 2d 538 (1997).

²³ See *Mennig v. City Council of City of Culver City*, 86 Cal. App. 3d 341, 150 Cal. Rptr. 207 (1978).

²⁴ See Cal. Const., art. XI, § 5 (charter cities); Cal. Gov. Code, § 37100.5 (general law cities).

local tax as any levy, charge or exaction of any kind imposed by a local government, except for a list of seven exemptions that constitute certain fees, charges or fines that cities may impose.²⁵

Three taxes play a major role in local finance because they raise significant sums of general-purpose revenues that cities may use to pay for a variety of programs and services. These three taxes are the property tax, the uniform local sales tax, and the vehicle license fee (“VLF”). Many local governments also impose optional local sales taxes and use the resulting revenues to support specific programs, such as transportation services.²⁶

With respect to two important forms of tax revenues—property tax and sales tax—there is a substantial degree of state control. The tax rate is determined by either the state Constitution (property taxes and Proposition 13) or state statute (sales tax and the Bradley Burns Uniform Sales Tax Act). Proposition 1A,²⁷ adopted by the voters in November 2004, and Proposition 22,²⁸ adopted by the voters in November 2010, drastically modified the interrelationship between the State of California and California cities relating to all taxes.

Property Tax

Property taxes, which have historically been considered local taxes, are collected according to a formula in the California Constitution.²⁹ The formula was adopted by voter initiative in 1978 as part of Proposition 13.³⁰ Under Proposition 13, the proceeds of property taxes are to be allocated “according to law.” This means that local governments receive general-purpose revenues from a one percent property tax levy on real property.

In the early 1990s, the Legislature reallocated property taxes to help satisfy the state’s obligation to fund education under Proposition 98. Specifically, in 1992 and 1993, the state shifted an ongoing share of property taxes from local governments to schools and community colleges (commonly referred to as the “ERAF shift”). In 2004, the state enacted a similar two-year shift of property taxes (\$1.3 billion annually) from local governments to schools and community colleges. These shifts had the effect of reducing local government resources and reducing state costs.

Proposition 1A, approved by the voters in 2004, strictly limits the state’s ability to shift property taxes from cities to schools or community colleges. The measure generally prohibits the state

²⁵ Cal. Const., art. XIII C, § 1, subd. (e).

²⁶ California Secretary of State, Supplemental Voter Information Guide, November 2, 2004.

²⁷ Codified as amendments to California Constitution Articles XI, XIII and XIII B.

²⁸ Codified as amendments to California Constitution Articles XIII, XIX, XIX A, and XIX B and new Article XIX C.

²⁹ See Cal. Const., art. XIII.

³⁰ Property taxes are limited to one percent of the full cash value of the property (purchase price after 1975), and the growth of the full cash value base due to initiative may not exceed two percent per year. See Cal. Const., art. XIII A, §§ 1 and 2.

from shifting any share of property tax revenues allocated to local governments for any fiscal year under the laws in effect as of November 3, 2004. The measure also specifies that any change in how property tax revenues are shared among local governments within a county must be approved by two-thirds of both houses of the Legislature (instead of by majority votes). Finally, the measure prohibits the state from reducing the property tax revenues provided to cities and counties as replacement for the local sales tax revenues redirected to the state and pledged to pay debt service on state deficit-related bonds approved by voters in March 2004.³¹

In 2008, the Legislature suspended Proposition 1A's protections, and "borrowed" \$1.8 billion in local property tax revenues. Cities, counties, and special districts were able to take advantage of legislation that was adopted to allow for bonds to be issued that would be secured by the state's obligation to repay the borrowed property tax by 2013. The revenues from the bonds went to the over 1,200 cities, counties, and special districts that participated in the bond program to backfill those property taxes lost to the state.

Proposition 22, approved by the voters in 2010, prohibits the state, even during a period of severe fiscal hardship, from delaying the distribution of tax revenues for transportation, redevelopment, or local government projects and services.³² However, in 2011 the Legislature adopted ABx1 26 to dissolve California redevelopment agencies. The California Supreme Court upheld ABx1 26 as constitutional and redevelopment agencies were dissolved as of February 1, 2012.³³ Many cities continue to wind down their former redevelopment agencies through successor agencies as required under the legislation.

The Legislature made additional changes to the dissolution process when it enacted AB 1484 in 2012. The League initiated litigation challenging the constitutionality of certain provisions of AB 1484. On March 3, 2016, the Court of Appeal found that AB 1484 violated Prop 22 to the extent it allowed the Department of Finance (DOF) to order sales and use tax revenues and property tax revenues to be withheld from cities and distributed to other local taxing entities.

In 2015, the Legislature adopted AB 2, effective January 1, 2016. AB 2 provides new authority to revitalize disadvantaged communities through planning and financing infrastructure improvements and upgrades, economic development activities, and affordable housing via tax increment financing based in part on the former community redevelopment law.

Sales Tax

The Legislature has preempted the field of sales and use taxation in the name of statewide uniformity.³⁴ Cities must impose sales taxes in accordance with state law.³⁵ Sales tax revenues

³¹ California Secretary of State, Supplemental Voter Information Guide, November 2, 2004.

³² California Secretary of State, Voter Information Guide, November 2, 2010.

³³ See *California Redevelopment Association v. Matosantos*, 53 Cal.4th 231, 135 Cal.Rptr.3d 683 (2011).

³⁴ See Cal. Rev. & Tax. Code, §§ 7200 and following (Bradley-Burns Uniform Local Sales and Use Tax Law).

³⁵ See Cal. Rev. & Tax. Code, §§ 6001, 7202(c).

account for about seven percent of city revenues statewide.³⁶ City sales tax rates may not exceed one percent, unless the city takes advantage of certain exceptions to the cap.³⁷

Proposition 1A and Sales Tax

Proposition 1A prohibits the state from reducing any local sales tax rate, limiting existing local government authority to levy a sales tax rate, or changing the allocation of local sales tax revenues. For example, the state could not reduce a city's uniform or optional sales tax rate, or enact laws that shift sales taxes from a city to the county in which it is located.³⁸

Vehicle License Fee (VLF)

The VLF is a tax levied annually on the value of motor vehicles registered in the state. For about a half century, the VLF rate was two percent of vehicle value. In 1999, the Legislature began reducing the rate charged to vehicle owners, with the state "backfilling" the resulting city and county revenue losses. During 2003–04, the VLF (set at a rate of 0.65 percent of vehicle value) and the VLF backfill would have provided about \$5.9 billion to cities and counties. The state fully repaid its VLF obligations in 2005. Under current law, most VLF revenues are allocated to counties for health and social services programs. Some VLF revenues are allocated to cities for general fund purposes.³⁹

Under Proposition 1A and Proposition 22, if the state reduces the VLF rate below its current level, the state must provide local governments with equal replacement revenues. However, the Legislature in 2011 enacted new legislation to reallocate the local share of the VLF to partially fund the realignment of certain law enforcement services to counties and to also fund grants for specified law enforcement activities rather than for general fund purposes. The League initiated litigation challenging the constitutionality of the legislation but the court ruled in the state's favor.

State Mandated Cost Reimbursement Requirements

In 1979, the voters amended the California Constitution to require that the state reimburse local agencies whenever the state mandates local agencies to implement a new program or higher level of service.⁴⁰

³⁶ Calculation by Michael Coleman from California State Controller reports.

³⁷ See, for example, Cal. Gov. Code, §§ 26290 and following (San Joaquin County Justice facilities); Cal. Rev. & Tax. Code, § 7285.5 (the county authority to adopt a tax in increments of 0.125 percent for "specific purposes"); and § 7288.1 (public education, drug abuse and crime prevention, and health care). An uncodified section of Chapter 1257 of the Statutes of 1987 limits the combined rate of special statutory authorizations to 2.25 percent.

³⁸ California Secretary of State, Supplemental Voter Information Guide, November 2, 2004.

³⁹ *Id.*

⁴⁰ See Cal. Const., art. XIII B, § 6.

Proposition 1A requires that the state suspend certain state laws creating mandates in any year that the state does not fully reimburse local governments for their costs to comply with the mandates. Beginning July 1, 2005, Proposition 1A requires the state to either fully fund each mandate affecting cities or suspend the mandate's requirements for the fiscal year. This provision does not apply to mandates relating to employee rights. The measure also defines as a mandate state actions that transfer to local governments the financial responsibility for a required program for which the state previously had complete or partial financial responsibility.

Other Taxes

There are other kinds of taxes that cities use to fund community services and facilities. Some common types are:

- **Utility Users Taxes**—typically a percentage of residents' gas, electricity, telephone, water and cable television bills.
- **Transient Occupancy Taxes**—can be a flat amount or a percentage of the bill on hotels, motels and similar lodgings for individuals staying 30 days or fewer.⁴¹
- **Business License Taxes**—typically a percentage of gross receipts.
- **Mello-Roos Community Facilities Districts**—a special mechanism to finance public facilities, infrastructure and services through imposition of special taxes.

The imposition or increase of taxes requires voter approval. The degree of voter approval depends on whether the tax is considered to be a “general” tax or a “special” tax.

General Taxes

A “general tax” is a tax placed into the general fund for any and all municipal purposes.⁴² The imposition of general taxes is also subject to the provisions of Propositions 62 and 218, which require for approval, among other things, a two-thirds vote of the legislative body and a majority vote of the voters voting in an election. The election on the general tax must occur at a regularly scheduled general election for members of the city council. There is an emergency exception to the timing requirement, but the determination of the emergency requires a unanimous vote of the legislative body.⁴³

⁴¹ See Cal. Rev. & Tax. Code, § 7280.

⁴² *Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 46 Cal. Rptr. 2d 266 (1995).

⁴³ Cal. Gov. Code, §§ 53723-53724; Cal. Const., art. XIII, § 2(b).

Special Taxes

In contrast, special taxes are collected or earmarked for a specific purpose or governmental program.⁴⁴ Special taxes require a two-thirds vote of approval by the electorate.⁴⁵ There are no timing restrictions on elections to approve special taxes. Courts have ruled that taxes levied by a special-purpose taxing district or agency (such as those used for jail construction in a number of counties) must be special taxes.⁴⁶

Fees

Cities have the general authority to impose fees, sometimes called charges or rates, under the city's police powers. "Fees" refer to the costs of providing a particular service, such as issuance of a building permit or connection to a sewer or water line. Another well-known type of fee is the development fee, which is designed to defray the cost of public facilities relating to the development.⁴⁷ However, following the passage of Proposition 26 as discussed above, all new local fees must fall within one of the seven listed exemptions in Article XIII C, section 1(e) of the California Constitution, to avoid being considered general or special taxes subject to voter approval requirements.

City fee levies may not exceed the estimated reasonable cost of providing the particular service or facility for which the fee is charged, plus overhead. A fee which exceeds such cost may be considered a special tax and require two-thirds voter approval.⁴⁸

There are specific procedures for fee and rate adoption.⁴⁹ Proposition 218 requires voter or property owner approval of some types of fees—those imposed on property or on persons as an incident of property ownership (known as property-related fees).

Fees and service charges account for about 43 percent of city revenues statewide.⁵⁰

Benefit Assessments

"Benefit" assessments are charges levied to pay for public improvements or services provided within a pre-determined district or area according to the special benefit the parcel receives from

⁴⁴ See Cal. Const., art. XIII C, § 1(d); Cal. Gov't Code § 53721; *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 184 Cal. Rptr. 713 (1982).

⁴⁵ See Cal. Const., art. XIII A, § 4, XIII C § 2(d).

⁴⁶ *Rider v. County of San Diego*, 1 Cal. 4th 1, 2 Cal. Rptr. 2d 490 (1991).

⁴⁷ See Cal. Gov. Code, § 66000 and following.

⁴⁸ *Carlsbad Municipal Water Dist. v. QLC Corp.*, 2 Cal. App. 4th 479, 485, 3 Cal. Rptr. 2d 318 (1992); *City of Dublin v. County of Alameda*, 14 Cal. App. 4th 264, 281, 17 Cal. Rptr. 2d 845 (1993). See Cal. Gov. Code, § 50076.

⁴⁹ See Cal. Gov. Code, §§ 54954.6 and 66000 and following.

⁵⁰ Calculation by Michael Coleman from California State Controller reports.

the improvement or services. These features distinguish benefit assessments from taxes. Traditionally, assessments finance the construction of public improvements. In some instances, however, they also may be used to finance public services benefiting the property.

General law cities must have express legislative authority to levy specific benefit assessments and there are a number of statutes providing that authority.⁵¹ Charter cities are authorized to develop their own procedures for levying benefit assessments. Benefit assessments generally are levied against real property.

Proposition 218 requires approval of assessments by the property owners who pay them. It also requires a mailed ballot vote in which ballots are weighted in proportion to the assessment each property owner will be required to pay.⁵²

Benefit assessments account for about one and a half percent of city revenues statewide.⁵³

State Revenues (“Subventions”)

The state and counties levy certain taxes that are shared with or subvented to cities. These presently include the VLF (as discussed above), cigarette and tobacco products tax, liquor license fees, and motor vehicle fuel tax. Cities also receive shared revenues from county and federal governments. These funds come in the form of support for programs such as entitlement programs and one-time grants for which applications must be submitted.

Generally speaking, these kinds of revenues have played a decreasing role in city budgets. In 1974-75, cities received about 21 percent of their revenues from state and federal subventions. Today the amount is about ten percent.⁵⁴

Debt Financing

Cities may issue bonds and other debt instruments to finance municipal improvements and services. These must be supported by a revenue source to pay back the debt, such as tax, fee or assessment funds.

Other Revenue Sources

Cities also are authorized to raise revenue through certain other activities such as earning interest on invested funds and franchising public utilities, cable television, and solid waste enterprises. In an effort to find new revenue sources, cities have looked at ways to become more entrepreneurial. For example, San Diego sells its surplus or out-of-date equipment, such as

⁵¹ See Cal. Sts. & High. Code, §§ 5000 and following (1911 Act), 10000 and following (1913 Act), 22500 and following (1972 Act), and 36600 and following (1994 Act).

⁵² See generally Cal. Const., art. XIIIID.

⁵³ Calculation by Michael Coleman from California State Controller reports.

⁵⁴ Calculation by Michael Coleman from California State Controller reports.

parking meters, street signs, and fire hydrants, in its city-owned stores. Many cities provide services to other local governments to lower the cost of service to both agencies.

SECTION III: Ethics, Conflicts of Interest and Open Government

As part of your participation in this conference, you will receive what is commonly referred to as “AB 1234 training”. Enacted in 2005, AB 1234 requires local elected officials to receive training every two years on the laws related to ethics, conflicts of interest and open government. The Institute for Local Government, in conjunction with the Attorney General’s office and other stakeholders, has developed educational materials that will assist you in understanding these important, but often complicated, areas of the law.