Selected Topics in Municipal Finance
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League of California Cities
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Property Tax

ACA 1 (Aguiar-Curry, D-Yolo)

- Would amend Prop. 13 to allow 55% voter approval of supplemental property taxes to fund bonds to finance public infrastructure and affordable housing
- On the November 2024 ballot
Response to CBRT Measure

ACA 13 (Ward, D-San Diego)

• Proposed constitutional amendment on November 2024 ballot – affecting CBRT measure if it is also voted in November 2023
• Initiative constitutional amendment imposing supermajority requirements must pass by that supermajority
• So, CBRT measure would require 2/3 voter approval
Utility Taxes / General Fund Transfers

- *Wyatt v. City of Sacramento* (2021) 60 Cal.App.5th 373
  - Upheld post-218 approval of GFT from water, sewer, and trash utilities to general fund as a general tax
  - Plaintiffs argued Prop. 218 forbids all general UUTs
  - Victory means voters can approve GFTs
Utility Taxes / General Fund Transfers

• *Lejins v. Long Beach* (2021) 72 Cal.App.5th 303
  • Similar facts as *Wyatt v. Sacramento* – post-218 election to validate GFT from water and sewer utilities
  • Purported to distinguish *Wyatt* in ruling for challengers, but seems to disagree with *Wyatt*
Utility Taxes / General Fund Transfers

*Palmer v. City of Anaheim* (2023) 90 Cal.App.5th 718

- Voter approval of charter amendment to authorize general fund transfer sufficient to defeat Prop. 26 challenge
- Effectively sides with *Wyatt* over *Lejins* by concluding voter-approved taxes collected from the utility, rather than on customers bills, do not cause rates to exceed cost of service in violation of Propositions 218 and 26
- Plaintiffs did not seek rehearing or review
More UUT disputes

*Simpson v. City of Riverside*, Riverside Sup. Ct. Case No. RIC 1906168
- Followed *Lejins*, distinguished *Wyatt, Palmer*
- In remedies phase as of 04/24

*Beck v. City of Canyon Lake*, 4th DCA No. D083322
- City lost writ trial, but defeated refund remedy
- Respondents / Cross-Appellant brief on appeal due 4/26/24
Water Rates

2023’s AB 755 (Papan, D-San Mateo)

• Requires water cost-of-service analysis to isolate costs to serve top 10% of customers (but not customer classes)

• May make it risky not to have tiered rates (but perhaps not if rate are class-based, as is common)

• But tiered rates are challenging, too

• Adopts Water Code section 390 et seq. effective 1/1/24
Water Rates

AB 1827 (Papan, D-Millbrae)

• facilitates tiered water rates, stating that, in allocating costs, COSA can consider any or all of higher water demand, maximum potential water use, and projected peak water use

• Allows meter size as a cost-allocation factor

• Response to adverse rulings in City of San Diego and Otay Water District cases

• In Assembly Local Government Committee as of 4/15/24
Stormwater Fees

SB 231 (Hertzberg, D-San Fernando Valley)

• Effective 1/1/18, defines “sewer” under Prop. 218 to include storm sewers (GC 53750(k))
• Seeks to overrule HJTA v. Salinas by statute, citing Crawley v. Alameda and Griffith v. Pajaro
• This authority is most safely used for stormwater reuse project benefitting water or sewer supplies
• Followed in Gluck v. City and County of San Francisco, 1st DCA No. A170087 [appeal from order sustaining demurrer without leave to amend; awaiting record as of 4/15/26]
• Cited favorably in Paradise Irr. Dist. v. Comm’n on State Mandates (3rd DCA 2019)
• Construed negatively, but not reached in DOF v. Mandates Commission (3rd DCA 2022)
Stormwater Fees

_Dept. of Finance v. Commission on State Mandates (2022)_ 85 Cal.App.5th 535, review denied

- Street-sweeping mandate not reimbursable b/c local governments can impose fees for trash removal
- But partial exemption from Prop. 218 for “sewer” fees limited to sanitary sewer fees
- Did not reach impact of 2017–18’s SB 231, which took the opposite view, b/c statute not retroactive to this case
- Agencies now processing mandate claims with support from D-Max
Franchise Fees

*Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248

- SCE agreed to increased franchise fee upon PUC authorization for line item on power bills
- DCA found tax requiring voter approval
- Supreme Court remanded: Franchise fee must reflect reasonable value of real estate rights conferred by franchise
  - Reasonable value may be shown by bona fide negotiations, “other indicia of worth”
  - Also reaffirms that valid fees do not become taxes simply because passed on to rate payers
- City won remand trial
- City won further appeal in an unpublished ruling; plaintiffs did not seek review
Trash Franchise Fees

**Zolly v. City of Oakland (2022) 13 Cal.5th 780**

- Challenge to franchise fee imposed on City solid waste franchisees under Props. 218 and *Jacks v. City of Santa Barbara*
- SCOCA found standing because apartment owners alleged they bore economic incidence of fee; city’s claim otherwise could not be tested on demurrer
- Prop. 26 exception for use of property limited to tangible property, not franchise rights
- Fee was “imposed” so as to trigger Prop. 26 b/c established by legal authority
- Oakland can try to prove at trial that haulers get unusual rights in rights-of-way that are proportionate in value to franchise fee
Trash Franchise Fees

• Tips for protecting this revenue source
  • Avoid controversy if possible
  • Make a record that haulers get rights in rights-of-way that others do not (like the right to place bins in street weekly)
  • Make a record that the value of those rights is at least roughly proportionate to the franchise fee
  • Have a cost-of-service study in your record; consider hiring a consultant, and have a lawyer review it
  • Separately cost regulatory fees (like AB 939 compliance fees)
Franchise Fees

*Apartment Owners Association of California v. City of Los Angeles* (2d DCA Case No. B313439)

- Class action challenge by well-known plaintiffs' lawyers to franchise fees on commercial and multi-family haulers under Prop. 218
- City won summary judgment; plaintiffs appealed
- DCA reversed and remanded, citing *Zolly*
- LASC Case Nos. BC677423, BC709658
  - Summary judgment denied 3/1/24
Franchise Fees

*City of Lancaster v. Netflix, Inc. (2024) 99 Cal.App.5th 1093*

• City sought to enforce DIVCA franchise fee on streaming services

• DCA found no private right of action in city to sue non-franchisee under DIVCA
Development Impact Fees

*County of El Dorado v. Superior Court of El Dorado County* (2019) 42 Cal.App.5th 620

- Statute of limitations to challenge DIFs is one-year
- But suit can be filed after each year’s findings, so it serves to limit remedy, but not risk of suit
- AB 1600 findings are burdensome, but it is very risky not to do a good job on them every year
- Limited *Walker v. City of San Clemente* (2015) 239 Cal.App.4th 1350, which had ordered refund of all fees collected since inception of fee
Development Impact Fees

*Hamilton and High, LLC v. City of Palo Alto (2023) 89 Cal.App.5th 528, review denied*

- in-lieu parking fees are AB 1600 fees
- Time for suit runs from denial of refund claim, but no deadline for such a claim
- Questions *El Dorado*
- Legislative response is possible
Development Impact Fees

*Sheetz v. County of El Dorado* (2022) 84 Cal.App.5th 394, cert. granted SCOTUS No. 22-1074

- $23,420 traffic impact fee on new house challenged as regulatory taking
- DCA affirmed County’s victory, concluding
  - *Nollan / Dolan* analysis does not apply to legislative fees
  - AB 1600 does not require tract-specific analysis
  - Fee reasonably related to traffic impacts
Sheetz v. County of El Dorado (Apr. 12, 2024) ___ U.S. ___, 2024 WL 1588707

• *Nollan / Dolan* analysis applies to legislative fees
• Remanded to apply *Nollan / Dolan* here and to determine how to do so.
• Three justices concurred to defend impact fees
• Property rights bar remains hopeful
• It seems that nexus is easily shown, and that rough proportionality must be applied differently to prospective fees for a class of uses than for one fee imposed quasi-judicially
Development Impact Fees

*Barajas v. Petaluma*, DCA No. A165258

- challenge to AB 1600 fees post-*White* and *El Dorado*
- Cal Cities filed amicus brief
- Fully briefed and awaiting argument as of 1/18/24
Development Impact Fees

AB 516 (Ramos, D-San Bernardino)

• Effective 1/1/24

• Additional requirements for annual and 5-year reports on AB 1600 fees, reporting on project status and on refunds paid

• Additional requirements for audits, including review of construction schedules; must inform fee-payors of right to request audits; and must post reports to website
Questions?
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