Update on the Law of Municipal Finance

by

Michael G. Colantuono, Esq.
Matthew C. Slentz, Esq.
Taylor Anderson, Esq.

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HIGHSMITH
WHATLEY, PC

Presenters

Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
(213) 542-5700
(530) 432-7357
MColantuono@chwlaw.us
MSlentz@chwlaw.us
TAnderson@chwlaw.us

Sales and Use Taxes

- Rev & Tax Code § 7285.9 authorizes local transactions and use taxes
- RTC 7251.1 limits total of city and county TUTs to 2%

Sales and Use Taxes

Many statutory exceptions to the 2% cap, including

- AB 1256 (Wood, D-Healdsburg) – lifts 2% cap on sales taxes for Humboldt County
- SB 335 (Cortese, D-Santa Clara) – ditto for Sta Clara County
- SB 862 (Laird, D-Santa Cruz) – ditto for Sta Cruz County transit

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Sales and Use Taxes

Long Beach Reform Coalition v. City of Long Beach, Los Angeles Superior Court No. 25 STCP 00471

- challenge to implementation of sales tax following sunset of County tax
- filed 2/6/25
- Trial-setting conference set for May 15, 2025

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Sales and Use Taxes

- *County of Alameda v. Alameda County Taxpayers' Assn., Inc.* (2024) 99 Cal.App.5^{th} 226
  - Followed other post-*Upland* cases on initiative special tax issue
  - Role of Children's Hospital did not name private entity in violation of art. II, section 12
  - Upheld exemption from 2% cap in unpublished discussion

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Sales and Use Taxes

- *Alameda County Taxpayers' Assn., Inc. v. County of Alameda* (2025) 108 Cal.App.5th 524, *depublication and review denied*
  - General tax not made a special tax by discussion of use of proceeds for homeless services
  - Rejected claim that ballot materials were so misleading as to invalidate the measure
  - Statutory exemption to 2% cap on county and city sales taxes was not unconstitutional "special" legislation

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Sales and Use Taxes

Pending challenges to exemptions to 2% cap as invalid special legislation

- *Silicon Valley Taxpayers Assn. v. City of Campbell*, Sta. Clara Sup. Ct. No. 25CV455853
  - City demurrer set for June 6, 2025
- *Lester v. Cooper*, Contra Costa Sup. Ct. No. MSN20-1173
  - Contra Costa Co. demurrer set for June 9, 2025

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Sales and Use Taxes

AB 2854 (Irwin, D-Ventura)

- Requires annual reports of sales tax rebate agreements to CDTFA (or nonexistence of same) and website posting
- Authorizes fine for failing to do so of $1,000 per day for first 180 days and $4,000 per day for the balance of the first year
- Effective 1/1/25
- Rev & Tax Code § 7213

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Utility Taxes / General Fund Transfers

- *Wyatt v. City of Sacramento* (2021) 60 Cal.App.3d 373
  - Post-218 approval of GFT from water, sewer, and trash utilities to general fund as a general tax was lawful
  - Plaintiffs had argued that Prop. 218 forbids all general UUTs
  - Victory meant UUTs were safe, and voters could approve GFTs

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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*

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Utility Taxes / General Fund Transfers

- *Palmer v. City of Anaheim* (2023) 90 Cal.App.5th 718
  - Similar facts as *Wyatt v. Sacramento* – post-26 election to validate GFT from power utility
  - Upheld because election was sufficient to satisfy Prop. 26 and Prop. 218 does not apply to electric rates

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Utility Users Taxes

Beck v. City of Canyon Lake, 4th DCA Case No. D083322

- Trial court invalidated voter-approved UUT on water and sewer as use of proceeds of a property-related fee for unrelated purposes
- DCA affirmed in unpublished opinion
- Logic endangers all water, sewer and trash UUTs
- Petition for Review, if the City files it, due 4/29/25
- If the City does not seek review, plaintiffs' counsel can be expected to file more such suits

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Utility Users Taxes

Rosenthal v. City of Los Angeles, 2d DCA No. B339303

- Class action challenge to UUT on electric bills
- City won on demurrer; plaintiffs abandoned appeal
- Similar case pending in trial court – *Sierra v. City of Los Angeles*, LASC No. 24STCV12286 (lead case 23STCV17245)
    - City's demurrer to be heard 4/24/25

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Tiered Water Rates

- *Coziahr v. Otay Water Dist.* (2024) 103 Cal.App.5th 785
  - Trial court invalidated tiered rates under *Capistrano* and awarded refunds
  - Both parties appealed
  - DCA affirmed using deferential review and concluded refunds available under Prop. 218
  - Review and depublication denied 10/23/24

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Irrigation Water Rates

HJTA v. Coachella Valley Water Dist. (2025) 108 Cal.App.5th 485, *petn. rev. filed* 3/12/25

- CVWD could not justify lower rates for raw water delivered to farms due to historic priority
- Court rejected defense that all rates subsidized
- Petition for review tests standing, ability to challenge subsidized rates, availability of refund remedy, application of federal due process to justify money remedy

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Tiered Water Rates

Patz v. City of San Diego, 4th DCA Case No. D080308 – trial court invalidated tiered rates

- DCA issued 3/12/25 tentative ruling affirming lability but reversing remedy, applying Gov. Code § 53758.5, barring refunds and requiring money remedy to be provided via next ratemaking
- Argument May 6, 2025

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Tiered Water Rates

Dreher v. LA DWP, 2d DCA No. B329610 — City won all but low-income discount; no refunds because plaintiff did not pay under protest; plaintiffs appealed

- Court invited supplemental briefs on Gov. Code, §53758.5's ban on refund remedies, Gov. Code, §53750.6's encouragement of tiered rates, and *HJTA v. Coachella Valley Water District* (2025) 108 CA5th 485
- Fully briefed as of 3/28/25

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Tiered Water Rates

2023's AB 755 (Papan, D-San Mateo)

- Requires water cost-of-service analysis to isolate costs to serve top 10% of each customer class
- May make it risky not to have tiered rates
- But tiered rates are challenging, too
- Adopts Water Code section 390 et seq. effective 1/1/24

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Tiered Water Rates

AB 1827 (Papan, D-Millbrae)

- Facilitates tiered rates by allowing use of meter size, peaking factors, and similar criteria in water ratemaking
- Gov. Code, section 53750.6, effective 1/1/25
- Response to trial court rulings against the City of San Diego and the Otay Water District

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Exhaustion of Administrative Remedies

AB 2257 (Wilson, D- Suisun City)

- Imposes duty to exhaust administrative remedies
- Requires challengers to participate in ratemaking hearings, identify legal issues, and sue only on those issues
- We recommend ordinance or resolution to broaden and clarify these rules
- Gov. Code, sections 53759.1 & 53759.2, effective 1/1/25

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Ratemaking Litigation

SB 1072 (Padilla, D-Chula Vista)

- No refund remedy under Prop. 218 but agency must credit any overcollection in next ratemaking
- Gov. Code section 53785.5, effective 1/1/25
  - Arguably retroactive as declaratory of existing law
  - But statement to that effect amended out of bill
  - Arguably applies as procedural legislation to pending disputes which arose before statute effective

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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
- 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

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Stormwater Fees

Dessin, LLC v. City of Sacramento, 3rd DCA Case No. C100644

- Reverse validation challenge to increase in storm water fee because margin of victory in property owner vote provided by city's own properties and those of other government agencies
- Trial court ruled for City
- Fully briefed 3/3/25

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Stormwater Fees

Cities have these options to fund stormwater mandates:

- general funds;
- charge other city programs which burden the system — like water, sewer and trash services;
- fee for “refuse collection” by keeping trash out of receiving waters;
- property-owner or voter approval of property-related stormwater fee; or
- voter approval of general or special tax

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Regulatory Fees

Sutter's Place, Inc. v. City of San Jose (2024) 104 Cal.App.5th 855, review denied

- Prop. 26 and due process challenge to card room regulatory fees
- Equal allocation of fee between two licensees: upheld trial court findings as fair and reasonable
- Strict reading of regulatory fee exception and what may be recovered (e.g., legislative activity, PRA request)
- Refund of invalid costs only
- Allows due process claim in ordinary rate-making challenge

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Soda Taxes

Cultiva La Salud v. State of California (2023) 89 Cal.App.5th 868

- AB 1838 (2018)
  - Preempts charter city soda taxes until 2031
  - Passed in exchange for California Business Roundtable withdrawing initiative to amend CA Constitution to require voter approval of nearly all government revenues
- Penalty provision invalidated as attempt to chill charter city home rule authority
- Santa Cruz's Measure Z narrowly approved 11/5/24. Test suit from Big Soda may follow

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Development Impact Fees

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

- 1-year limit statute of limitations to challenge DIFs
  - Suit can be filed after each year's findings
  - Limits remedy, not litigation exposure
- Thorough AB 1600 findings are burdensome, but key to reducing legal risk
- Limits *Walker v. City of San Clemente* (2015) 239 Cal.App.4th 1350, which ordered refund of all fees collected since inception of fee

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Development Impact Fees

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

- Parking in-lieu fees subject to AB 1600 even though voluntary
- Casts doubt on *El Dorado*
- Best to comply with AB 1600 for DIFs unless implemented via development agreement waiving suit

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Development Impact Fees

Barajas v. City of Petaluma, 1st DCA No. A165258 unpublished

- Affirmed trial court ruling upholding City's AB 1600 findings
- New findings required every five years, not new studies
  - Findings relying on earlier nexus study sufficed
  - Study's age did not affect the validity of findings
- Studies must be updated every 8 years (Gov. Code §66016.5(a)(8))

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Development Impact Fees

Sheetz v. County of El Dorado (2024) 601 U.S. 267

- Legislatively adopted DIFs now subject to *Nollan / Dolan* "essential nexus" & "rough proportionality" test
- AB 1600 already requires nexus studies, aligning with *Nollan* / *Dolan*
- Underscores importance of meeting AB 1600 requirements
- 90-day protest window for developers if agency provides timely notice

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Development Impact Fees

AB 516 (Ramos, D-San Bernardino)

- Effective 1/1/24
- Gov Code sections 66006, 66008, 66023,
- Annual findings must report on:
  - Status of each improvement identified in nexus study
  - Any interfund loans
  - Number of payors entitled to refunds if fees not timely spent
- Audit must assess if DIF is excessive, spending timeline, and facility completion dates
- Duty to notify fee payors → right to audit, receive annual report, and notice of review meeting

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Development Impact Fees

AB 1820 (Schiavo, D-Santa Clarita)

- Effective 1/1/25
- Gov. Code sections 65940.1, 65941.1, 65943.1
- Development applicants may request estimate of DIFs to be provided within 30 days
- On project approval, agency must provide detailed list of estimated fees

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Development Impact Fees

SB 937 (Wiener, D-San Francisco)

- Effective 1/1/25
- Gov. Code section 66007
- Defers most development impact fees on residential construction from the building permit to certificate of occupancy
- Utility connection fees exempted
- Public officer or employee can execute contracts to record lien on property; post sample online

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Development Impact Fees

AB 2243 (Wicks, D-Oakland) (fee changes only)

- Effective 1/1/25
- Gov. Code section 65912.114 (g)
- Applies to office, commercial, or similar use conversion or demolition to residential use
- Requires DIF "credit" so fee is attributable only to the development's incremental impact on public facilities or services

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Development Impact Fees

AB 2430 (Alvarez, D-San Diego)

- Prohibits “monitoring fees” for density bonus or inclusionary housing if units regulated by State agencies
- Applies to preexisting projects
- Monitoring fees can still apply to local incentives for units at different affordability levels than state-monitored units, including moderate-income units
- Effective 1/1/25
- Gov. Code section 65915.3

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Development Impact Fees

AB 2663 (Grayson, D-Contra Costa)

- Applies to local agencies that collect inclusionary housing in-lieu fees
- Deadline – On 1/1/26 must post on website:
  - Annually – the amount of fees collected in the last year and whether fees are intended to fund a project
  - Every 5 years –fees collected in past 5 years, and the projects funded
- Effective 1/1/25 as Gov. Code section 65906.6

Development Impact Fees

AB 2553 (Friedman, D-Glendale)

- Requires cities and counties to reduce traffic DIFs for sites near transit
- "Major transit stop" — Includes bus routes with headways of 20 minutes or less (previously 15 minutes or less)
- Effective 1/1/25
- Gov. Code section 66005.1

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Development Impact Fees

AB 3177 (Wendy Carrillo, D-Los Angeles)

- Applies lower trip generation rate for traffic DIFs for projects in "transit priority area"
  - Previously within ½-mile of a "transit station"
- Limits when a city may impose a "land dedication requirement" to mitigate traffic impacts of housing
- Effective 1/1/25
- Gov. Code section 66005.1

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Development Impact Fees

AB 3012 (Grayson, D-Contra Costa)

- Requires cities to provide fee estimate tool on websites for housing developments
- Requires HCD to create a template by 7/1/28
- Deadlines:
  - 7/1/31 for cities of 500k+
  - 7/1/32 for smaller cities
- Effective 1/1/25
- Gov. Code section 65940.2

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Questions?

Colantuono, Highsmith & Whatley, PC

Northern California

420 Sierra College Dr., Suite 140
Grass Valley, CA 95945-5091
(530) 432-7357

333 University Ave., Suite 200
Sacramento, CA 95825
Phone: (916) 400-0370

670 West Napa Street
Sonoma, CA 95476
(707) 986-8091

Southern California

790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101-2109
(213) 542-5700

7545 Irvine Center Dr., Ste. 200
Irvine, CA 92618
(949) 545-9051

www.chwlaw.us

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