

## MEMORANDUM

TO: Margaret Brodtkin, Founder & Director, Funding the Next Generation

FROM: James C. Harrison and Ben Gevercer

DATE: November 02, 2021

RE: Local Government Funding Options for California's Children

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This memorandum describes how voters and local governments can utilize local revenue sources to fund programs for children, youth, and families. Section I addresses the relationship between the state and local governments on issues of taxation, and how local tax measures appear on city and county ballots. Section II identifies the various types of local taxes that can be levied to fund programs for children, youth, and families. In addition, attached to this memorandum is a chart listing the vote requirements for tax measures placed on the ballot by both local governing bodies and voter-proposed initiatives, as well as the scope and limits for each type of tax listed in Section II.

Finally, please note that there are several other issues that should be considered before deciding whether to proceed with a tax measure in a particular jurisdiction, including relevant provisions of a local charter, local ordinances, and other constitutional limitations on the scope of the tax.

### **I. TAXES AS A FUNDING SOURCE**

Local governments use taxes to fund an array of local services and functions, including fire departments, law enforcement, parks and recreation, education, and health services.<sup>1</sup> Alternatively, local governments may also enact non-tax levies, which are often referred to as charges, assessments, and fees.<sup>2</sup> However, charges, assessments, and fees present challenges as viable revenue sources to raise funds for children, youth, and family services as they cannot be levied for revenue purposes unrelated to the specific charge, assessment, or fee. Because these alternatives face constitutional limits, local tax measures are a more feasible way to fund children, youth, and family services at the local level.

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<sup>1</sup> This memorandum uses "local government" to refer to general law cities and counties and charter cities and counties. Many special districts are authorized to impose taxes for specific purposes, although the initiative power is only available in some special districts. Cal. Elec. Code § 317, 9300.

<sup>2</sup> Cal. Const. art. XIII C, § 1.

**A. State Limits On The Power Of Local Governments To Tax**

The state bestows on local governments the power to tax at the local level. Under the California Constitution, the Legislature cannot levy taxes for local purposes.<sup>3</sup> Instead, the Legislature authorizes local governments to tax within their boundaries.<sup>4</sup>

The state retains certain powers over local taxation. Taxes passed by local governments, like all local laws, must abide by the California Constitution and other state laws.<sup>5</sup> The state government also has the exclusive power to tax certain matters, such as alcohol, tobacco products, insurance companies, and banks and financial institutions.<sup>6</sup>

Despite these state constraints, local governments retain significant power to raise revenues for local purposes, as discussed further in Section II.<sup>7</sup>

**B. Types of Local Government and the Power to Tax**

There are two types of city government in California: “charter cities, which are organized under a charter,” and “general law cities, which are organized under the general law of the State of California.”<sup>8</sup> While all affairs of general law cities are bound by state law, each charter city has the power to pass and enforce any ordinance or regulation related to “municipal affairs.”<sup>9</sup> When a city’s charter or an ordinance relates to municipal affairs, it supersedes state law.<sup>10</sup> In this way, charter cities have more independent authority over matters of local importance than general law cities. Nonetheless, all non-municipal affairs in charter cities fall under the authority of the state Legislature as matters of “statewide concern.”<sup>11</sup> Thus, the scope of any charter city’s power hinges on whether an issue relates to

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<sup>3</sup> Cal. Const. art. XIII, § 24 (“The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.”).

<sup>4</sup> *Santa Clara Cty. Local Transportation Auth. v. Guardino*, 11 Cal. 4th 220, 248 (1995) (“That grant of power is an essential prerequisite to all local taxation, because local governments have no inherent power to tax.”)

<sup>5</sup> Cal. Const. art. XI, § 7; *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893, 897 (1993) (“If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.”).

<sup>6</sup> Cal. Const. art. XX, § 22; Cal. Rev. & Tax. Code §§ 12204, 23182, 30111, and 30462(b).

<sup>7</sup> See, e.g., Cal. Rev. & Tax. Code § 7200 *et seq.* (authorizing local sales and use taxes); *id.* § 7251 *et seq.* (authorizing transactions and use taxes); *id.* § 7285 *et seq.* (authorizing counties’ transactions and use taxes).

<sup>8</sup> Cal. Gov’t Code § 34101 (defining charter cities); *id.* § 34102 (defining general law cities); *City of Huntington Beach v. Becerra*, 44 Cal. App. 5th 243, 251 (2020).

<sup>9</sup> Cal. Const. art. XI, § 5; *Ainsworth v. Bryant*, 34 Cal. 2d 465, 469 (1949). According to the California League of Cities, there are 121 charter cities in California:  
<https://www.cacities.org/UploadedFiles/LeagueInternet/6b/6bbb4ee3-88f9-4d8f-93ad-0075a7b486c4.pdf>.

<sup>10</sup> This authority is known as the “home rule power.” *Johnson v. Bradley*, 4 Cal. 4th 389, 397 (1992).

<sup>11</sup> *State Bldg. & Constr. Trades Council of Cal. v. City of Vista*, 54 Cal. 4th 547, 552 (2012) (“State law is supreme with respect to matters of ‘statewide concern.’”).

municipal affairs or a statewide concern.<sup>12</sup> Courts have never formulated an exact definition of municipal affairs, and in fact they have been clear that it is not even possible to do so.<sup>13</sup> Typically, a municipal affair is an issue that only affects the municipality and has no regional or statewide effect.<sup>14</sup> In making that determination, courts look to the historical circumstances presented and whether under current conditions the state has a more substantial interest in the subject than the charter city, as “the constitutional concept of municipal affairs is not a fixed or static quantity.”<sup>15</sup> What constitutes a municipal affair can change over time; for example, while the construction and maintenance of telephone lines was a municipal affair in 1911, it became a matter of statewide concern by 1959, because the availability of telephone lines on city streets began to impact communication with people all over California.<sup>16</sup> Ultimately, the courts approach the question as an ad hoc inquiry that must be answered in light of the facts and circumstances surrounding each case.<sup>17</sup>

For example, city elections and the power of a charter city to tax for local purposes are municipal affairs.<sup>18</sup> Only a city’s charter, and state or federal tax law or regulations on specific issues, limit a charter city’s power to tax.<sup>19</sup> Meanwhile, state law controls both city elections and local taxation in general law cities.<sup>20</sup>

There are also two types of counties in California: general law counties and charter counties.<sup>21</sup> Charter counties do not, however, enjoy the same degree of authority as charter cities to pass legislation that supersedes state law.<sup>22</sup> Instead, county charters only prevail over state law in certain matters which the state Constitution explicitly reserves for

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<sup>12</sup> *Id.*

<sup>13</sup> *Cal. Fed. Sav. & Loan Ass’n v. City of L.A.*, 54 Cal. 3d 1, 14 (1991).

<sup>14</sup> *State Bldg. & Constr. Trades Council of Cal. v. City of Vista*, 54 Cal. 4th 547, 557 (2012).

<sup>15</sup> *Id.* (citing *Pac. Tel. & Tel. Co. v. S. F.*, 51 Cal. 2d 766, 771 (1959)).

<sup>16</sup> *Pac. Tel. & Tel. Co.*, 51 Cal. 2d at 771.

<sup>17</sup> *Cal. Fed. Sav. & Loan Ass’n*, 54 Cal. 3d at 16.

<sup>18</sup> See Cal. Const. art. XI, § 5; *Johnson*, 4 Cal. 4th at 402, n.13 (“The election of municipal officers is strictly a municipal affair”); *Ex Parte Braun*, 141 Cal. 204, 210 (1903) (“When the power to impose taxes is conferred upon a municipality to enable it to raise the money essential for the purposes for which it is created, that power necessarily becomes a municipal affair.”).

<sup>19</sup> *Mervynne v. Acker*, 189 Cal. App. 2d 558, 561 (1961) (“[When] the state has legislatively occupied a field of general state concern, then the matters in that field ordinarily cease to be ‘municipal affairs’ . . .”).

<sup>20</sup> Cal. Elec. Code § 10101 *et seq.* (describing how general law city elections are conducted); Gov’t Code §§ 36501, 34871 (authorizing different types of city government); *id.* § 37100.5 (authorizing general law cities to impose the same types of taxes as charter cities).

<sup>21</sup> Cal. Const. art. XI, §§ 1, 4.

<sup>22</sup> *City & Cty. of San Francisco v. Regents of Univ. of Cal.*, 7 Cal. 5th 536, 545 n.2 (2019).

them.<sup>23</sup> Unlike a charter city, a charter county does not have authority over county elections or taxation, and must follow state law when enacting legislation related to either.<sup>24</sup>

Overall, charter cities possess broad authority to enact taxes, though the Legislature retains the authority to preempt local taxation on matters of statewide concern.<sup>25</sup> By contrast, general law cities, charter counties, and general law counties may only enact taxes authorized by the Legislature. Without legislative approval or constitutional authority, local governments have no inherent taxing power.<sup>26</sup> However, the Legislature has granted general law cities and counties the same taxation power as charter cities.<sup>27</sup>

### **C. How A Local Tax Measure Is Placed on the Ballot**

There are two ways that a local tax measure may be proposed: a legislative body may propose a measure and place it on the ballot; or voters may propose a measure by initiative petition, which the legislative body must then place on the ballot or adopt.

When local legislative bodies – such as city councils and county boards of supervisors – place tax measures on their local ballots, they pass an ordinance or resolution to do so.<sup>28</sup> The ordinance or resolution must describe the type of tax proposed, the rate of tax to be levied, the method of collection, and the date of the election for the measure.<sup>29</sup> Special tax measures, defined below, must also describe the purpose or service for which the new revenues will be used.<sup>30</sup> A local legislative body may place a special tax measure on the ballot with a simple majority of the members of the legislative body. Though local governments may generally pass ordinances by a majority of all members of a city or county’s legislative body, general tax measures, also defined below, require two-thirds of all members to approve the measure.<sup>31</sup>

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<sup>23</sup> Cal. Const. art. XI, § 4; see *Younger v. Bd. of Supervisors*, 93 Cal. App. 3d 864, 873 (1979) (holding unconstitutional a county law restricting the eligibility of elected county officials because it exceeded charter county’s authority under the state Constitution and general state laws).

<sup>24</sup> See *Cawdrey v. City of Redondo Beach*, 15 Cal. App. 4th 1212, 1219 (1993).

<sup>25</sup> See, e.g., *Century Plaza Hotel Co. v. City of Los Angeles*, 7 Cal. App. 3d 616, 624, 626 n.6 (1970) (discussing legislative language expressly preempting the local taxation of alcoholic beverages and the field of sales and use taxation); *California Fed. Savings & Loan Assn. v. City of Los Angeles*, 54 Cal.3d 1, 12-15 (1991) (finding that State may preempt local taxation even though local taxation has historically been considered a municipal affair).

<sup>26</sup> *Guardino*, 11 Cal. 4th at 248 (citing Cal. Const. art. XIII, § 24).

<sup>27</sup> Cal. Gov’t Code §§ 50075, 37100.5.

<sup>28</sup> *Id.* § 53723 (general tax); *id.* § 50077 (special tax).

<sup>29</sup> *Id.* § 53724.

<sup>30</sup> *Id.*

<sup>31</sup> Cal. Gov’t Code § 53724(b).

The second way a tax measure is placed on the ballot is by the voters through the exercise of their power of initiative.<sup>32</sup> The state Constitution grants voters in cities and counties the initiative power – this includes the power to enact a tax by initiative.<sup>33</sup> The initiative power in cities and counties is generally co-extensive with the legislative power of a city council or board of supervisors, unless state law preempts the voters’ power.<sup>34</sup> Voters in a city or county may therefore in most cases propose any tax that a city or county legislative body can propose. In some instances, the Legislature has the power to exclusively delegate authority over certain decisions to local legislative bodies.<sup>35</sup> If a local legislative body, such as a board of supervisors, is expressly delegated a specific authority by the Legislature, voters are thereby precluded from exercising that authority using the power of initiative.

To place any initiative on the ballot, proponents of an initiative must follow a series of procedures as required by state law (or required by a city or county charter), the most significant of which is the gathering of signatures from registered voters who live in the jurisdiction.<sup>36</sup> If advocates collect the requisite number of signatures to qualify the measure, then the measure must be submitted to the voters or be adopted by the legislative body.<sup>37</sup> This process is explained in more detail below in subsection G.

#### **D. General Taxes vs. Special Taxes**

Any tax levied by a local government is categorized as either a general tax or a special tax.<sup>38</sup> A general tax is any tax imposed for general governmental purposes to supplement a local government’s general fund.<sup>39</sup> If a local government wishes to impose, increase, or extend a general tax, the proposed measure must be submitted to the voters and be approved by a majority of the electorate.<sup>40</sup> A general tax placed on the ballot by a legislative body will appear on the ballot at a regularly-scheduled general election.<sup>41</sup> A general tax placed

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<sup>32</sup> Cal. Const. art. II, § 11 (providing local initiative power); Cal. Const. art. XIII C, § 2 (limiting the ability of local governments to “impose, extend, or increase any general tax.”); see *Cal. Cannabis Coal. v. City of Upland*, 3 Cal. 5th 924, 931 (2017) (holding voters may properly impose taxes via initiative).

<sup>33</sup> Cal. Const. art. II, § 11; *Rossi v. Brown*, 9 Cal. 4th 688, 699 (1995) (“taxation was not only a permitted subject for the initiative but was an intended object of that power.”).

<sup>34</sup> *DeVita v. Cty. of Napa*, 9 Cal. 4th 763, 775-76 (1995).

<sup>35</sup> *Id.* at 776.

<sup>36</sup> Cal. Elec. Code § 9200 *et seq.* (regarding city ballot initiatives); *id.* § 9100 *et seq.* (regarding county ballot initiatives).

<sup>37</sup> *Id.* §§ 9215, 9115(f).

<sup>38</sup> Cal. Const. art. XIII C, § 2(a).

<sup>39</sup> *Id.* § 1(a); *Rider v. Cty. of San Diego*, 1 Cal. 4th 1, 14 (1991).

<sup>40</sup> Cal. Const. art. XIII C, § 2(b); Cal. Gov’t Code § 53723.

<sup>41</sup> *Cal. Cannabis Coal.*, 3 Cal. 5th at 943.

on the ballot by the voters via initiative petition may appear on the ballot at either a regularly-scheduled general election or a special election ordered by the local governing body.<sup>42</sup>

A special tax is any tax enacted for a specific purpose.<sup>43</sup> The revenues from a special tax may also be placed into a general fund, but may only be used for the special tax's specific purpose.<sup>44</sup> A special tax measure placed on the ballot by a legislative body must comply with additional accountability requirements: at minimum, a special tax measure must provide (a) a statement specifying the tax's purpose, (b) a requirement that the funds will only go to the tax's specific purpose, (c) the creation of an account for the tax proceeds, and (d) an annual report prepared by the local government's chief fiscal officer.<sup>45</sup> Special taxes *placed on the ballot by a legislative body* also must be approved by a two-thirds vote of the electorate.<sup>46</sup>

Recently, several California courts have affirmed that a special tax proposed by voter initiative requires only a simple majority vote.<sup>47</sup> To date, these courts have uniformly held that the constitutional requirement that special taxes be approved by two-thirds of the electorate only applies to special tax measures put on the ballot by local governments.<sup>48</sup> In one opinion, the court explained that the power of citizens to raise taxes by initiative with a majority vote, long enshrined in the state Constitution and state law, went unmentioned in the state constitutional provisions requiring a two-thirds majority for special tax measures.<sup>49</sup> Thus, the court reasoned the two-thirds requirement for special taxes neither repealed nor abridged "the people's power to raise taxes by initiative, and to do so by majority vote."<sup>50</sup> This series of cases reinforces the constitutional requirement that the vote threshold for passing special tax measures placed on the ballot via citizen's initiative petition is a simple majority.<sup>51</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> Cal. Const. art. XIII C, § 1(d).

<sup>44</sup> *Guardino*, 11 Cal. 4th at 232.

<sup>45</sup> Cal. Gov't Code § 50075.1.

<sup>46</sup> Cal. Const. art. XIII A, § 4; Cal. Const. art. XIII C, § 2(d).

<sup>47</sup> *City & Cty. of S.F. v. All Persons Interested in Matter of Proposition C*, 51 Cal. App. 5th 703, 715 (2020), *review denied* (Sept. 9, 2020) [hereinafter *Matter of Prop. C*]; *City of Fresno v. Fresno Bldg. Healthy Communities*, 59 Cal. App. 5th 220, 232 (2020), *review denied* (Mar. 30, 2021); *Howard Jarvis Taxpayers Ass'n v. City & Cty. of S.F.*, 60 Cal. App. 5th 227 (2021) *review denied* (April 28, 2021); *City & Cty. of S.F. v. All Persons Interested in Matter of Proposition G*, No. A160659, 2021 Cal. App. LEXIS 603 (Ct. App. July 26, 2021).

<sup>48</sup> *See, e.g., Matter of Prop. C*, 51 Cal. App. 5th at 721.

<sup>49</sup> *Id.*; *see also* Cal. Const. art. II, § 10; Cal. Elec. Code §§ 9217, 9122.

<sup>50</sup> *Matter of Prop. C*, 51 Cal. App. 5th at 721, 724.

<sup>51</sup> To date, however, the California Supreme Court has refused to hear a challenge to these decisions, and until the Court does so, this is some risk that it could reach a different conclusion.

**E. Restrictions on Measures Limiting a County’s Budget Authority**

Although voters have the power to enact new funding for new services and programs, the initiative process at the county level cannot be used to strip the budget authority over existing funds from a local governing body.

In general, courts tend to resolve disputes in favor of the long-standing citizen’s initiative power, but there are limitations on what initiative measures can do. In some instances, the Legislature has exclusively delegated legislative authority to a local legislative body, thereby precluding initiative and referendum.<sup>52</sup> In this vein, California courts recognize certain limits on how initiatives can change county budgets, as the Legislature has enacted the County Budget Act expressly delegating authority over a county budget to a county board of supervisors.<sup>53</sup>

In *Totten v. Board of Supervisors*, the California Second District Court of Appeal held the initiative power could not be used to set minimum future annual budgets for public safety agencies in a general law county.<sup>54</sup> The court reasoned that the voters, by initiative, could not prescribe minimum future annual budgets for county public safety agencies because (a) the state Legislature intended to delegate authority over the county budget and public safety agency funding exclusively to the county board of supervisors; (b) public safety is a matter of “statewide concern”; and (c) the county board of supervisors would otherwise be inhibited from performing their essential government function of overseeing county fiscal affairs.<sup>55</sup> Because the initiative infringed on the essential functions of county government, it exceeded the scope of the electorate’s initiative power and was invalid.

This year, a Los Angeles County Superior Court applied the *Totten* court’s holding and reasoning to invalidate a charter county initiative which sought to limit public safety spending and reallocate funds to community support programs.<sup>56</sup> Even though the charter amendment was placed on the ballot by the board of supervisors – not by the voters exercising their initiative power – the court reasoned that the ballot process could not be used to take the board’s budget authority out of the hands of the current and future boards of supervisors.

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<sup>52</sup> *DeVita*, 9 Cal. 4th at 776.

<sup>53</sup> Cal. Gov’t Code §§ 29000-29093.

<sup>54</sup> 139 Cal. App. 4th 826, 830 (2006).

<sup>55</sup> *Id.* at 834 (citing *DeVita*, 9 Cal. 4th at 775).

<sup>56</sup> *Coal. of Cty. Unions v. Los Angeles Cty. Board of Supervisors*, No. 20STCP04019 (L.A. Superior Court June 17, 2021). The Los Angeles County Board of Supervisors voted in June 2021 to appeal the decision. Sarah Holder, *L.A. County’s Ambitious Policing Reform Agenda Hits a Roadblock*, Bloomberg (June 22, 2021), <https://www.bloomberg.com/news/articles/2021-06-22/l-a-measure-to-fund-police-alternatives-loses-in-court>.

With these cases in mind, county ballot measures that seek to limit, require, or set minimum future annual budgets for certain areas, departments, or programs, or that attempt to move funding from one area to another, are vulnerable to challenge. However, the case law regarding local government budget authority does not constrain advocates in any way from seeking new funding sources to fund new programs or services.

#### **F. Measure A/B Approach**

Another approach to enact tax measures directed toward certain programs is to place a general tax measure on the ballot, accompanied by a separate advisory measure that expresses a preference – but imposes no legal obligation – about how the tax revenues will be used.<sup>57</sup> This is especially useful when a local governing body seeks to impose a tax for a specific purposes; voters tend to like special tax measures because they dedicate revenues to a specific, important community purpose. However, general tax measures require substantially fewer votes to pass than special tax measures (when proposed by a local governing body).

To balance these benefits, some advocates use an approach which borrows from both types of measures. Both measures need only a majority vote to pass, but campaigns can urge voters to support both by asserting new tax revenues will only fund a specific community purpose.

Multiple courts have upheld this approach, despite challenges which argue the measures together more closely resemble special taxes and should require a two-thirds majority to pass.<sup>58</sup> In 1998, the Sixth District Court of Appeal determined a Santa Clara County tax measure, Measure B, was a general tax – even though the county also placed a companion advisory measure, Measure A, on the same ballot to promise Measure B taxes would fund certain transportation projects.<sup>59</sup> Measure A stated it was “Santa Clara County voters’ intent that any new [Measure B] tax funds be spent on [a list of] transportation improvements.”<sup>60</sup> Because Measure A only expressed intent, it did not *legally obligate* the county to reserve Measure B tax funds for certain transportation projects, so Measure A did not render Measure B a special tax measure. Since this decision, other jurisdictions have proposed and passed

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<sup>57</sup> *Coleman v. Cty. of Santa Clara*, 64 Cal. App. 4th 662, 665 (1998).

<sup>58</sup> *Id.*; see also *Johnson v. Cty. of Mendocino*, 25 Cal. App. 5th 1017, 1031 (2018).

<sup>59</sup> *Coleman*, 64 Cal. App. 4th at 665.

<sup>60</sup> *Id.*



general tax measures that included the establishment of an advisory panel to recommend how the funds should be spent.<sup>61</sup>

## **G. Signature Gathering for Voter Initiatives**

State law governs how a proposed initiative qualifies for the ballot. After qualification, proponents for and opponents to the ballot measure submit ballot arguments.<sup>62</sup> Most signature gathering requirements for cities and counties are the same or very similar; key differences are noted below.

In charter cities and charter counties, different rules may apply than those specified in the sections described below. For example, the City of Los Angeles Charter requires an initiative petition to be signed by a number of registered voters of the City equal to 15 percent of the total number of votes cast for all candidates for the office of Mayor at the last general municipal election, or primary nominating election, at which a Mayor was elected prior to the filing of the petition.<sup>63</sup> Please make sure to refer to the charter of the relevant charter city or charter county you intend to file a petition in to verify what the relevant requirements are in that city or county.

### **1. File a Notice of Intention and Request a Title and Summary**

Before an initiative petition can be circulated for signature gathering, the proponents must file with the local government's elections official the text of the measure, a request for a title and summary, and a notice of intention.<sup>64</sup> The initiative's official proponents are the individuals who propose the initiative.<sup>65</sup> The official proponents exercise the initiative powers "[m]uch like a legislator who begins the traditional legislative process by placing a bill in the hopper, an official proponent commences the process of legislating by initiative by asking voters to sign a petition to place an initiative on the ballot."<sup>66</sup> The proponents must file the full

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<sup>61</sup> See City of Berkeley Soda Tax, Sugary Beverages and Soda Tax Question, Measure D (November 2014), [http://web.archive.org/web/20140815151220/http://www.ci.berkeley.ca.us/Clerk/City\\_Council/2014/07\\_Jul/Documents/2014-07-01\\_Item\\_23\\_Placing\\_a\\_Sugar-Sweetened\\_-\\_Rev.aspx](http://web.archive.org/web/20140815151220/http://www.ci.berkeley.ca.us/Clerk/City_Council/2014/07_Jul/Documents/2014-07-01_Item_23_Placing_a_Sugar-Sweetened_-_Rev.aspx); City of Berkeley Real Estate Transfer Tax, Measure P, Real Property Transfer Tax Increase (November 2018), [https://www.acvote.org/acvote-assets/02\\_election\\_information/PDFs/20181106/en/Measures/12%20-%20Measure%20P%20-%20City%20of%20Berkeley.pdf](https://www.acvote.org/acvote-assets/02_election_information/PDFs/20181106/en/Measures/12%20-%20Measure%20P%20-%20City%20of%20Berkeley.pdf).

<sup>62</sup> Cal. Elec. Code § 9161 (counties); *id.* § 9282 (cities). However, ballot arguments are outside the scope of this memorandum and will not be discussed further.

<sup>63</sup> Charter of the City of Los Angeles, § 451.

<sup>64</sup> Cal. Elec. Code §§ 9103, 9104 (referring to this county requirement as a "notice of intention"); *id.* § 9202 (referring to this city requirement as a "notice of intent").

<sup>65</sup> *Chula Vista Citizens for Jobs & Fair Competition v. Norris*, 782 F.3d 520, 527 (9th Cir. 2015).

<sup>66</sup> *Id.*

text of the proposed initiative with the local elections official, who refers the draft measure to the city or county counsel for preparation of a ballot title and summary.<sup>67</sup> The notice of intention must contain the printed name, signature, and business or residence address of at least one but not more than five proponents. It may also include a statement, not exceeding 500 words in length, stating the reasons for the proposed petition. The only restriction is that the statement be accurate. Proponents must also pay a \$200 deposit which the elections official will refund if they certify the sufficiency of the initiative petition.<sup>68</sup>

Within 15 days after the proposed measure is filed, the city or county counsel will provide the local elections official with a ballot title and summary for the proposed measure. Along with the request for title and summary, the proponent must include a signed statement acknowledging that it is a misdemeanor to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure.<sup>69</sup> If the proponents of a proposed initiative believe that the ballot title and summary for the proposed measure is false, misleading, or otherwise violates the law, they may file a lawsuit seeking an amendment to the title and summary.<sup>70</sup> A court will only order an amendment to the ballot title and summary upon *clear and convincing proof* that the ballot title or summary is false, misleading, or otherwise violates the law.<sup>71</sup>

## **2. Publish Notice of Intention**

After the ballot title and summary is returned to the proponents, and before circulating any petitions, proponents must publish the notice of intention, as well as the ballot title and summary of the proposed measure, in a newspaper of general circulation published in that city or county.<sup>72</sup> Then, proponents file proof of publication with the local elections official.<sup>73</sup>

## **3. Gather Signatures**

After the publication of the title and summary, proponents circulate signature-gathering petitions among the registered voters of the city or county and collect signatures.<sup>74</sup>

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<sup>67</sup> *Id.* § 9105(a) (counties); *id.* § 9203 (cities).

<sup>68</sup> *Id.* § 9103(b) (counties); *id.* § 9202(b) (cities).

<sup>69</sup> *Id.* § 9608.

<sup>70</sup> *Id.* § 9203.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* § 9105(b) (counties); *id.* § 9205 (cities).

<sup>73</sup> Elec. Code § 9105(b) (counties); *id.* § 9206 (cities).

<sup>74</sup> *Id.* §§ 9108, 9118 (counties); *id.* § 9207 (cities).

Each section of the petition must include a copy of the notice of intention, and the title and summary prepared by the city or county counsel.

For county measures, proponents must collect signatures from at least 10 percent of the voters in the county, based on how many votes were cast county-wide for all candidates for Governor in the last gubernatorial election.<sup>75</sup> For city measures, proponents must collect signatures from at least 10 percent of the voters of the city for a proposed ordinance, or 15 percent of the voters for a proposed charter amendment, based on voter registration reports to the California Secretary of State.<sup>76</sup> In a city with 1,000 or fewer registered voters, signatures must be collected from either 100 voters or from 25 percent of the electorate, whichever is fewer.

#### **4. Return Signatures to Local Government**

After proponents gather enough signatures, the petitions are presented to the local elections official.<sup>77</sup> This must occur within 180 days from the date of receipt of the title and summary. Within 30 days from the date of filing of the petition, excluding Saturdays, Sundays, and holidays, the elections official examines the petition, and from the records of registration determines whether the petition is signed by the required number of voters, and whether the signatures are valid.<sup>78</sup> If the petition is sufficient, the elections official certifies the results of the examination to the legislative body of the local government at its next regular meeting.<sup>79</sup>

#### **5. Local Government Decides to Submit the Measure to Voters**

After certification, the local government's legislative body must either (1) submit the ordinance, without alteration, to the voters; (2) adopt the ordinance in full; or (3) order a report on the measure's potential impact, after which they must submit the ordinance to the voters.<sup>80</sup> Legislative bodies often ask for additional analysis of a measure, particularly one that is likely to have a fiscal impact. Sometimes, legislative bodies use this provision as a tactic to delay their decision to place the measure on the ballot and call an election. Therefore, it is important to include the time necessary for such an analysis to be conducted in a qualification calendar, especially if the proponents anticipate that the legislative body may be hostile to the proposed measure. If the legislative body is friendly, proponents may wish to work with

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<sup>75</sup> *Id.* § 9118 (counties).

<sup>76</sup> *Id.* §§ 9215 & 9255(c) (cities).

<sup>77</sup> Elec. Code §§ 9110, 9113, 9114, 9115 (counties); *id.* § 9211 (cities).

<sup>78</sup> *Id.* § 9114 (counties); *id.* § 9211 (cities).

<sup>79</sup> *Id.* § 9118 (counties); *id.* § 9215 (cities).

<sup>80</sup> *Id.* § 9118 (counties); *id.* § 9215 (cities). Elections Code § 9111 describes the contents of the report.

members of the body to encourage them to request such a report while the measure is circulating in order to avoid delaying the legislative body's decision to place the measure on the ballot.<sup>81</sup>

## **6. Ability to Withdraw Initiative**

Proponents may withdraw the initiative at any time before the 88th day before the election, whether or not the petition has already been found sufficient by the local elections official.<sup>82</sup>

## **II. COMMON TYPES OF LOCAL TAX MEASURES**

The following are examples of local taxes that local governments have used to generate revenue streams. State law authorizes other local taxes and fees not listed in this Section, which may be levied by local government for specified purposes but could not be directed toward programs for local children, youth, and families. For example, the state allows specially created a "community facilities district" to levy a tax in that district for services or capital expenditures in the district.<sup>83</sup>

The local taxes detailed below may be placed on the ballot either by a local governing body or voters by initiative petition, with the respective vote threshold discussed in Section I. Each of these local taxes can be levied as either a general tax or a special tax unless otherwise noted.<sup>84</sup>

### **A. Local Sales Taxes (Transactions and Use Taxes)**

Cities and counties may levy local sales taxes.<sup>85</sup> Local sales taxes are taxes that apply to the gross receipts from the sale of tangible personal property. State law authorizes all cities, counties, and some other local governmental entities to impose local sales taxes.<sup>86</sup>

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<sup>81</sup> Under Elections Code section 9212, the report must be completed no later than 30 days after certification by the elections official that the proponents have collected a sufficient number of valid signatures. The legislative body must either adopt the measure or call an election within 10 days of receiving the report. *Id.* § 9214.

<sup>82</sup> *Id.* § 9118.5 (counties); *id.* § 9215.5 (cities).

<sup>83</sup> Cal. Gov't Code § 53311 et. seq.

<sup>84</sup> Aside from the parameters of the taxes described in this Section, determining the best revenue source for programs or services for a particular local community may require other considerations that are outside the scope of this memorandum, such as the feasibility of enacting a tax on certain activities that may be unconnected to the programs being funded by the tax.

<sup>85</sup> Rev. & Tax. Code §§ 7261, 7262.

<sup>86</sup> *Id.* §§ 7261, 7262.

This local sales tax is an “add on” tax to the 7.25 percent statewide sales tax rate.<sup>87</sup> Once enacted, the California Department of Tax and Fee Administration collects and distributes all county and city local sales and use taxes back to the imposing jurisdiction.<sup>88</sup> The text of any local tax measure must include the requirements specified in statute.<sup>89</sup>

State law also limits the local sales tax rate to 2 percent within a county, which includes all cities within the county.<sup>90</sup> Any local sales tax that pushed the combined local sales tax rate within the county above 2 percent will not be collected. However, the Legislature has provided exemptions to several jurisdictions allowing the local sales tax rate within those jurisdictions to exceed 2 percent.<sup>91</sup> Any new exemption to the 2 percent local sales tax rate limit would require legislative action.

## **B. Parcel Taxes**

Cities and counties may levy special taxes on real property but cannot increase the statewide 1 percent property tax rate or levy a tax on real property based on the property’s value. The state Constitution establishes the general rule that real property taxes in California must be ad valorem, meaning the tax is proportionate to the value of the property, and the tax rate on real property is limited to 1 percent.<sup>92</sup> Therefore, voters cannot increase property taxes without amending the state Constitution.

However, local governments may impose a parcel tax – an annual tax on each parcel of real estate in a jurisdiction without regard to the value of the property. Parcel taxes may be imposed at a flat rate or be based on a property’s characteristic such as the square footage, the number of units, or any other metric other than property value. For example, East Palo Alto’s parcel tax is only imposed on commercial office space over 25,000 square feet at an annual rate of \$2.50 per square foot. However, parcel taxes imposed by school districts must be levied uniformly, thus each parcel no matter the size pays the same amount.<sup>93</sup>

The Constitution requires all parcel taxes to be special taxes – so parcel tax revenue must be dedicated to a specific purpose or purposes.<sup>94</sup>

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<sup>87</sup> *Know Your Sales and Use Tax Rate*, Cal. Dep’t. of Tax and Fee Admin. (last visited June 7, 2021), <https://www.cdtfa.ca.gov/taxes-and-fees/know-your-rate.htm>.

<sup>88</sup> Rev. & Tax. Code § 7200 et seq.

<sup>89</sup> *Id.* §§ 7261-7169.

<sup>90</sup> *Id.* § 7251.1.

<sup>91</sup> *E.g., id.* § 72892.2 (allowing a local sales tax in Alameda County to exceed the 2 percent limit).

<sup>92</sup> Cal. Const. art. XIII, § 1; Cal. Const. art. XIII A, § 1(a).

<sup>93</sup> Cal. Gov. Code § 50079(b)(1).

<sup>94</sup> Cal. Const. art. XIII D, § 3(a).

### **C. Business License Taxes**

Both cities and counties may levy business license taxes on any type of lawful business.<sup>95</sup> Taxes that local governments levy on businesses operating within a given jurisdiction are business license taxes.

There are different approaches to business license taxes. Some jurisdictions choose to levy a simple flat business license tax for each business. Other jurisdictions levy business license taxes based on a given business's gross receipts. Gross receipts taxes are only applicable to the proportion of the taxed activity that the business actually conducted within the jurisdiction. Counties can only levy this type of tax on businesses within the *county's unincorporated area*.<sup>96</sup> This system often has progressive tiers for taxation based on the business's gross receipts. Additionally, jurisdictions also have gross receipt tax rates that vary according to the type of business the jurisdiction is taxing. One sector of the local economy may end up paying one set of gross receipt taxes while other sectors of the local economy pay different rates. Jurisdictions may choose to only tax certain businesses with these taxes, while not taxing other industries with a business license tax at all. Some jurisdictions base business license taxes of certain businesses on square footage, the number of employees, or other factors.

#### **1. No New Local Soda Taxes**

Although historically the imposition of a local tax on soda (or other sugary, high-caloric beverages) was once viewed as a creative way to generate revenue while encouraging more healthy lifestyles, the Legislature recently enacted a law that preempts all local soda taxes until 2031, except in places that had a soda tax before 2018 (San Francisco, Berkeley, Oakland, and Albany).<sup>97</sup> Until the Legislature or a statewide initiative repeals this law, no jurisdiction may enact a local soda tax until 2031.<sup>98</sup>

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<sup>95</sup> Cal. Rev. & Tax. Code § 7284 (counties); Cal. Gov't Code § 37101, Cal. Bus. & Prof. Code § 16000 (cities).

<sup>96</sup> Cal. Rev. & Tax. Code § 7284.

<sup>97</sup> *Id.* §§ 7284.8-7284.16.

<sup>98</sup> However, there is currently a lawsuit challenging the constitutionality of the preemption. See January 2021 Sales and Use Tax Litigation Report, *Cultiva La Salud v. California*, 34-2020-80003458 12-13 (2021) *available at* <https://www.cdtfa.ca.gov/legal/litigation-roster/2021-1-SUT-Roster.pdf#nameddest=CULTIVA> (explaining that plaintiffs in the lawsuit are seeking a declaration that the statewide preemption of local soda taxes until 2031 is unconstitutional under art. I, § 3, art. II, § 11, art. XI, §§ 3 and 5, and art. XIII, § 25.5 of the California Constitution). The result of this lawsuit may allow local jurisdictions to enact soda taxes via the initiative process prior to 2031. But for the time being, such measures are not an option.

## **2. Cannabis Taxes**

Cities and counties may levy cannabis taxes on cannabis activity in the jurisdiction. In 2016, California voters enacted Proposition 64 to permit adults to possess and recreationally use cannabis, and to regulate the commercial cultivation and sale of recreational cannabis under California law. Proposition 64 also created a dual commercial cannabis regulatory structure whereby both the State and local governments regulate commercial cannabis.<sup>99</sup> Proposition 64 specifically envisioned local governments imposing taxes on cannabis in addition to state cannabis taxes.<sup>100</sup>

If a jurisdiction allows cannabis business activity, voters could levy a tax on that activity. Essentially, a cannabis tax is a business license tax applied to a single industry. Local governments often impose taxes on many different types of commercial cannabis activity that the jurisdictions permit to occur within their boundaries, such as cultivation, processing, distribution, commercial sale, etc.

Importantly, because Proposition 64 gives local governments significant regulatory authority over commercial cannabis in their respective jurisdictions, if a jurisdiction does not presently permit cannabis business activity and voters intend to propose a cannabis tax, they would also need to establish a local regulatory system allowing for cannabis activity.

### **D. Utility User Taxes**

Cities and counties may levy taxes on utility use. This type of tax is often referred to as a utility user tax (UUT) and can cover a wide range of services, including electricity, gas, water, sewer, telephone, and cable television services.<sup>101</sup> The State's power to regulate public utilities does not preempt local governments from levying a UUT to generate revenue.

Counties may only levy a UUT in the unincorporated area of the county. So long as an applicable city charter is not in conflict with a UUT, charter cities may levy this kind of tax. There is no limit on the UUT rates that cities and counties can set. Generally, the public utility or service supplier collects a UUT from customers as part of the standard billing process, which

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<sup>99</sup> See, e.g., Bus. & Prof. Code § 26200(a)(1).

<sup>100</sup> Cal. Rev. & Tax. Code § 34011(c) ("The excise tax imposed by this section shall be in addition to the sales and use tax imposed by the state and local governments."); *id.* § 34021 ("The [excise] taxes imposed by [the state on cannabis] shall be in addition to any other tax imposed by a city, county, or city and county.").

<sup>101</sup> Cal. Rev. & Tax. Code § 7284.2 (county); Cal. Gov't Code § 37100.5 (general law cities). Initially, only charter cities imposed UUTs under their home rule authority. However, the Legislature has expanded this authority to general law cities and counties. Cal. Gov't Code § 37100.5 & Cal. Rev. & Tax. Code § 7284.2.

the utility then remits to the city or county. When a city or county receives voter approval for a new UUT, the local government must submit a written notification to the public utility or service provider, on the effective date of the new UUT, requesting that it collect the tax.<sup>102</sup>

**E. Transient Occupancy (Hotel) Taxes**

Cities and counties may elect to levy a transient occupancy tax (TOT) on persons staying 30 days or fewer in hotels, motels, or other lodging facilities.<sup>103</sup> State laws do not limit TOT tax rates that local jurisdictions may impose. Hotel operators collect TOTs from customers and then remit the funds to the city or county.

**F. Documentary Transfer Taxes/Real Estate Transfer Taxes**

Cities and counties may impose a documentary transfer tax, which is a type of tax on the transfer of title to property. In counties, the tax on instruments transferring real property exceeding \$100 in value may be imposed at a rate of 55 cents for each \$500 of the value of the property transferred.<sup>104</sup> Cities may also impose a tax at one-half the rate, with a credit against the county tax.<sup>105</sup>

However, all cities and counties in the state have imposed documentary transfer taxes at the statutory rate limit.<sup>106</sup> This means that voters by initiative and local governments in each jurisdiction are unable to propose a measure to raise documentary transfer taxes unless the Legislature increases the cap under state law.

However, unlike counties and general law cities, charter cities may impose a similar real estate/real property transfer tax, which is a tax imposed on the transfer of real estate ownership. Typically, the tax rate is based on the value of the property. This voter-approved tax is unique to charter cities, and the rate limit on document transfer taxes does not

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<sup>102</sup> There are also separate notice requirements and timing provisions when an existing UUT is extended or amended.

<sup>103</sup> Cal. Rev. & Tax. Code § 7280.

<sup>104</sup> Cal. Rev. & Tax. Code § 11911. The state Constitution limits cities and counties from imposing special taxes on real property or a transaction tax or sales tax on the sale of real property. Cal. Const. art. XIII A, § 4. However, courts have recently and repeatedly held that section 4 of Article XIII A does not apply to the electorate. *See, e.g., Matter of Prop. C*, 51 Cal. App. 5th at 715-721 (“[Section 4] does not repeal or otherwise abridge by implication the people’s power to raise taxes by initiative...”). Therefore, there is a strong argument that section 4’s restrictions would not apply to voters exerting their initiative power.

<sup>105</sup> Cal. Rev. & Tax. Code § 11911.

<sup>106</sup> The California Local Government Finance Almanac website includes a list of all Documentary and Property Transfer Tax Rates: <http://www.californiacityfinance.com/PropTransfTaxRates.pdf>.



constrain charter cities.<sup>107</sup> As a result, charter cities can presently propose a real estate transfer tax and voters in a charter city may do so by initiative.

Under the state Constitution, real estate transfer taxes are treated as general taxes. Therefore, they cannot be proposed as special taxes.<sup>108</sup> However, some jurisdictions have addressed this limitation by creating an advisory committee on a particular topic, such as homeless services, to recommend how the proceeds of the tax should be spent.<sup>109</sup>

### **G. Admission Taxes**

Cities can impose admissions taxes on receipts from admission or entrance fees for things like sporting events, movie theaters, golf courses, amusement parks, and parking lots.<sup>110</sup> For example, the City of Santa Cruz levies an admission tax of 5% of the price of admission to events within the city limits of Santa Cruz.<sup>111</sup>

## **III. CONCLUSION**

The state Constitution, statutes, and local charters and ordinances set forth the legal parameters for establishing new local revenue streams to fund local services for children, youth, and families. Determining the best revenue stream for a local community requires the consideration of various other factors as well, such as economic and electoral conditions of a jurisdiction, the rate at which the tax or fee should be imposed, and the decision of whether advocates should seek the support of a local governing body to place a measure on the ballot, or alternatively, collect signatures for a ballot initiative.

Each jurisdiction will have unique needs, and fiscal pressures must be considered. Advocates and local government officials should consider the applicable legal and political constraints carefully and consult with their own legal advisors in deciding which funding source to pursue and the level, if any, of voter approval that it requires. In the end,

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<sup>107</sup> See, e.g., *Fielder v. City of Los Angeles*, 14 Cal. App. 4th 137, 146 (1993) (finding property transfer taxes to be a matter of municipal concern for charter cities and therefore outside the constraints of otherwise applicable state laws and instead firmly within the boundaries of the home rule amendment to the California Constitution.)

<sup>108</sup> *Cohn v. City of Oakland*, 223 Cal. App. 3d 261, 262 (1990).

<sup>109</sup> See City of Berkeley Real Estate Transfer Tax, Measure P, Real Property Transfer Tax Increase (November 2018), [https://www.acvote.org/acvote-assets/02\\_election\\_information/PDFs/20181106/en/Measures/12%20-%20Measure%20P%20-%20City%20of%20Berkeley.pdf](https://www.acvote.org/acvote-assets/02_election_information/PDFs/20181106/en/Measures/12%20-%20Measure%20P%20-%20City%20of%20Berkeley.pdf).

<sup>110</sup> See Cal. Gov't Code § 37100.5 ("Except as provided in Section 7282 of the Revenue and Taxation Code, the legislative body of any city may levy any tax which may be levied by any charter city, subject to the voters' approval pursuant to Article XIII A of the Constitution of California."); *id.* § 50075 ("It is the intent of the Legislature to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII(A) of the California Constitution.").

<sup>111</sup> *Admission Tax*, City of Santa Cruz, (last visited June 7, 2021)

<https://www.cityofsantacruz.com/government/city-departments/finance/licenses-fees-and-taxes/admission-tax>.

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however, advocates have many options when looking for opportunities to enact new revenue streams to fund local services for children, youth, and families.

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