

INITIATIVE PROPOSED TO AMEND CA CONSTITUTION

Changing the Rules for Local Taxes and Fees

By Sara Mares, NBS Director

The “Taxpayer Protection and Government Accountability Act” initiative, as amended a few times, has been submitted to the California Attorney General. Almost 1 million signatures are required to be gathered for this initiative to be included on the November 2022 ballot. The initiative has provisions that are retroactive to January 1, 2022, potentially nullifying certain charges approved after that date which do not meet the new requirements.

This initiative would expand the definition of taxes to include charges that are currently classified as fees.

Currently under the provisions in Article XIII of the California Constitution, taxes, property-related fees and assessments are

all distinct types of charges with differing requirements as to how they are charged (based on a reasonable methodology, costs or special benefits, etc.) and how they are approved (election, noticed hearing with or without election, or protest ballot proceeding).

Special taxes require a two-thirds vote while general taxes require a majority vote of the electorate. Based on recent case law, citizen initiative special taxes may be approved by majority vote rather than a two-thirds vote. Some fees, such as development impact fees or user fees, may be approved by a legislative body.

This new proposed initiative would expand the definition of taxes to include charges that are currently classified as fees. It also specifies that fees reflect the cost of providing service (currently the case) and that the cost should not exceed “the minimum amount necessary.” For some fees, this would mean the fee would have to closely approximate the actual cost of the fee payer. Further, if a fee payer challenges a fee,

the local agency would be required to defend the fee calculation and provide evidence that the fee meets this requirement, bearing the burden of proving that a charge is a fee and not a tax under the revised definition. The measure would also limit the ability to assign fee changes administratively.

By making it harder to impose fees, the initiative is expected to result in lower future tax and fee revenue for local government. Provisions are included that affect state taxes and fees as well, rendering it more difficult for the state to raise revenue.

The League of California Cities has opposed this initiative, as has the California Special Districts Association, and several cities have or will consider taking oppositional positions.

Check here for a link to the text of the initiative as well as updates on the status (21-0042A1) <https://www.sos.ca.gov/elections/ballot-measures/initiative-and-referendum-status/initiatives-referenda-cleared-circulation>.

The Legislative Analyst’s Office review of the initiative is here: <https://lao.ca.gov/BallotAnalysis/Initiative/2021-042>.



Parcel Taxes vis-à-vis Religious Organizations

By Andrew Kraus, NBS Consultant

Parcel taxes are used for a variety of reasons in many communities. There has been confusion in the past as to whether religious organizations are subject to certain types of these *non-ad valorem* (i.e., not value-based) property taxes. This confusion stems from the fact that religious organizations are generally exempt from *ad valorem* property taxes under Article XIII of the California Constitution. Despite this, subsequent legislation and court deliberation has confirmed that these types of organizations may still be subject to special parcel taxes being levied by local agencies.

In 2021, a Supreme Court case (*Valley Baptist Church v. City of San Rafael*) concerning the constitutionality of special taxes applied to religious organizations provided definitive input regarding the application of these exemptions in practice. In summary, the City of San Rafael has levied a Paramedic Services Tax ("Paramedic Tax") since it was initially approved in 2010. In Fiscal Year 2015-16, the City

conducted an audit of the Paramedic Tax and found that many non-residential properties were incorrectly excluded from this tax.

As such, the City began levying the additional non-residential properties in 2016 and notified affected property



owners about the prior year amounts to be collected. One property owner affected by this was Valley Baptist Church, who proceeded to file suit, challenging the constitutionality of the Paramedic Tax as applied to a place of worship.

While the trial court initially agreed that the property owner should be

exempt from the Paramedic Tax, the case was reviewed by the Supreme Court which concluded that Valley Baptist Church is not exempt from the Paramedic Tax levied by the City of San Rafael. While religious organizations would be exempt from the collection of *ad valorem* property taxes, those organizations may still be responsible for the payment of special taxes levied by a local agency. The Supreme Court referenced several key past cases, court opinions, and pieces of legislation to reach this conclusion.

With these details in mind, local agencies levying special taxes must be readily aware of the exemption criteria associated with those special taxes and should apply this exemption criteria on a consistent basis in practice.

NBS recommends that a local agency should develop a policy that addresses the treatment of properties with religious uses. Such a policy must take into account the tax methodology (or formula) and be reviewed by legal counsel.

2022 IS LIVE AND IN PERSON AGAIN!

In-person conferences are back in the local government world. In the first quarter of 2022, NBS Director Sara Mares was asked to speak on two revenue-focused panels at the annual California Society of Municipal Finance Officers (CSMFO) conference in San Diego.

NBS team member Tim Seufert was asked to speak at three conferences, those being the League of California Cities City Managers Conference (revenue recovery), the League Public Work's Institute (stormwater best practices) and the California Parks and Recreation Society's (CPRS) Annual Conference (funding sources).



NBS proudly sponsored the CSMFO golf tournament in February, held at The Crossings at Carlsbad.

Managing Director Greg Davidson got to take home the Thank You sign!

YEAR OF THE TIGER ... AND YEAR OF THE BID?

By Tim Seufert, NBS Managing Director

As we celebrate the Year of the Tiger, the Water Tiger to be more specific, we hope for success and good fortune! Let's hope it brings a solid recovery to all our communities.

Business Improvement Districts (BIDs, PBIDs, CBDs, TIDs, etc.) in many communities can support fiscal recovery *and* positive change, funding a wide variety of annual services and financing certain infrastructure: This includes everything from steam cleaning to marketing to implementing parking solutions.

To demonstrate its flexibility, note that a BID can even fund transportation services as is the case in Emeryville. The keys to success are robust public engagement and consensus on the needs to be

funded, a solid Management Plan, and a well-vetted Engineer's Report.

This photo is of the Tiger in San Francisco's Union Square, just blocks from NBS' SF office. NBS supported the Union Square BID in its recent renewal. This BID is a vital and potent force in helping the area recover from the COVID 'meltdown.' The BID is now known as the *Union Square Alliance*, providing a wide array of direct services to business, office, public and residential properties. For more information, visit their site: visitunionsquaresf.com/about-alliance/about-us.

*NBS will release a booklet on **BIDs/ Business Improvement Districts** in 2022. Email contactnbs@nbsgov.com if you would like to receive a copy.*



ADUs and Parcel Changes for 2022

Effective January 1, 2022, local agencies in the Golden State are required to allow the separate sale or conveyance of Accessory Dwelling Units (ADUs) under certain circumstances as a result of the passage of Assembly Bill 345. In addition, Senate Bill 9 became effective January 1 also, which requires all local agencies to consider certain proposed two-unit projects and lot splits ministerially.

Collectively, these two bills continue to pave the way for additional units and parcels to be added to developed residential property. In the context of any existing Special Financing Districts (SFDs), such as Assessment Districts, Community Facilities Districts,

and certain Parcel Taxes, it is important to consider how such units and/or additional parcels might be handled if the formation documents are silent on how such units/parcels might be charged.

It may be appropriate to establish guidelines for such SFDs. This may include a resolution interpreting the Rate and Method of Apportionment (RMA) for a CFD. For an Assessment District, the assessment methodology may require review, and in some cases for bonded assessment districts, apportionments of assessments may be required.

Consult your experts!





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OWNERSHIP CULTURE CREATES SATISFACTION AND SUCCESS

By Mike Rentner, NBS President and CEO

In 2014, NBS leadership decided to take our culture to another level and put our money and ideas where they matter the most: into our staff's financial futures. Moving beyond the basics of compensation and benefits, we waded into the waters of how to share equity with all of our staff. We consulted experts who helped us navigate this journey, as our desire was to not require any monetary input from employees and to minimize any immediate tax consequences for them.

We found the best solution to be an Employee Stock Ownership Program (ESOP). Working with attorneys, tax accountants, and finance experts in the ESOP community, we formed a 100% employee-owned firm. Every employee who is with the company for at least one year is allocated shares and vests over a period of time. The allocation of shares is distributed every year from a pool of shares following an annual valuation. No employee contribution is required—simply being a part of and contributing to the ongoing success of NBS helps drive more ownership for each individual.

ESOPs perform statistically better than companies without this mechanism. In an ESOP, every employee-owner is a difference-maker. Their contribution is hard work, collaboration, and owner-like behavior. They have a high interest level in how the company performs, what the goals are, what the results are, and finally, at the end of the year, what the stock value is. This environment creates a transparent financial structure for all the employee-owners, and a culture where everyone learns the basics of income statements, balance sheets, and all of the financial terms that go along with them.

We are now eight years into our plan and have seen the company, the stock value, and each person's personal wealth grow. Combining this type of mechanism with a 401k and other personal investments fosters financial security for every employee-owner, and guarantees a plan for retirement that is born of their years of hard work and success. 

