



County of Santa Cruz

COUNTY ADMINISTRATIVE OFFICE

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SUSAN A. MAURIELLO, J.D., COUNTY ADMINISTRATIVE OFFICER

November 15, 2001

AGENDA: November 20, 2001

BOARD OF SUPERVISORS
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

REPORT ON THE REPEAL OF THE COUNTY UTILITY TAX

Dear Members of the Board:

On October 16, 2001 your Board accepted the County Clerk's Certificate of Sample Examination for a County Initiative Petition to repeal the County's Utility Tax. The County Clerks letter indicated that the number of signatures on the petitions was sufficient.

Your Board then directed the County Administrative Office to coordinate the preparation of a report pursuant to Section 9111 of the Elections Code and to file the report with the Clerk of the Board of Supervisors on November 15, 2001; schedule the report and the matter of a decision on either (a) adopting the repeal ordinance; or (b) placing the matter on the March 5, 2002 ballot, for the Board of Supervisors regularly scheduled meeting of November 20, 2001; and provide a report on possible alternative measures for consideration by the Board on November 20, 2001.

Section 9111 Report

The Section 9111 Report (Attachment 1), which was developed in consultation with County Department Heads, is summarized below and detailed in Attachment 1. The report shows it is not possible to remove \$11.7 million in funds from the County Budget without having a serious impact on the programs and services available to County residents.

In summary,

- ✓ Because State law requires that the County balance its budget, there is an inescapable relationship between the services which county government provides and the revenues it receives.

SERVING THE COMMUNITY - WORKING FOR THE FUTURE

65

2

**BOARD OF SUPERVISORS
REPEAL OF COUNTY UTILITY TAX**

**AGENDA : November 20, 2001
Page 2**

- ✓ The repeal of the County Utility Tax will cause a permanent ongoing loss of \$9,752,000 and a one time loss of \$2,000,000 in County General Purpose Revenue for a total loss of \$11,752,000 in available financing for next year's budget.
- ✓ The loss of General Purpose Revenue requires an equal and offsetting reduction in the Net Cost of County Government.
- ✓ Repeal of the County Utility Tax will have a far reaching effect on both county wide programs and programs provided to residents of the incorporated area. Deep cuts would be required in:
 - health and social services programs for children, the elderly, the poor and disabled provided by County Departments and community based private non-profit providers;
 - the enhanced pavement management program operated by the Department of Public Works;
 - public health programs for infants and children, mental health services for adults and children and indigent medical care services for the working poor;
 - public safety services including police protection in the unincorporated area, criminal prosecution and probation services provided on a county wide basis;
 - parks and recreation services provided for adults and children in the unincorporated area;
 - environmental health and environmental protection services;
 - emergency services; and
 - the business and legislative functions of County Government.
- ✓ Repeal of the Utility Tax would also require increases in existing fees and implementation of new fees, including:
 - a fee for 911 services in the unincorporated area of approximately \$3.00 per month per phone line;

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- increased fees for parks and recreation programs offered in the unincorporated area for children and adults; and
 - increased fees for a broad range of planning and environmental health services.
- ✓ The reductions will have an effect, directly and indirectly, on financing and construction of infrastructure of all types, including, but not limited to, transportation, parks, and open space and the ability of the county to meet the housing needs of the community.
- ✓ The Report concludes that if the Board of Supervisors adopted the proposed repeal ordinance, it would cause:
- deep reductions in the services available to county residents;
 - increases in fees and charges paid by county residents; and
 - would severely limit the capacity of County Government for discretionary spending which would impair the financing, acquisition and construction of infrastructure improvements, including roads and parks.

Because of these adverse impacts the report recommends that the Board of Supervisors reject the option of adopting the repeal ordinance and order that the repeal measure be placed on the March 5, 2002 ballot.

State's Fiscal Outlook

It should be noted that the reductions summarized above and detailed in the attached report are produced as a result of the repeal of the utility tax. The reductions do not take into account the current recession and reductions in local funds which may result from the State's deteriorating financial condition.

In this regard, on November 14, 2001 the State's bi-partisan and well respected Legislative Analyst released her report on California's fiscal outlook. In summary, the Legislative Analyst report states:

- ***"State revenues are projected to fall 12 percent in 2001-02 — the deepest one year decline in the post World War II period."***
- ***This abrupt revenue fall off is pushing the state into a major deficit for the first time since the early 1990's.***

- *The State will end 2001-02 with a deficit of \$4.5 billion compared to the \$2.6 billion dollar reserve assumed in the 2001-02 Budget Act.*
- *The 2002-03 budget year faces a shortfall of \$12.4 Billion and potentially even more.*
- *As with the rest of the nation, California's economic downturn accelerated in the weeks following the September 11 attacks.*
 - *The most severe adverse developments have been in travel related industries where, for example hotel occupancy rates in November remain well below a year ago.*
 - *Softness is also being experienced in a wide variety of other industry sectors, including manufacturing, real estate, retail sales, and entertainment."*

This is a very ominous development for all local governments. The last time the State faced a major deficit the Governor and the Legislature raided the local property tax and transferred millions of local dollars which support local programs into the State's General Fund Budget.

In Santa Cruz County, the County General Fund's share of the local property tax dropped from 24% to 13% and continues at that depressed level today. In this regard, for 2001-02 the County will send \$21,067,732 to the State General Fund.

The current recession and the State's deteriorating financial condition are a huge unknown in the County's financial future which can only aggravate the fiscal problem which repeal of the utility tax would produce.

Opinion Research

Following the submission of the signatures for the initiative petition to the County Clerk, this office contracted with Gene Bregman and Associates for opinion research concerning County Government and the repeal of the County Utility Tax. Attachment 2 of this letter is a copy of the Bregman and Associates report.

Alternative Measure

On October 16, 2001 your Board directed that this office provide a report on a possible alternative measure for the Board's consideration. That report will be provided on December 4, 2001 which is before the deadline for placing an alternative measure on the March 5, 2002 ballot.

Conclusion and Recommendation

In conclusion, because of:

1. the current recession,
2. the State's deteriorating financial condition,
3. the many uncertainties associated with the tragedy of September 11, 2001, and
4. the program impacts associated with the loss of \$11.7 million in utility tax revenue from next's budget,

we do not believe that the public interest would be well served by your Board adopting the utility tax repeal ordinance at this time. The alternative is to order the matter be placed on the March 5, 2002 ballot for a decision by the voters.

At this time it is our RECOMMENDATION that your Board take the following actions:

1. Order that the initiative ordinance repealing of the County Utility Tax be placed on the March 5, 2002 ballot for a decision by the voters; and
2. Request that the County Auditor prepare a fiscal impact statement and that County Counsel prepare an impartial analysis of the measure.

Very truly yours,



Susan A. Mauriello
County Administrative Officer

Attachments

cc: Each County Department Head
Each Judge
Each City
Each Bargaining Unit
Each Affected Provider

Repeal of the County Utility Tax

Report Pursuant to Section 9111 of the Elections Code

**County Administrative Office
November 15, 2001**

1

Repeal of the County Utility Tax

Report Pursuant to Section 9111 of the Elections Code

Introduction

On October 16, 2001 the County Clerk of the County of Santa Cruz certified the sufficiency of an initiative petition to repeal the County of Santa Cruz Utility Tax a copy of which is attached. At that time, the Board of Supervisors directed the County Administrative Office to coordinate the preparation of a report on the matter pursuant to Section 9111 of the California Elections Code.

Section 9111 of the Elections Code states that the Board of Supervisors may refer the proposed initiative measure to any county agency or agencies for a report on any or all of the following:

1. Its fiscal impact.
2. Its effect on the internal consistency of the county's general and specific plans, including the housing element, and the consistency between planning and zoning.
3. Its effect on the use of land, the impact on the availability and location of housing, and the ability of the county to meet its regional housing needs.
4. Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
5. Its impact on the community's ability to attract and retain business and employment.
6. Its impact on the uses of vacant parcels of land.
7. Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
8. Any other matters the Board of Supervisors request to be in the report.

The issues listed above are individually addressed in the report which follows.

65

1. **Fiscal Impact of the repeal of the County Utility Tax.**

Revenue Loss From Repeal of the Utility Tax

The County Utility Tax is what is known as a users tax. The tax is levied on utility users in the unincorporated area. The tax rate is 7% of charges for gas and electricity, cable television, intra state telephone service except mobile phones, and sewer services. The tax is levied only in the unincorporated area. Local cities levy utility taxes inside their boundaries to finance important city services. The existing tax exempts the first \$34 of gas and electric charges for low income users, exempts agricultural users and provides a ceiling on the payments of the largest users.

The 2001-02 County Budget is based on the receipt of \$9,752,000 from the utility users tax. If the Utility Tax is repealed in March of 2002 the County will lose approximately \$2,000,000 for the current fiscal year and \$9,752,000 from the next year's budget for a total loss for next fiscal year of \$11,752,000.

The utility users tax is one of the County's General Purpose Revenues. General purpose revenues are used to finance the Net County Cost of all County programs with a local share of cost, such as the Sheriff's police services in the unincorporated area, health and welfare services, county parks and recreation programs, adult and juvenile detention and the important legislative and business functions of County Government.

The County Utility Tax is among the most important of the County's General Purpose Revenues. It is the single largest source of general purpose revenue for the unincorporated area and third largest source of general purpose revenue for the overall County Budget.

Relationship Between Revenues and Expenditures

At the Board of Supervisors meeting of October 16, 2001, the proponents of the utility tax repeal suggested that it would be possible to eliminate the utility tax without significant program impacts. This is not correct.

The County is required by State law to have a balanced budget where financing equals expenditures. For county government a balanced budget is not just a good idea it is the law and it is not possible to reduce tax revenue without reducing expenditures and the programs and services associated with those expenditures.

Effect of the Revenue Loss

The material which follows illustrates the fiscal and program impact of the repeal of the County Utility Tax on the programs and services provided to County residents and the user fees which County residents pay for those services. The illustration includes a mix of fee increases and services reductions spread over the broad range of programs and services which the County provides to all the citizens of our community.

The impact statements were developed in consultation with County Department Heads. We believe they provide your Board with a preliminary review of the effects of the repeal on the programs and services offered by County Government. A final reduction plan would be presented for consideration during the fiscal year 2002-03 budget hearings if the repeal is enacted by the voters.

The impact statements are presented on a department by department basis in descending order. The reductions total \$11,752,000 including:

- a \$9,752,000 reduction for the annual loss of general purpose revenues from the repeal; and
- a \$2,000,000 reduction for the one time revenue **loss** in fiscal year 2001-02.

Each department's share of the \$9,752,000 operating reduction was assigned based on the department's relative share of the Net County Cost for 2001-02. The following budgets were excluded from the preliminary reduction plan: adult and juvenile detention, insurances, debt services, long term contracts and the cost of county facilities and utilities. Reductions in these areas will require a more detailed review of contractual commitments, the operation of 24 hour jail facilities and other health and safety constraints than could be accomplished in the thirty day time frame provided for the preparation of this report. The table below summarizes the reduction target amounts by department.

Department	Reduction
• Health Services Agency	(\$2,038,365)
• Dept. of Public Works - Pavement Management	(2,000,000)
• Communications-ESD	(1,348,416)
• Human Resources Agency	(1,315,283)
• Sheriff-Coroner	(1,301,860)
• District Attorney	(591,510)
• Planning	(565,737)
• Parks, Open Space, Cultural Services	(545,411)
• Inter Gov. Service Funds (General Fund Charges)	(397,007)
• Probation	(262,239)
◦ County Administrative Office	(235,602)
• Board of Supervisors	(194,871)
◦ County Counsel	(175,300)

Department	Reduction
• Personnel	(159,855)
• Auditor-Controller	(157,308)
• Animal Control	(123,977)
• Treasurer-Tax Collector	(101,042)
• Assessor	(66,671)
• Agricultural Comm./Sealer of Weights and Measures	(63,468)
• Agricultural Extension Services	(45,000)
• Emergency Services -Disaster Resp.	(33,225)
• DPW- Surveyor	(16,290)
• Commissions	(13,563)
Total Reduction Budgets	<u>(\$11,752,000)</u>

The fiscal impact statements which follow illustrate the far reaching effects of reducing the County Budget by \$11,752,000.

Department	Reduction Amount
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Health Services Agency	(\$2,038,365)
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- The reduction in the Health Services Agency will affect services in the Santa Cruz and Watsonville Health Clinics, Mental Health Services available to individuals with psychiatric disabilities including adults and children, as well as the public health, indigent medical care and alcohol and drug treatment programs available to County residents. The material which follows discusses the reductions.

- Health Clinics in Watsonville and Santa Cruz

The County Clinics currently provide services to uninsured and low-income children, adults and seniors. The reductions will reduce the clinics capacity for physician primary care services by 120 patient visits per week. These patients, which include uninsured children, adults and seniors have limited options for accessing care so they

will have to wait 6-8 weeks for a visit. A reduction in the pharmacy will limit patient's ability to pick up medication the same day it is prescribed.

- Mental Health Treatment for Disabled Individuals

The reductions in County Mental Health will reduce medication and therapy services to individuals with psychiatric disabilities and disabled children and seniors.

Adult Mental Health Impacts

A 20% reduction of mental health jail staffing will decrease the number of evaluations and crisis services provided.

Reductions in outpatient staff will cut capacity by 60 hours per week for mental health services to seriously mentally ill adults across the County. As many as 50 individuals will not receive needed services and many more will receive a reduction of 1-3 contacts per month with their mental health counselors and psychiatrists. Additionally, a reduction in staff time at the crisis program will diminish the County's capacity to provide community crisis services and avoid acute care hospitalization.

A reduction in vocational services provided to seriously mentally ill adults at Community Connections means 10 people daily will not receive the services needed to move toward employment and independent living. Additionally, the program would likely be reduced from 5 to 4 days per week reducing overall effectiveness.

Children's Mental Health

A reduction in available staff time means that 80 children and their families will not receive mental health services. As a result the youth no longer served are much more likely to continue to be in trouble with the law and be a problem to society.

Administration

A reduction in administrative positions in Mental Health and Substance Abuse will reduce the capacity to pursue and manage grants and revenues, as well as the capacity for quality mental health planning and service delivery support for the community.

- Indiaent Medical Care (Medicruz)

Reductions will reduce access to hospitalizations, outpatient treatment, specialists, and pharmacy services to working poor, i.e., individuals who are not insured and who are not disabled or are too young for Medicare.

- Public Health

A reduction in drug and **AIDS** prevention services provided by Salud Para La Gente, the Needle Exchange Project and Santa Cruz Aids Project to teens.

A reduction in Hepatitis C prevention services including screening, vaccinations, and counseling for drug abusers and members of the public who have had transfusions and other potential exposure. This disease can be fatal if undiagnosed and untreated and *is* spread through blood exposure.

A move toward a full cost recovery program for restaurants, spas, animal care facilities, home owners, developers, businesses and contractors who use Environmental Health services for septic permits, restaurant inspections, wells and hazardous materials monitoring and mitigation by increasing fees. This will be a hardship for many businesses and homeowners but the alternative was compromising the community's safety in critical areas such as water and food quality.

A reduction in staff time for the high-risk infant program provided by Public Health nursing that will result in reducing the program by thirty infants.

Reduction in nursing and mental health services to the homeless will reduce access to medical care, counseling, case management, and psychiatric treatment of individuals and families who are homeless. These services are relied upon to transition clients back into housing and to stabilize mental health.

Reduction in health administrative support services will impact training and technical assistance in dealing with complex health issues. Response capacity to the community will be limited especially during periods of high public health alert as is the current situation or during natural disaster mobilization.

- Alcohol and Drug Services

The reduction for Alcohol and Drug Services will curtail services to teens, adults, pregnant mothers and seniors provided by non-profit service providers. This will impact Sunflower House, Alto Services, Si Se Puede, Youth Services, Fenix, Janus, Pajaro Prevention and Student Assistance, Triad, Santa Cruz Community Counseling Center and Women's Crisis Support. These agencies will turn away an estimated 400 clients. Clients will be less able to become clean and sober and more likely to become involved in the criminal justice system, domestic violence, drunk driving, and gang activities.

The reduction in Alcohol and Drug administration will reduce the pursuit of new revenue options and evaluation of services currently funded.

**Department of Public Works
Pavement Management Program**

(\$2,000,000)

- The one time loss will be funded by reducing the amount set aside for the General Fund contribution to the pavement management program. For the past two years the County General Fund has made a significant contribution to the pavement management program as shown in the table below:

	Year	Amount
•	2000-01 Actual Pavement Management Contribution	7,000,000
•	2001-02 Budgeted Pavement Management Contribution	5,000,000

Repeal of the utility tax will restrict the County's financial capacity to make any General Fund Contribution to the Pavement Management Program in future years.

Communications

(\$1,348,416)

- The reduction will be achieved by implementing a fee for 911 services analogous to the fee charged by the State of California. We anticipate that a fee of \$3.00 per phone line per month (land lines only) will be required.

Human Resources Agency

(\$1,315,283)

The Human Resources Agency has projected that the anticipated loss of funding would drastically impact the vital services programs provided to the elderly and families with children. The Agency projects that the funding reduction would result in a loss of:

- 18,600 hours of childcare for the County's poorest families;
- 3,500 shelter days and nights for the County's homeless;
- 10,800 fewer meals to the frail and elderly;
- 87,000 fewer meals provided through the food banks and 71 fewer food vouchers for pregnant and nursing mothers;
- 3,400 less hours of counseling provided by non-profit mental health providers;
- 1,000 fewer visits to non-profit medical and dental programs; and
- 240 fewer Elder Day treatment days.

The preceding **loss** in service units has been calculated solely on the loss of local dollars to community programs. It should be noted that the loss in service could be much greater where the local dollars leverage state or federal money that would no longer be available.

The table below lists the estimated reduction by contractor.

Non-Profit Contractor		Reduction Amount
•	Barrios Unidos	\$ 9,680
•	Central Coast YMCA/Watsonville	3,174
•	COPE Centro Familiar	17,459
•	Court Appointed Special Advocates	5,805
•	Defensa De Mujeres	23,180
•	Dientes Community Dental Clinic	20,962

Non-Profit Contractor	Reduction Amount
• Emeline Child Care Center	2,524
• Fenix Services	14,695
• Community Bridges (Food and Nutrition Services)	154,445
• Second Harvest Food Bank	27,880
• Homeless Garden Project	331
• Interfaith Satellite Shelter Services	1,592
• La Familia Center	11,500
• Mid County Children Center	9,111
• New Life Center	2,091
• Pajaro Valley Healthy Start	3,765
• Pajaro Valley Shelter	8,385
• Planned Parenthood Mar Monte	11,647
• Project Scout	278
• SCCCC/River Street Shelter/Si Se Puede	20,764
• Salud Para La Gente	29,522
• Santa Cruz Aids Project	5,868
• Senior Council	13,854
• Volunteer Center	9,152
• Women's Crisis Support	7,057
• Women's Community Health Center	3,698
• BigBothers/Big Sisters	4,899
• Campus Kids Connection	7,247
• Association of Watsonville Area Seniors	866
• Community Children's Center	1,533
• California Grey Bears	8,112
• Sane/Sart	5,848
• Facilities Account	9,303
• Families in Transition	2,484

	Non-Profit Contractor	Reduction Amount
•	San Lorenzo Valley Youth First	10,621
a	Doran Center for the Blind	2,469
•	Survivors Healing Center	746
•	WomenCare	1,435
•	Children's Center of the San Lorenzo Valley	11,776
a	Central Coast Center for Independent Living	3,829
a	Community Action Board	28,236
•	Child Development Resource Center	961
a	Family Services of the Pajaro Valley	3,147
•	Glen Arbor School	7,893
•	Group Home Society/Above the Line	10,770
a	Homeless Community Resource Center	12,786
a	CRLA (Legal Aid - Community Advocates)	7,273
a	Ombudsman/Advocate	6,879
•	Pacific Pre-School	3,605
•	Pajaro Valley Children's Center	4,007
•	Parents Center	6,201
a	Salvation Army	197
a	Walnut Street Women's Center	2,326
a	Family Service Association of the Central Coast	10,966
a	Senior Citizens Legal Services	9,040
a	Senior Network Services	4,976
•	Senior Citizens of San Lorenzo Valley	2,146
a	Stroke Activity Center	6,307
•	Santa Cruz Toddler Care Center	12,214
a	Valley Resource Center	14,008
a	Watsonville YWCA	4,291
a	Welfare & Low Income Support Net Work	2,647
	Total	\$ 650,463

- The reductions in the Human Resources Agency budget will:
- reduce the coordination of early intervention and prevention services, staff development, the legal services available for Child Welfare Services, social worker time available to the Seniors serviced by the MSSP, and data processing support for Adult Protective Services;
 - eliminate the social work component of the Pajaro Valley Unified School District's Healthy Start program, the Local Day Care Licensing program and SSI advocate for General Assistance;
 - severely curtail or eliminate Adult Protective Services contracts involving respite care for care givers, temporary emergency shelter care, in home support for non-eligible IHSS clients and home repair services;
 - reduce staff available for Veterans Services which will increase processing time for veterans claims and reduced hours for the Watsonville office;
 - require increased fees for Public Guardian payees and conservatorship cases and an increase in cost claiming; and
 - significantly reduce a broad range of programs and services provided by local non-profit groups for seniors, children, teens, women, the homeless and the disabled who live in our community. The reductions will effect 62 different contractors operating a total of 78 programs. The reductions, which average 13.3% are summarized in terms of population served in the table below:

Programs Serving		Reduction Amount
•	Seniors	\$ 162,747
•	Children	130,197
•	Teens	19,529
•	Women	58,589
•	Homeless	39,059
•	Disabled	13,020
•	Other	227,322
Total		\$ 650,463

Sheriff Coroner

(\$1,301,860)

- The Sheriff-Coroner has indicated that:
 - “a reduction of this amount would require the elimination of more than 20 positions in Sheriffs Operations Bureau; and
 - the magnitude of the reduction would severely affect the safety of County citizens.”

The Operations Bureau provides law enforcement services twenty-fours per day, seven days a week to the unincorporated areas of the County. Services include responding to calls, conducting preventative patrols, crime investigation, providing special teams in response to major incidents and providing search and rescue activities on an on-call basis.

District Attorney

(\$591,510)

- The District Attorney has indicated that a cut of this amount “would necessarily require cuts to the most essential functions of the office involving criminal prosecution.”

The Criminal Prosecution Division of the District Attorney’s Office is responsible for prosecuting adults and juveniles who commit criminal violations of state laws and county ordinances. The division also assists local law enforcement agencies on criminal law and procedure.

It is anticipated that the reduction would require the elimination of 8 attorney and/or investigative positions in the criminal prosecution division.

Planning

(\$565,737)

- This reduction will have an adverse impact on the following functions: Inspection Services, Development Review, Resource Planning, Code Compliance, Housing and administration.

- Development Review

The elimination of staffing will reduce the total amount of time available for counter work and permit processing at the Government Center and at the Permit Centers. There will be delays in responding to public inquiries and increases in processing times for all types of

permits. Additionally, fees for services will be increased to provide for full cost recovery for development review.

- Resource Planning

The Resource Planning function will be affected by the elimination of staff assigned to protect fisheries through erosion control, watershed management and the review of timber harvest plans. Reductions will also affect the department's capacity for habitat conservation planning.

- Code Compliance

Staff reductions will limit the time available for this function and will result in additional backlogs in code compliance caseloads.

- Housing

A reduction in staff time assigned to Housing will reduce the department's capacity to advance the County's housing goals and delay preparation of the Housing Element of the General Plan.

- Inspection Services

The elimination of staffing expenditures will reduce the capacity of the department to process complex engineering proposals in a timely manner. In Santa Cruz, where unique conditions sometimes demand complex solutions, this may affect a broad range of development proposals.

- Other Planning Functions

The elimination of staff support will have an effect on the public services available throughout the department including capacity for prompt response. The department's multi-year program to convert its paper records to electronic files to improve access and increase staff productivity will be suspended or delayed.

- Financing of the General Plan Update

Because the County's capacity to finance new costs will be diminished, the Department will propose fee increases to support these activities.

Parks, Open Space and Cultural Services

(\$545,411)

- The reduction would have a severe impact on a broad range of parks, recreation and cultural programs and services operated by the department or offered by the department through contracts with local community groups. There are severe reductions in programs and some activities have been eliminated.

- **Parks and Recreation Programs**

Swim Center

The Swim Center would be closed two days a week, (Sunday and Monday) and the hours adjusted for Tues.-Friday. Pool hours would be reduced 12.5% (an average of 9 hours per week in the fall, winter and spring months and an average of **22** hours per week during the expanded hours offered for the summer months). In addition there would be reductions in staff for customer service, maintenance and lifeguards, an increase in gate fees for swimmers of \$.50 per entry, an increase in Swim Lesson fees and reduced fee days for kids would be eliminated.

Grants

A reduction in year-round recreation grants to the Davenport Teen Center, Pacific School and Loma Prieta School of 12.5%.

Elimination of the grants to the Monte Fireworks and the O'Neill Sea Odyssey, which provides environmental education to area youth.

Summer Recreation

Summer Recreation Contracts to various agencies including the San Lorenzo Valley Youth Council, Bonny Doon, Watsonville YMCA, Live Oak School, and Davenport Resource Center are proposed to be eliminated.

The Ben Lomond Dam summer program including the Aquatics staff and the contract for installation and removal of the fish ladder are proposed for elimination.

The Free Summer Drop-In Recreation Programs at all **4** sites are proposed to be eliminated.

21

All youth recreation fees would be increased by 12.5% above the rate of inflation.

- Facilities

On-site security of the Miller Property will be curtailed.

The Burt Scott Estate will cease to operate as a meeting facility and is proposed to be rented as a home.

Fees for all facility rentals including fields, picnics, community rooms, pools, concessions, horse boarding and house rentals will be increased 10-12% above the rate of inflation.

- Parks Planning

The department's capacity for parks planning will be severely limited by staff reductions in this division.

- Arts and Cultural Programs

The department's capacity to support the Arts Commission and County Art programs will be severely limited by staff reductions in this division.

Grants to the Cultural Council, the McPherson Museum of Art and History and the Santa Cruz Veterans Building are proposed for reduction as follows:

•	Cultural Council	\$	23,019
a	McPherson Museum of Art and History		20,707
e	Santa Cruz Veterans Building		7,500

Information Services Department

(\$397,007)

- The reduction will delay the implementation of various improvements in the County's computer network which will decrease the productivity of County Departments and the services available to county residents including various web based E-Government Services.

65

22

Probation Department

(\$262,239)

- The reduction will result in reduced staff and increased caseloads. Decreases in probation supervision can impact public safety, decrease opportunities for rehabilitation, and potentially shift costs to the adult and juvenile detention system. The decrease in supervision/increased caseloads for each program area is as follows:

- Domestic Violence

A reduction in available staff in the Adult Domestic Violence Unit will increase caseloads to an average of **175** cases per Probation Officer.

- Adult Services

A reduction in available staff in both the North County and South County Adult Service Units will increase caseloads for officers who now carry 150 to 300 cases per officer. This will be accomplished by increasing reassessing client risk and increasing the number of unsupervised or lightly supervised cases.

The reduction in the South County Unit would result in both increased caseloads and the end of the Adult Divisions "vertical supervision" program for South County.

- Juvenile Services

A reduction in available staff would reduce the Department's capacity to provide the intensive supervision and services which have helped keep children in our community out of institutional placements.

County Administrative Office/Clerk of the Board

(\$235,602)

- The reduction would reduce staffing available for inter-governmental projects and advocacy and **for** the department's efforts to improve the efficiency and effectiveness of County operations. It would also effect the availability and timeliness of the Clerk of the Board's public information services.
- The reduction would also result in 12.5% reductions in the following shared programs:

15

- Criminal Justice Council Contract for Intergovernmental Coordination \$ 7,391
 - Convention and Visitors Bureau Contract for the promotion of tourism in the County \$ 34,901
- The reduction would result in the elimination of contract funds for expert and technical assistance and legislative advocacy when such assistance or advocacy is needed to protect the County and the public's interest.

Board of Supervisors

(\$194,871)

- The reduction would reduce staffing resources and expenditures and would severely impair the capacity of the Board of Supervisors to effectively respond to constituent concerns and to advocate on behalf of constituents with other agencies and governments.

County Counsel

(\$175,300)

- The reduction reduces available attorney time and resources which restricts the County's capacity to defend and pursue the public interest in a broad range of land use and consumer litigation.

Personnel

(\$159,855)

- The reductions in Personnel would affect the County's ability to attract and retain the best employees in this difficult labor market. Specifically, the reductions in staff time would limit important programs and services offered by the Department for the benefit of other departments including recruitment, training, performance counseling and assistance with discipline and long term succession planning.

Auditor-Controller

(\$157,308)

- The reductions in the Accounting and Control functions would impede the development and implementation of E- Government capabilities for County Government, an important public service which would affect many County Departments and programs.
- The reduction in the Audit functions of the office will lessen an important watchdog function of County Government by diminishing the capacity to perform discretionary audits of many programs and services.

24

Animal Control

(\$123,977)

- The reduction would result in a significant curtailment of or delays in a broad range of animal control services including patrol, nuisance investigations, dog bite investigations and dead animal pick up for rabies testing.

Treasurer Tax Collector

(\$101,042)

- Reductions in Tax Collector and Treasury functions will reduce taxpayer services and create delays in the processing and investment of funds held in the County Treasury which affect all local governments including special districts and the schools.

Assessor

(\$66,671)

- The reduction will effect the timeliness of the processing of assessment roll changes which will in turn adversely effect the property tax system and revenues available to all local governments which receive property taxes including special districts and the schools.
- The reduction will also delay important projects designed to improve the efficiency and effectiveness and productivity of the office.

Agricultural Commissioner

(\$63,468)

- The reduction will have a severe impact on the Protective Inspection function which the Agricultural Commissioner operates for benefit of the community and will diminish the effectiveness of the department's efforts in four important local programs — Pierce's Disease (Glassy - Winged Sharpshooter), the response and emergency quarantine program for Sudden Oak Death syndrome, regulatory efforts concerning methyl bromide use, and the local noxious and invasive weeds program.

Agricultural Extension

(\$45,000)

- The reduction would curtail the development of an important new environmental program for the County. Specifically, work on the Integrated Pest Management Program would end.

Emergency Services

(\$33,225)

- The reduction in this function will reduce the County Government's capability for disaster planning and response including training, public education and advocacy for Santa Cruz County at the State and federal level.

Surveyor

(\$16,290)

- The reduction will increase processing time required for survey maps, final map review and use permit plan check.

Commissions

(\$13,563)

- The reduction would reduce the staff time available to the Women's Commission, the Seniors Commission and the Children's Commission and would result in a loss of services and advocacy.

Other Reduction Comments

The required reduction has been allocated among most County Departments and functions because the size of the revenue loss from the repeal is so large as to preclude reducing only unincorporated area or only General Government Departments. For example, the on-going reduction amount of \$9,752,000 is equal to:

- ✓ 52% of the Net County Cost of the major unincorporated area services - the Sheriff's Office, Parks and Planning;

or

- ✓ 89% of the Net County Cost of all General Government functions excluding plant, elections, utilities and facility costs and liability insurance.

A 52% reduction in the Net County Cost of the Sheriff's Office, Parks and Planning would dismantle most of the public safety, parks and planning functions of county government. Likewise, an 89% reduction in the Net County Cost of the General Government functions of County Government is equally unworkable.

2. **The initiatives effect on the internal consistency of the county's aeneral and specific plans, includina the housina element, and the consistency between plannina and zoning.**

The initiative will have little or no effect on the internal consistency of the County's general and specific plans and will have little or no effect on the consistency between planning and zoning. However, work on general plan program priorities will be curtailed.

3. **The initiatives effect on the use of land, the impact on the availability and location of housina. and the ability of the county to meet its reaional housina needs.**

In the past, the major affordable housing program in Santa Cruz County has been associated with the 20% low and moderate income housing set aside provided for in redevelopment law. Over the long term, the repeal of the utility tax could affect the County's ability to engage in redevelopment activities and utilize tax increment financing, which requires a General Fund share of costs, and this would restrict funds available for housing. Land use permit processing time will increase as will fees for these services.

4. **The initiatives impact on fundina for infrastructure of all types. includina. but not limited to, transoortation, schools, parks. and open space. The report mav also discuss whether the measure would be likelv to result in increased infrastructure costs or savinas. includina the costs of infrastructure maintenance, to current residents and businesses.**

The repeal of the utility tax would have an adverse effect on funding for County infrastructure projects including roads, parks and open space because the County has used General Fund monies for roads, the acquisition, development and operations of parks and the acquisition and management of open space. Such expenditures are discretionary and the repeal of the utility tax will severely restrict the capacity for discretionary spending in the County's General Purpose Revenues.

Absent a capacity for discretionary spending, the County's General Purpose Revenues will be required to fund State mandated obligations including the operation of adult and juvenile detention facilities, the local share of State mandated health and welfare expenditures, maintenance of the property tax system for the benefit of the State and other local governments. Examples of the effect of the repeal on spending for infrastructure and operations are as follows:

- In the 2000-01 fiscal year, the Board of Supervisors took the unprecedented action to allocate significant financial resources towards a major program to upgrade the condition of the County's road system. That effort was anticipated to require appropriations of approximately \$5 million annually for seven years. To date, funding has been committed for the first two years of that program and the public is just now beginning to realize the benefits that program will produce. If the utility tax is repealed, that effort will be severely impacted, because the County will lack the

discretionary funds to continue the program. This in turn will cause further deterioration of the County's transportation infrastructure.

- Elimination of the utility tax will require reductions in the level of effort supporting the operation of parks facilities, most likely resulting in restricted hours of operations and increased user fees. The most dramatic impacts will likely be felt at the Simpkins Family Swim Center, which demands the greatest share of local tax support, and after-school and recreation programs for the County's youth.

5. The initiatives impact on the community's ability to attract and retain business and employment.

The ability to attract and retain employers will be adversely affected because the County's financial capacity for the maintenance and improvement of its infrastructure and for the operation of high quality government services will be severely restricted if the Utility Tax is repealed. The ability of a community to attract and retain businesses and employers depends on, in part, the ability of the local government to maintain high quality government services and maintain and improve its infrastructure.

6. The initiatives impact on the uses of vacant parcels of land.

The repeal of the utility tax could have a limited affect on the use of vacant parcels. For example, in the past the County has acquired vacant land for parks purposes, or participated in the acquisition of vacant land for parks purposes with General Fund monies. These expenditures were discretionary and as noted in the preceding items the repeal of the utility tax would severely restrict the discretionary capacity in the County's General Purpose Revenues.

7. The initiatives impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas desianated for revitalization.

Repeal of the utility tax should have a minimal effect on existing business districts. As noted in the preceding items the repeal of the utility tax would severely restrict the discretionary capacity in the County's General Purpose Revenues which would affect the acquisition of open space, maintenance and improvement of county roads with general fund monies and the ability of the County to engage in redevelopment activity where there is a General Fund share of cost.

Over the long term the repeal of the utility tax could increase the pressure to approve certain commercial developments, thereby encouraging the fiscalization of land use decisions. This process could increase development pressure on agricultural lands.

8. Any other matters the board of supervisors request to be in the report.

The Board did not request that other matters be addressed in the report.

28

Conclusion and Recommendation

In conclusion, adopting the repeal ordinance would cause:

- deep reductions in the services available to county residents;
- increases in fees and charges paid by county residents; and
- would severely limit the capacity of County Government for discretionary spending, which over the long term, would impair the financing, acquisition and construction of infrastructure improvements, including roads and parks.

Because of these adverse impacts it is the recommendation of the County Administrative Office that the Board of Supervisors reject the option of adopting the repeal ordinance and order that the repeal measure be placed on the March 5, 2002 ballot.

65

Copy of Repeal of Petition

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The County Counsel has prepared the following title and summary of the chief purpose and points of the proposed measure: **COUNTY UTILITY TAX REPEAL INITIATIVE MEASURE**. This initiative measure proposes to repeal Chapter 4.25 of the Santa Cruz County Code, entitled "Utility Users Tax." Chapter 4.25 imposes a tax on persons in the unincorporated areas of Santa Cruz County (that is, outside the cities of Capitola, Santa Cruz, Scotts Valley and Watsonville) who receive and pay for electricity, natural gas, ~~sewer~~ cable television, and intrastate telephone service. The tax is a percentage of the charges for such utilities. The chapter also sets out various exemptions from the tax. The current tax is used for the general government purpose, of the County of Santa Cruz. If eligible voters meeting or exceeding the number set by State law sign the petition, the measure will qualify for the ballot, unless adopted by the County Board of Supervisors without an election. If the measure is approved, the utility users tax shall no longer be collected in the unincorporated areas of the County and shall no longer be a source of revenue for County governmental purposes. If the measure is approved, it will also preclude the Board of Supervisors from adopting any new tax based on the consumption or use of natural gas, electricity, telephone, sewer and/or cable television services, unless and until further action is taken by the voters to change the terms of the measure.

Notice of Intention to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the County of Santa Cruz for the purpose of repealing the Utility Users Tax, Chapter 4.25 of the Santa Cruz County Code. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

1. Taxes on the utility users must be eliminated now because of soaring costs.
2. Seniors and low-income residents suffer financially from this tax when they are unable to pay for their ~~uses~~.
3. This will be the first time that the People of Santa Cruz County have the opportunity to vote on this tax.
4. Telephone, sewer, cable television access, natural gas and electricity are essential utility services and should not be taxed in this manner.
5. Most cities, and a vast majority of counties in California do not impose a utility users tax.
 s/ Mrs. Victoria S. Haslam-Bowman, 4320 Gladys Avenue, Santa Cruz, CA 95062
 s/ Mr. Robert E. Lissner, 2731 Old San Jose Road, Soquel, CA 95073
 s/ Mr. Robert B. Suhr, 100 Marinera Road, Scotts Valley, CA 95068
 s/ Mr. Thomas L. Sprague, 290 Altos Drive, Watsonville, CA 95076
 s/ Mr. Charles Richard Fetter, 2042 Lockhart Gulch Road, Scotts Valley, CA 95068

THE PEOPLE OF THE COUNTY OF SANTA CRUZ DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 4.25 of the Santa Cruz County Code, imposing a utility Users Tax, is repealed.
 SECTION 2. The County of Santa Cruz shall not impose a utility users tax based on consumption or use of natural gas, electricity, telephone, sewer and/or cable television services.
 SECTION 3. If any provision of this measure is found to be invalid, that invalidity shall not effect the remaining portions of this measure.

NOTICE TO THE PUBLIC

THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER, YOU HAVE THE RIGHT TO ASK.

1	Print Your Name	Residence Address Only	
	Your Signature as Registered to Vote	City, State	Zip
2	Print Your Name	Residence Address Only	
	Your Signature as Registered to Vote	City, State	Zip
3	Print Your Name	Residence Address Only	
	Your Signature as Registered to Vote	City, State	Zip
4	Print Your Name	Residence Address Only	
	Your Signature as Registered to Vote	City, State	Zip
5	Print Your Name	Residence Address Only	
	Your Signature as Registered to Vote	City, State	Zip
6	Print Your Name	Residence Address Only	
	Your Signature as Registered to Vote	City, State	Zip

DECLARATION OF PERSON CIRCULATING SECTION OF INITIATIVE PETITION

I, _____ declare:
 (Print Name)

1. My residence address is _____, in Santa Cruz County, California, and I am a registered voter in Santa Cruz County;
 2. I personally circulated the attached petition for signing;
 3. I witnessed each of the appended signatures being written on the petition and to my best information and belief, each signature is the genuine signature or the person whose name it purports to be; and
 4. The appended signatures were obtained between the dates of _____ and _____, inclusive.
- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ at _____
 (Date) (Place of Signing) (Complete Signature of Petition Circulator)

31

Opinion Research

Attachment 2

65



GENE BREGMAN & ASSOCIATES

Public Opinion & Marketing Research

MEMORANDUM

To: County of Santa Cruz

From: Gene Bregman
Gene Bregman & Associates

Date: November 2, 2001

Re: Results of Countywide Survey/Findings and Recommendations

This memorandum presents the highlights of results from a public opinion survey conducted by Gene Bregman & Associates on behalf of Santa Cruz County. A total of 400 likely voters were interviewed by telephone during the period October 5-7, 2001. The margin of error for the survey ranges from +/- 2.9% to +/- 4.9%, depending on response levels to a particular question.

1. Survey participants first were asked to assess how things were going in Santa Cruz County today. More than half the respondents (51 percent) said that things in the County are going in the right direction, with just 31 percent saying they are pretty seriously off on the wrong track. The highly favorable nature of these attitudes can best be seen when only those people with an opinion are taken into account, with a resulting 62 percent being positive and just 38 percent being negative towards the County. Those favoring repeal of the utility tax, Republicans, and those over 65 years of age are less satisfied than are other voters.

33



2. The measure to appear on the ballot that would repeal the County's seven percent utility tax promises to be a very close election. At the time of this survey, 44 percent said they would vote in favor of the measure, a virtually equal 40 percent were opposed, with the rest undecided. After survey participants heard eight reasons to oppose the initiative, opposition was greater than support. However, those opposed still represented less than a majority of all voters (Favor = 38 percent, Oppose = 47 percent, Undecided = 16 percent).
3. When three other possible ballot measures were tested, two were supported by statistically equal proportions of voters: exempting senior citizens over age 65 from paying the utility tax (Favor = 58 percent), and exempting the first \$51 of each month's gas and electric charges from the tax (Favor = 54 percent). For the third measure, there was less support, as voters were evenly divided on an advisory statement to instruct the County to spend the tax only for law enforcement, health and social service programs, and park and recreation programs. The table, below, shows all five votes in the survey:

	<u>Yes</u>	<u>No</u>	<u>Undecided</u>
First Vote on Repeal	44%	40%	17%
Second Vote on Repeal	38%	47%	16%
Senior Exemption	58%	36%	7%
Exempt First \$51	54%	34%	13%
Advisory Statement	44%	46%	10%

4. When voters were asked to choose their preferred option for the utility tax, there was no clear favorite. However, the most frequent selection was for the senior exemption (25 percent). At statistically equal levels were repealing the tax completely and leaving the tax as it is today (19 percent, each), followed by exempting the first \$51 of gas and electric bills (16 percent), and the advisory statement (13 percent).

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34



5. Support in the first ballot for the repeal was greatest among Republican men (Favor = 69 percent), those over the age of 50 (50 percent), and those currently without children in their households (48 percent).
6. Opposition was greatest among Democrats under the age of 50 (Oppose = 54 percent), and voters with children (48 percent).
7. It is particularly interesting to note that after respondents learned more about the effects of a utility tax repeal and became generally opposed to it, statistically significant differences among the various voter groups were less common, although support was still strongest among Republicans, especially Republican men, and opposition was still strongest among Democrats under the age of 50.
8. Voters were evenly divided on the recently enacted federal income tax cut, with **44** percent approving of it and **47** percent disapproving. Approval was greater among those favoring repeal of the utility tax and Republicans, especially Republican men.

15

35

HAROLD W. GRIFFITH
P.O. Box 96
Freedom, California 95019-0096
(831) 763-0607

October 31, 2001

Santa Cruz County Board of Supervisors
701 Ocean Street, Room 500
Santa Cruz, Ca. 95060

Dear Supervisor:

On October 16, 2001 the Board directed county staff to study the fiscal effects of the loss of revenue, etc., if the utility user tax was repealed. At that meeting, the County Administrative Officer, Susan Mauriello stated to the Board that the utility tax was not illegal. Dwight Herr of the county counsel's office, stated that the utility tax was adopted in reliance on case law existing at the time of adoption. Since three Supervisors are members of the California State Bar and the other two Supervisors have been in public office for ten plus years, I feel that there should be no difficulty understanding the legal issues 'surrounding this tax. This letter, therefore, examines how and why the utility tax is illegal and shows that it was not adopted in reasonable reliance on case law existing at the time of adoption. This letter will also address some ramifications of those facts and a solution to the problem.

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36

I.

LEGALITY OF THE TAX

A.

ARTICLE XIII § 24

The California State Constitution Article XIII § 24 states:

* "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."

While explaining this section of the State Constitution, the California Supreme Court stated in *Santa Clara County Local Transportation Authority v. Guardino (Guardino)* (1995) 11 Cal. 4th 220 (Exhibit A) at page 247 that:

"The first clause- 'The Legislature may not impose taxes for local purposes'- is a restriction on the Legislature's otherwise plenary power 'of taxation [citation]; the clause prohibits the Legislature from imposing a particular *class* of taxes, viz., taxes whose proceeds are devoted to purely 'local' purposes [citations].

Complementing the first clause, the second clause of the constitutional provision- i.e., the Legislature "may authorize local governments to impose" local taxes - is a confirmation of the Legislature's authority to grant the taxing power to local governments insofar as necessary to enable them to impose such taxes if they see fit. That grant is an essential prerequisite to all local taxation, because local governments have no inherent power to tax."

Thus, the Legislature has complete and absolute power over all taxation in the state and must grant or authorize local governments to levy taxes before those entities have any power, authority or right to levy any local tax.

6 ///

37
B.

LEGISLATIVE AUTHORIZATION

As the California Supreme Court states in *Guardino* page 248:

"The Legislature's authority to grant taxing power to local government, moreover, includes the authority to prescribe the terms and conditions under which local governments may exercise that power: 'If the legislature grants this power to these subordinate divisions of the government, it has the right to say, by the grant, in what manner that power shall be exercised.' [citation] As this court observed over a century ago, 'While the constitution has taken from legislature the power to impose taxes upon counties or other public corporations, it has not given to such corporations any power whatever to impose taxes, but has authorized the legislature to vest such power in them by general laws. [citation] The power of a county or other public corporation to impose any tax is only that which is granted by the legislature, and *its exercise must be within the limits and in the manner so conferred.*' [citation] Again this is the general rule: 'Except as prohibited or limited by the constitution, and *with such restrictions as it deems fit*, ... '"

The *Guardino* Court continues on page 250:

"The requirements of voter approval before a local government enacts a proposed tax is another such condition on the exercise of local taxing power."

The Legislature has granted counties the authority to levy utility users taxes in Revenue and Taxation Code § 7284.2

(see Exhibit B) but in section 7284.4 the Legislature states:

"Any tax levied pursuant to this chapter shall be subject to any applicable voter approval requirement imposed by any other provision of law. ..."

Government Code § 53723, (see last page of Exhibit A), is a section of Proposition 62, which was adopted by the California voters in November 1986, and is a provision of law which imposed

38
a requirement of voter approval on February 26, 1991.

Government Code § 53723 states:

"No local government, or district, whether or not authorized to levy a property tax, may impose any general tax unless and until such general tax is submitted to the electorate of the local government, or district and approved by a majority vote of the voters voting in an election on the issue."

Government Code § 53724, of Proposition 62 is a provision of law which imposes requirements on the governing legislative body and puts some requirements on the ordinance or resolution to be adopted by the governing body. The proposed ordinance must conform to the requirements of section 53724 and then be approved by a majority of the voters voting in an election on the approval of the tax at issue. Since the County Utility user tax was adopted on February 26, 1991 (Exhibit "C") then it was required that the County obtain voter approval of the tax.

Therefore: The Legislature's grant of power to the county allowing the levy of a utility user tax placed the condition of voter approval on that authorization. Proposition 62 also placed requirements on the ordinance or resolution approved by the Board which levies a general tax. Those conditions, voter approval and the ordinance proposing a tax, rate, method of collection, date of the election, were not met.

C.

VOID, ULTRA VIRES and ILLEGAL

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Article I § 26 of the California Constitution states:

39
"The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."

in *Hotel Employees & Restaurant Employees International Union v. Davis* (1999) 21 Cal. 4th 585 on page 602 California Supreme Court wrote:

"A statute inconsistent with the California Constitution is, of course, void. *Nougues v. Douglass* (1857) 2 Cal. 65, 70."

Black's Law Dictionary, 6th Edition, on page 747 defines

ILLEGAL: Against or not authorized by law.

CONCLUSION TO LEGALITY OF TAX

Since the California State Constitution, Article XIII § 24, requires all local governments to receive Legislative authorization before levying a local tax; and since, Revenue and Taxation Code § 7284.4, which grants that authority, commands voter approval if required by any provision of law; and since, Proposition 62 (Government Code § 53723), is a provision of law that required voter approval of all general taxes on February 26, 1991 when the Santa Cruz County utility user tax was adopted; then the county utility tax was not authorized by law to be adopted without voter approval on February 26, 1991. Since this tax did not and has not received voter approval it is void, *ultra vires* (beyond the jurisdiction and authority of the Board of Supervisors to adopt) and the tax is illegal.

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40

II.

OTHER ISSUES

A.

REASONABLE RELIANCE ON EXISTING CASE LAW

More than three months after the Santa Cruz County Board of Supervisors adopted the utility user tax, an Appellate Court ruled Proposition 62 unconstitutional in *City of Woodlake v. Logan* (May 29, 1991 - see Exhibit D). Although, Propositions 62's "window period" had been declared unconstitutional (Government Code § 53727 (b)), in 1988, in *City of Westminster v. County of Orange* (see Exhibit A page 4), the rest of Proposition 62 was still law and was binding on the Board of Supervisors as of February 26, 1991 when the county utility user tax was adopted.

Therefore: The County Utility User Tax ordinance was not adopted in ,reasonable reliance on case law existing at the time of adoption.

B.

PROPOSITION 218

The County's only remaining defense in the case *Griffith v. Santa Cruz County* (H019505) is that Proposition 218 supersedes Proposition 62 and thereby impliedly repeals Proposition 62, so that, taxes imposed between August 1, 1985 and January 1, 1995, which were adopted without voter approval, are then "grand-fathered" and preserved.

The County counsel's brief in the Appellate Court contends (Respondent's Brief pg. 28) that:

105

41

"Proposition 218 unambiguously states that taxes imposed or increased after January 1, 1995 must be submitted to the voters. The only reasonable reading of this provision is that taxes imposed or increased before January 1, 1995 are not required to be submitted to the voters."

Taxpayers can see that Proposition 218 superseded Proposition 62 for taxes imposed after January 1, 1995. This utility tax ordinance, however, was adopted before January 1, 1995. Simply because Proposition 218 superseded Proposition 62 voter approval requirements "for taxes imposed or increased after January 1, 1995", it does not follow that taxes imposed or increased before January 1, 1995 are not required to be submitted to the voters, under Proposition 62. These facts do not lead to the conclusion that Proposition 218 includes an implied "grandfather clause" allowing all taxes imposed before January 1, 1995 and after August 1, 1985 to be immune from the voter approval requirement of Proposition 62

In addition, *McLaughlin v. State Board of Education* (1999) 75 C.A. 4th 196, 223 explains that:

"We are mindful that the principal of amendment or exception by implication is to be employed frugally, and only where the later-enacted statute creates such a conflict with existing law that there is no rational basis for harmonizing the two statutes, such as where they are 'irreconcilable', clearly repugnant, and so inconsistent that the two cannot have concurrent operation, ...
(*In re White* (1969) 1 Cal. 3d 207, 212) "

page 219: " 'repeal by implication' (*Nickelsberg v. Workers' Comp. Appeals Bd.* (1993) 54 Cal.3d 288, 298.

In *Nickelsberg* the California Supreme Court explains:

"Repeals by implication are disfavored and are recognized only when potentially conflicting

42

statutes cannot be harmonized. *Dew v. Appleberry*
(1979) 23 Cal. 3d 630, 636"

Therefore, since it seems that Proposition 62 and Proposition 218 can be harmonized by simply by acknowledging that 62 is controlling between August 1, 1985 and December 31, 1994 and that 218 'is controlling on and after January 1, 1995, the repeal by implication should not be recognized by the court.

CONCLUSION TO OTHER ISSUES

The county did not rely on existing case law which was in existence at the time the County Utility User tax was adopted since Proposition 62 (Government Code § 53723) was still operative for at least another three months after adoption of the county utility user tax. The idea that Proposition 218 contains an "implied repeal" of Prop. 62 is simply amazing considering the case law that states that repeals by implication are disfavored and case law to the effect that laws are supposed to be read without addition or subtraction of the words that are used in the text of the law.

III.

RAMIFICATIONS OF ILLEGAL TAXATION

A.

CLAIM - ACTION RELIEF

The utility user tax ordinance provides that when a tax has been illegally or erroneously paid or collected a claim for refund may be submitted to the tax administrator. We have shown

43

above that the utility user tax is clearly illegal. This one year "statute of limitation" to claim a refund is found in Santa Cruz County Code § 4.25.190 (A). This refund claim opens the possibility that actions for judgments on the rejected claims could be filed in amounts as much as \$9.5 million dollars per year. The court could require the monies to be returned to the taxpayers if the tax is ever found to be illegal. In a class action suit, the Plaintiff's attorney gets 25% of the refunded amount and this could be a powerful incentive for an attorney looking for an income.

In *Howard Jarvis Taxpayers Association v. City of La Habra* (June 4, 2001) 25 Cal. 4th 809 the court ruled that the statute of limitations for a taxpayer to file a suit, after the claim for refund has been rejected is three years. And the right to challenge the validity of a tax begins each time they pay the alleged illegal tax. This clarified the statute of limitation to allow each county taxpayer to sue the county to challenge the validity of the utility user tax until it is approved by the voters. If my suit fails, someone else can try again.

Therefore: Taxpayers could file claims for a return of all taxes paid each year and file a suit for refund within three years after the claim is rejected.

B.

WITH INTEREST THEREON

The California Supreme Court ruled in *California Federal Savings & Loan Assn. v. City of Los Angeles* 11 Cal. 4th 342 that

the proper interest rate of 7% was applicable to a judgment against a local public entity and was mandated by California Constitution Article XV § 1.

THEREFORE: It seems that 7% annual interest must be paid on the refund of the utility user taxes collected and refunded.

C.

DOES 1-60,000

The Appellate Court ruled in *Thomas v. City of East Palo Alto* (1997) 53 C.A. 4th 1084, 1087 that:

"We also conclude those persons who have been unconstitutionally required to pay this tax may sue in a class action for the refunds to which they are entitled, when each plaintiff who would join in the class action has theretofore filed a valid individual administrative claim for a refund from the City."

Therefore: The Attorneys who specialize in class action refund actions might come to Santa Cruz County and start looking for people who want a refund of the utility taxes that they paid.

D.

GENERAL MOTORS v SAN FRANCISCO

The Superior Court ruled in *General Motors v. City and County of San Francisco*, Exhibit "E" ruled that the one year and three year limitation for filing a claim for the refund of illegal taxes paid did not apply to the taxes in that case. The City and County of San Francisco was ordered to repay 310 million dollars that they collected over the last several years. The

McKesson remedy may not really be available to the County. That remedy allows the local government to take advantage of short statutes of limitations. Thus, the County misht have to return tax back to 1995 or 1991 with interest.

E.

UTILITY USER TAX REPEAL

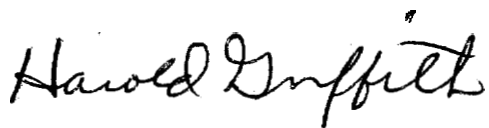
If the repeal measure loses, the tax will still not have complied with the requirements of Proposition 62 or Revenue and Taxation Code § 7284.4. Proposition 62 requires, among other things, that the tax win "approval of the majority vote of the voters voting in an election on the issue."!The electorate in voting on the repeal are asked the question, "Should the utility user tax be repealed." not "Do you favor the adoption of a utility user tax." In addition, I have found no limit on how many times an issue, like the repeal of an illegal tax, can be brought up in a local ballot measure. Thus, if the repeal measure loses this time it could face ballot challenges.

III.

A POSSIBLE SOLUTION

The Supervisors could place the utility user tax ordinance on the ballot. If it gets approved by a majority of the voters than the utility tax would be legal from now on.

Sincerely,



Harold Griffith

[No. S036269, Sept. 28, 1995.]

SANTA CLARA COUNTY LOCAL TRANSPORTATION AUTHORITY, Petitioner, v. CARL GUARDINO, as Auditor-Controller, etc., Respondent; HOWARD JARVIS TAXPAYERS' ASSOCIATION et al., Real Parties in Interest.

SUMMARY

A sales tax proposed by a local transportation agency for the funding of certain transportation projects was approved by a majority but less than two-thirds of the electors voting on it in the affected county. The county auditor-controller refused to sign bonds to be issued out of the anticipated revenues from the tax until the tax was determined to be valid, and the transportation agency filed a petition for a writ of mandate in the Court of Appeal, contending that the tax violated neither Prop. 13 (Cal. Const., art. XIII A) nor Prop. 62 (Gov. Code, § 53720 et seq.). The Court of Appeal, Sixth Dist., No. H010835, denied the petition, finding that the tax was invalid under Prop. 13.

The Supreme Court affirmed, holding that the tax was invalid under Prop. 62, and therefore declining to address its validity under Prop. 13. The court held that the supermajority requirement of Gov. Code, § 53722 (special tax imposed by local government or district must be submitted to electorate and approved by two-thirds vote), was applicable to the tax, because the transportation agency was a district, and the tax was a special tax, within the meaning of the statute. The court further held that the voter approval required by Gov. Code, § 53722, is not an exercise of legislative power by the people, and therefore, is not a referendum within the meaning of the California Constitution; that moreover, the statute's requirement that taxes imposed by a local government be approved by the voters does not violate the constitutional prohibition against subjecting tax statutes to a referendum (Cal. Const., art. II, § 9, subd. (a)), and the specific requirement that special taxes imposed by a local government be approved by a two-thirds majority does not violate the constitutional declaration that a referendum needs only a simple majority to pass. The court held that Cal. Const., art. XIII, § 24, permits the Legislature to authorize local governments to impose taxes for

local purposes, and the voter approval requirement of Gov. Code, § 53722, is a valid condition on the exercise of local taxing power. Finally, the court held, the voter approval requirement does not violate the federal constitutional guaranty of equal protection. (Opinion by Mosk, J., with Kennard, Arabian, Baxter and George, JJ., concurring. Separate dissenting opinions by Lucas, C. J., and Werdegar, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1) **Mandamus and Prohibition § 61—Mandamus—Procedure—Alternative Writ.**—It is improper for a Court of Appeal to set a matter for oral argument and file a written opinion without issuing either an alternative writ or an order to show cause. The statutory procedure for writs of mandate (Code Civ. Proc., § 1085 et seq.) requires issuance of an alternative writ or order to show cause before setting a writ matter for oral argument.

(2) **Constitutional Law § 18—Constitutionality of Legislation—Judicial Power to Declare Legislation Void—Judicial Self-Restraint.**—The Supreme Court will not decide constitutional questions where other grounds are available and dispositive of the issues of the case. This principle is an application of the larger concept of judicial self-restraint, which demands that a court not reach constitutional questions unless absolutely required to do so to dispose of the matter before it.

(3a-3d) **Counties § 15—Fiscal Matters—Limitation on Imposition of Special Taxes—Sales Tax for Transportation Projects.**—Gov. Code, § 53722 (special tax imposed by local government or district must be submitted to electorate and approved by two-thirds vote), was applicable to a sales tax proposed by a county transportation agency to fund certain transportation projects; and since the two-thirds voter approval requirement is constitutional, and the proposed tax failed to garner such approval, the tax was invalid, although approved by a simple majority of the voters. The tax in question was a special tax, since it was imposed for specific purposes. Further, the local agency was a district within the meaning of the statute, since it was an agency of the state formed pursuant to general law (Pub. Util. Code, § 180000 et seq.) for the local performance of a governmental function within limited boundaries (a single county). Although the district was not authorized to levy property taxes, this did not exempt it from Gov. Code, § 53722.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 109.]

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- (4) **Statutes § 36—Construction—Giving Effect to Statute—Avoidance of Surplusage.**—The rule of statutory construction under which the court should avoid rendering a part of a statute surplusage will be applied only if it results in a reasonable reading of the legislation. When uncertainty arises in a question of statutory interpretation, consideration must be given to the consequences that will flow from a particular interpretation. In this regard, it is presumed the Legislature intended reasonable results consistent with its expressed purpose, not absurd consequences.

- (5) **Counties § 15—Fiscal Matters—Limitation on Imposition of Local Taxes—Voter Approval Requirement: Municipalities § 23—Powers—Taxation.**—The manifest purpose of Prop. 62 (Gov. Code, § 52720 et seq.) was to increase the control of citizenry over local taxation by requiring voter approval of all new local taxes imposed by all local governmental entities.

- (6) **Statutes § 21—Construction—Legislative Intent—Unpassed Bills.**—Unpassed bills, as evidences of legislative intent, have little value. The same is true of unpassed constitutional amendments.

- (7) **Statutes § 42—Construction—Aids—Legislative Counsel.**—While an opinion of the Legislative Counsel is entitled to respect, its weight depends on the reasons given in its support.

- (8a, 8b) **Counties § 15—Fiscal Matters—Limitation on Imposition of Special Taxes—Voter Approval Requirement—Validity Under Constitutional Referendum Restrictions: Municipalities § 23—Powers—Taxation.**—Since the voter approval required by Gov. Code, § 53722, is not a referendum within the meaning of the California Constitution, the statute's requirement that taxes imposed by a local government be approved by the voters does not violate the constitutional prohibition against subjecting tax statutes to a referendum (Cal. Const., art. II, § 9, subd. (a)), and the specific requirement that special taxes imposed by a local government be approved by a two-thirds majority does not violate the constitutional declaration that a referendum needs only a simple majority to pass. Unlike a constitutional referendum, voter approval under Gov. Code, § 53722, is a condition precedent to enactment of each statute to which it applies, while the constitutional referendum may be invoked only after the statute has been enacted. Although the Legislature characterizes as a referendum the procedure of Elec. Code, § 9140 (submission of ordinance by board

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of supervisors to voters), and that procedure does not require a petition, the lack of a petition is the only similarity with Gov. Code, § 53722, and does not make the voter approval requirement of Gov. Code, § 53722, a referendum. (Disapproving, to the extent its reasoning is to the contrary, *City of Woodlake v. Logan* (1991) 230 Cal.App.3d 1058 [282 Cal.Rptr. 27].)

- (9) **Initiative and Referendum § 3—Constitutional Provisions—Constitutional Referendum Power.**—The constitutional referendum power (Cal. Const., art. II, § 9, subd. (a)) is the right reserved to the people to adopt or reject any act or measure that has been passed by a legislative body, and which, in most cases, would without action on the part of the electors become a law. Enactment is not a quality of the referendum. It is limited in its operation to the adoption or rejection of legislation already enacted by a legislative body, and in the absence of such prior enactment there can be neither rejection nor adoption by the electorate.

- (10) **Initiative and Referendum § 3—Constitutional Provisions—Division of Legislative Power Between Legislature and People.**—Cal. Const., art. IV, § 1 (legislative power is vested in Legislature but people reserve to themselves powers of initiative and referendum), divides the entire legislative power of the state between the Legislature and the people's reserved right of initiative and referendum, and the initiative and referendum are therefore the sole methods by which the people may constitutionally exercise legislative power.

- (11a-11c) **Counties § 15—Fiscal Matters—Limitation on Imposition of Special Taxes—Voter Approval Requirement—As Condition on Local Taxing Power: Municipalities § 23—Powers—Taxation.**—The vote required by Gov. Code, § 53722 (special tax imposed by local government or district must be submitted to electorate and approved by two-thirds vote), is not an exercise of legislative power by the people, and therefore it is not a referendum and is not subject to the constitutional restrictions imposed on the referendum power. Cal. Const., art. XIII, § 24, permits the Legislature to authorize local governments to impose taxes for local purposes, and the requirement of voter approval before a local government enacts a proposed tax is a valid condition on the exercise of local taxing power. Even if the clause of Cal. Const., art. XIII, § 24, declaring that the Legislature may authorize local governments to impose taxes is regarded as surplusage (because the Legislature's power to do so is necessarily included in the Legislature's plenary power to tax under Cal. Const., art. IV, § 1), this does not

support the conclusion that the Legislature lacks the authority to condition the exercise of local taxing power on voter approval.

(12) **Counties § 15—Fiscal Matters—Grant by Legislature of Authority to Tax: Municipalities § 23—Powers—Taxation.**—The second clause of Cal. Const., art. XIII, § 24 (Legislature may authorize local governments to impose local taxes), is a confirmation of the Legislature's authority to grant the taxing power to local governments insofar as necessary to enable them to impose such local taxes if they see fit. That grant of power is an essential prerequisite to all local taxation, because local governments have no inherent power to tax.

(13) **Counties § 15—Fiscal Matters—Grant by Legislature of Authority to Tax—Imposition of Conditions: Municipalities § 23—Powers—Taxation.**—The Legislature's authority to grant taxing power to local governments includes the authority to prescribe the terms and conditions under which local governments may exercise that power. Even when the taxing power has been granted, it does not become a vested right but remains at all times subject to amendment or repeal by the Legislature.

(14) **Taxation § 4—Governmental Powers—Local Taxes.**—The principal purpose of Cal. Const., art. XIII, § 24, is to prohibit the Legislature from imposing local taxes, as it decrees in its first clause. But the second clause serves an ancillary purpose. Rather than leave to inference the important matter of who has the power to tax for local purposes, the drafters chose to spell out the complete scheme: thus the first clause bars the Legislature from imposing local taxes, while the second clause expressly confirms the Legislature's authority to grant local governments the power to levy such taxes.

(15a) **Initiative and Referendum § 6—State Elections—Initiative Measures—Restriction on Imposition of Local Taxes.**—In enacting Gov. Code, § 53722, as part of Prop. 62, the voters acted within the scope of the initiative power in conditioning the enactment of a local tax measure on approval by the local electorate, since the statute is one that the Legislature itself could have enacted.

(16) **Initiative and Referendum § 1—Liberal Construction of Initiative Power.**—The initiative power must be liberally construed to promote the democratic process. It is the solemn duty of the courts to guard this power jealously and to resolve any reasonable doubts in favor of its exercise. As with statutes adopted by the Legislature, all presumptions

favor the validity of initiative measures, and mere doubts as to validity are insufficient; such measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.

(17) **Initiative and Referendum § 6—State Elections—Initiative Measures—Subject Matter—Taxation.**—In contrast to the referendum, the California Constitution does not limit the subject matter of direct legislation proposed by initiative. In particular, the courts have upheld initiative measures addressing the subject of taxation.

(18) **Initiative and Referendum § 6—State Elections—Initiative Measures—People's Power as Coextensive With Legislature's.**—To the extent the initiative is the constitutional power of the electors to propose statutes and to adopt or reject them (Cal. Const., art. II, § 8, subd. (a)), it is generally coextensive with the power of the Legislature to enact statutes.

(19) **Constitutional Law § 97—Equal Protection—Classification—Voting Rights—Supermajority Approval of Local Taxes.**—The voter approval requirement of Gov. Code, § 53722 (special tax imposed by local government or district must be submitted to electorate and approved by two-thirds vote), does not violate the federal constitutional guaranty of equal protection (U.S. Const., 14th Amend.). The United States Supreme Court, in approving a 60 percent vote requirement, has held that the equal protection guaranty is not violated by provisions requiring a supermajority so long as they do not discriminate against or authorize discrimination against any identifiable class, and that holding was not limited to bond elections but applied to tax elections as well. Although the high court implied that a provision requiring unanimity or giving a veto power to a very small group might be unconstitutional, a group composed of one-third plus one of those voting (the size of the group that can defeat a tax under Gov. Code, § 53722) is not such a small group.

(20) **Constitutional Law § 29—Constitutionality of Legislation—Partially Unconstitutional Statutes—Severability Rule—Inapplicability Where Reach of Statute Is Merely Limited.**—Prop. 62 (Gov. Code, § 53720 et seq.) is not invalid even if its express purpose—giving the electorate the right to vote on new local taxes—is partially defeated because of a purported inapplicability of the proposition to charter cities, where nearly one-half of the state's population resides. Under the law of severability, when the main purpose of a statute is

53

issue bonds payable from the revenues from this tax, and declared that such revenues and the bond proceeds could be used only for the projects described in the county transportation expenditure plan.

The board of supervisors then placed the ordinance on the November 1992 General Election Ballot as Measure A. It received an affirmative vote of 54.1 percent, i.e., more than a majority but less than two-thirds of those voting.

Following the election, a number of nonprofit organizations and individuals opposed to Measure A filed an action in the Santa Clara Superior Court challenging the tax as violative of both Proposition 13 and Proposition 62.

In January 1993 the transportation authority adopted a resolution for the issuance of \$275 million in bonds (revenue notes) payable out of its anticipated revenues from this tax, and directed its auditor-controller, Carl Guardino, to sign the bonds. (See Pub. Util. Code, § 180257.) Guardino refused to do so unless and until the tax was determined to be valid. The transportation authority (hereafter petitioner) then filed a petition for writ of mandate in the Court of Appeal in the first instance, contending the tax is not in violation of either Proposition 13 or Proposition 62. The petition named Guardino as respondent and named the plaintiffs in the pending superior court action as real parties in interest, and prayed for a writ compelling Guardino to sign the bonds.

(1)(See fn. 2.) The Court of Appeal exercised its original jurisdiction over the petition (Cal. Const., art. VI, § 10), held the tax invalid under Proposition 13, and denied the writ.² We granted review.

I

As it did in the Court of Appeal, petitioner now contends the challenged tax is not invalidated by either Government Code section 53722³ or section 4 of article XIII A of the California Constitution. A holding that the tax violates the constitutional provision, of course, would be dispositive of this proceeding. (See, e.g., *Rider v. County of San Diego* (1991) 1 Cal.4th 1 [2

²We note that although the Court of Appeal set the matter for oral argument and filed a written opinion in the case, it did so without issuing either an alternative writ or an order to show cause. Some three years earlier we explained in detail why this procedure was improper and directed that "in the future all Courts of Appeal should follow the contemplated statutory procedure [see Code Civ. Proc., §§ 1085, 1087, 1088] by issuing an alternative writ or order to show cause before setting a writ matter for oral argument." (*Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1025, fn. 8 [269 Cal.Rptr. 720, 791 P.2d 290].) We reiterate that directive today.

³All unlabelled code references hereafter are to the Government Code.

Cal.Rptr.2d 490, 820 P.2d 1000) (hereafter *Rider*.) But the same would be true of a holding that the tax violates section 53722; in either event respondent would be under no duty to sign the bonds and the petition to compel him to do so would be without merit, as the Court of Appeal held. When a similar local sales tax was challenged on the same two constitutional and statutory grounds in *Rider*, this court chose to address only the constitutional ground and held the tax invalid under Proposition 13. (1 Cal.4th at pp. 10-15.) The majority opinion in *Rider*, however, expressly left the statutory ground open (*id.* at p. 15); and the concurring opinion of Justice George, joined by Justice Panelli, discussed the merits of that ground at some length, concluding that the tax was also invalid under section 53722 and that section 53722 was constitutional (1 Cal.4th at pp. 17-24).

Nevertheless, the constitutionality of section 53722 remains in doubt. In *City of Westminster v. County of Orange* (1988) 204 Cal.App.3d 623 [251 Cal.Rptr. 511], the Court of Appeal held unconstitutional a section of Proposition 62 (§ 53727, subd. (b)) that requires majority voter approval of any local taxes imposed during a 16-month "window period" preceding the effective date of the proposition. And in *City of Woodlake v. Logan* (1991) 230 Cal.App.3d 1058 [282 Cal.Rptr. 27], the Court of Appeal held unconstitutional three more sections of Proposition 62: viz., section 53723, a closely related provision that requires majority voter approval of all new general taxes, and two procedural provisions implementing that requirement (§§ 53724, 53728).

These holdings inevitably cast a cloud over the constitutionality of section 53722, because the two procedural provisions just cited (§§ 53724, 53728) also govern section 53722, and the defects found in all three provisions of Proposition 62 invalidated in *City of Woodlake v. Logan*, *supra*, 230 Cal.App.3d 1058, are defects that petitioner now contends invalidate section 53722. Indeed, although the majority Court of Appeal opinion in this case did not reach the question, the dissenting opinion discussed it in detail and concluded that section 53722 is unconstitutional for the very reason that *Woodlake*'s "analysis and conclusion apply with equal force to the voter approval requirement in section 53722."

These circumstances call for a prompt resolution of the issue by this court. In the nine years since Proposition 62 was adopted, the Legislature has enacted numerous statutes like the Act in issue here (Pub. Util. Code, §§ 180000-180264) purporting to authorize local governmental entities to impose taxes with the approval of less than two-thirds of the voters, and local entities like petitioner have relied on those statutes. Accordingly, in its

until voter approval has been obtained, and thus the local entity will not include the anticipated tax revenue in its enacted budget until after the electorate has approved the tax." (*Rider, supra*, 1 Cal.4th 1, 23 (conc. opn. of George, J.))

This error also infected the Court of Appeal's analysis of the second contention raised in *Woodlake, supra*, 230 Cal.App.3d 1058. The defendant argued (*id.* at p. 1066) that if the Legislature has the power to impose voter approval requirements on taxes that it levies itself, it may likewise condition the taxing power of local governments, and hence the same condition may be imposed by a statutory initiative such as Proposition 62. But rather than answering that contention,¹⁵ the Court of Appeal recast the question in terms of the referendum power. First the court asserted that Proposition 62 "mandates local referendums on tax issues." (230 Cal.App.3d at p. 1066.) Next the court declared that "The real question presented by this issue is whether the Legislature may expand the [local] referendum power by ignoring express restrictions appearing in the Constitution." (*Id.* at p. 1067.) The court then answered *that* question in the negative, relying on certain reasoning in *Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 836-837 [313 P.2d 545], to the effect that the presence of express restrictions on the statewide referendum power in the Constitution (art. II, § 9(a)) implies that the Legislature has no authority to waive those restrictions in prescribing procedures for the exercise of the local referendum power (Cal. Const., art. II, § 11). *Geiger*, however, dealt with a true referendum,¹⁶ and because section 53722, like section 53722, is not such a referendum, the reasoning of *Geiger* cited by the court is not in point here. Thus the *Woodlake* court failed to respond to the defendant's contention, answered a question that the defendant did not ask, and in so doing incorrectly assumed that section 53723 is a referendum within the meaning of the Constitution.

For all the foregoing reasons, the decision in *Woodlake, supra*, 230 Cal.App.3d 1058, is erroneous, and it is hereby disapproved.¹⁷

Lastly, petitioner contends that the voter approval requirement of section 53722 must be a referendum "because the Constitution does not permit any

¹⁵The court did "question" the defendant's major premise, but declined to discuss it because it was "not the issue here." (230 Cal.App.3d at p. 1066.)

¹⁶In *Geiger v. Board of Supervisors, supra*, 48 Cal.2d 832, a county board of supervisors enacted a sales and use tax. Prior to the effective date of the ordinance, a taxpayer presented a petition demanding that the board either repeal the ordinance or submit it to a vote of the electorate. This is a common form of the local referendum in California, the "indirect referendum." (Now see Elec. Code, §§ 9144-9145 [referendum on county ordinances], 9237, 9241 [referendum on municipal ordinances].)

¹⁷For identical reasons we find unpersuasive an opinion of the Attorney General that petitioner also cites, insofar as it concludes that a statute (Rev. & Tax. Code, § 7285) containing a voter approval requirement similar to that of section 53722 is an impermissible

other involvement of the electorate in the legislative process." (10) Petitioner relies on article IV, section 1, of the Constitution, which provides that "The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum." Petitioner asserts that this provision of the Constitution divides the entire legislative power of the state between the Legislature and the people's reserved right of initiative and referendum, and that the initiative and referendum are therefore the sole methods by which the people may constitutionally exercise legislative power. We agree. (11a) Petitioner then contends, however, that the vote that section 53722 requires is also an exercise of legislative power by the people, and hence must be a referendum. We disagree. The answer to petitioner's contention lies in another provision of the Constitution—article XIII, section 24.

The first sentence of article XIII, section 24, of the Constitution (hereafter article XIII, section 24) provides: "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them." The sentence contains two clauses. The first clause—"The Legislature may not impose taxes for local purposes"—is a restriction on the Legislature's otherwise plenary power of taxation (see, e.g., *Delaney v. Lowery* (1944) 25 Cal.2d 561, 568 [154 P.2d 674]): the clause prohibits the Legislature from imposing a particular class of taxes, viz., taxes whose proceeds are devoted to purely "local" purposes. (See, e.g., *People v. Martin* (1882) 60 Cal. 153, 155-156 [under predecessor to article XIII, section 24, Legislature had no power to impose local business license tax to benefit county general fund]; see also *City of Los Angeles v. Riley* (1936) 6 Cal.2d 621, 623-624 [59 P.2d 137] [distinction between "local" and "state" purposes of a tax].)

(12) Complementing the first clause, the second clause of the constitutional provision—i.e., the Legislature "may authorize local governments to impose" local taxes—is a confirmation of the Legislature's authority to grant the taxing power to local governments insofar as necessary to enable them to

referendum on a tax. (73 Cal.Ops.Atty.Gen. (1990) 111, 113-114; but see *id.* at p. 115, fn. 12 ["The constitutionality of Government Code sections 53720-53730 [i.e., Proposition 62] is beyond the scope of this opinion."].)

We need not determine the correctness, however, of *City of Westminster v. County of Orange, supra*, 204 Cal.App.3d 623, the decision that held unconstitutional the provision of Proposition 62 (§ 53727, subd. (b)) requiring voter approval of taxes imposed during a 16-month window period preceding the effective date of the proposition (Nov. 5, 1986), the vote to be held within 2 years after that date. The case appears distinguishable. (See *Rider, supra*, 1 Cal.4th 1, 23-24, fn. 6 (conc. opn. of George, J.)), and the parties do not rely on it. In any event, it is doubtful that any such taxes remain at issue today, since the deadline for voting on them expired almost seven years ago (Nov. 5, 1988).

15

impose such local taxes if they see fit. That grant of power is an essential prerequisite to all local taxation, because local governments have no inherent power to tax. (*In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal.2d 21, 73 [37 Cal.Rptr. 74, 389 P.2d 538]; *County of Mariposa v. Merced Irr. Dist.* (1948) 32 Cal.2d 467, 474 [196 P.2d 920]; *County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1454 [29 Cal.Rptr.2d 103]; *Martin Hospital Dist. v. Rothman* (1983) 139 Cal.App.3d 495, 501-502 [188 Cal.Rptr. 828], and cases cited.) In language equally applicable to all forms of local government, a leading treatise explains that "Municipal corporations have no inherent power of taxation. On the contrary, municipal corporations possess with respect to taxation only such power as has been granted to them by the constitution or statutes. This is true particularly with reference to those political subdivisions of the state which do not have full municipal status but which are constituted for special purposes and with limited powers and functions," e.g., special districts like petitioner herein. (16 McQuillin, *Municipal Corporations* (3d rev. ed. 1994) § 44.05, p. 17, fn. omitted [hereafter McQuillin].)

(13) The Legislature's authority to grant taxing power to local governments, moreover, includes the authority to prescribe the terms and conditions under which local governments may exercise that power. "If the legislature grants this power to these subordinate divisions of the government, it has the right to say, by the grant, in what manner that power shall be exercised." (*Ex Parte Pfirrmann* (1901) 134 Cal. 143, 149 [66 P. 205].) As this court observed over a century ago, "While the constitution has taken from the legislature the power to impose taxes upon counties or other public corporations, it has not given to such corporations any power whatever to impose taxes, but has authorized the legislature to vest such power in them by general laws. (Const., art. XI, sec. 12 [now art. XIII, § 24].) The power of a county or other public corporation to impose any tax is only that which is granted by the legislature, and its exercise must be within the limits and in the manner so conferred." (*Hughes v. Ewing* (1892) 93 Cal. 414, 418 [28 P. 1067], italics added.) Again this is the general rule: "Except as prohibited or limited by the constitution, and with such restrictions as it deems fit, . . . the state may confer such power as it deems proper or expedient . . . [¶] The taxing power delegated may be only a part of that possessed by the state or may be limited in any way," (McQuillin, *supra*, § 44.07, p. 30, fn. omitted, italics added.)

Finally, even when it has been thus granted, the taxing power of a local government does not become a vested right of that entity but remains at all times subject to amendment or repeal by the Legislature. (*In re Redevelopment Plan for Bunker Hill*, *supra*, §1 Cal.2d 21, 73; *Martin Hospital Dist. v.*

Rothman, *supra*, 139 Cal.App.3d 495, 501-502.) "Municipal corporations do not have, as to the taxing power, vested rights which may not be affected by subsequent legislation. The power to levy taxes, where delegated by the legislature to municipal corporations, is during the pleasure of the legislature, so that it may be revoked, modified, or limited at any time." (McQuillin, *supra*, § 44.14, p. 58, fn. omitted.)

For example, in authorizing local governments to levy local sales and use taxes (Rev. & Tax. Code, § 7200 et seq. [Bradley-Burns Uniform Local Sales and Use Tax Law]) the Legislature imposed elaborate conditions on the exercise of that power: thus the Legislature itself fixed the rate of the tax (*id.*, §§ 7202, subd. (a), 7203), prescribed both general and specific provisions of the taxing ordinance (*id.*, §§ 7202, subds. (b)-(e), 7203, subds. (a)-(b)), mandated a series of tax exemptions and credits (*id.*, §§ 7202, subds. (f)-(h), 7202.5, 7203, subds. (c)-(e)), and required the local governments to contract with the State Board of Equalization to administer and collect the tax at the local governments' expense (§§ 7202, subd. (d), 7204, 7204.3). The Legislature added or amended many of these conditions, moreover, long after its original grant of this taxing power to local governments.

The Legislature placed similarly elaborate conditions on the power it granted to certain counties and districts to impose additional "transactions and use" taxes. (Rev. & Tax. Code, §§ 7251 et seq. [Transactions and Use Tax Law], 7285 et seq. [Counties Transactions and Use Tax Law].)

In authorizing counties to levy a motor vehicle fuel tax for local transportation purposes, the Legislature likewise mandated the method of imposing and collecting the tax, specified provisions of the taxing ordinance, prescribed tax exemptions, and restricted the uses to which the proceeds of the tax could be put. (Rev. & Tax. Code, §§ 9501-9507.)

Again, in authorizing local governments to impose a sales tax on certain consumer products for purposes of graffiti prevention, the Legislature prescribed the maximum allowable tax rate, the maximum life of the tax, the method of its collection, the allocation of its proceeds, and the disposition of overpayments and refunds. (Rev. & Tax. Code, §§ 7287-7287.10.)

In a series of statutes the Legislature also authorized special districts to impose local sales taxes for the purpose of financing the construction and operation of certain categories of public facilities. One category is exempted by the statute at issue in *Rider*, *supra*, 1 Cal.4th 1, i.e., taxes to fund criminal detention and courthouse facilities. (Gov. Code, §§ 26250-26285

52

[San Diego County Regional Justice Facility Financing Act], now see Rev. & Tax. Code, §§ 7286.30-7286.38.)¹⁸ Another category is exemplified by the statute that authorized the tax at issue in the case at bar, i.e., taxes to fund streets, highways, and mass transit systems. (Pub. Util. Code, §§ 180000-180264 [Local Transportation Authority and Improvement Act].)¹⁹ In each of these statutes the Legislature typically specified the rate and maximum life of the tax, prescribed the method of imposing and collecting it, and mandated the purposes for which the proceeds could be used.

(11b) The requirement of voter approval before a local government enacts a proposed tax is another such condition on the exercise of local taxing power. If the local government chooses to exercise that power, the Legislature may require it to take several steps in order to impose the tax. One of those steps is to obtain the approval of a specified proportion of the votes of the members of the local legislative body. (See, e.g., Rev. & Tax. Code, §§ 7285, 7285.5; Gov. Code, § 53724, subd. (b) [Proposition 62].) Another such step is to obtain the approval of a specified proportion of the votes of the local electors. Thus in the statutory schemes cited above the Legislature included, among the conditions for imposing the taxes in question, the requirement that the local electorate approve such taxes either by a simple majority (Rev. & Tax. Code, §§ 7285, 7285.5, 9502) or by a two-thirds vote (*id.*, §§ 7286.32, 7287; Gov. Code, § 26298.2). Indeed, the statute that authorized the tax at issue here—the very statute to which petitioner owes its existence—prescribes such a condition: “A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of a county may be imposed by the [local transportation] authority in accordance with this chapter and [the Transactions and Use Tax Law], if the tax ordinance is adopted by a two-thirds vote of the authority and imposition of the tax is subsequently approved by a majority of the electors voting on the measure at a special election called for that purpose by the board of supervisors, at the request of the authority, . . .” (Pub. Util. Code, § 180201, italics added.)

There is nothing unusual about such voter approval requirements. They have a long history in this state (see, e.g., *Hobart v. The Supervisors of Butte*

¹⁸(See also, e.g., Gov. Code, §§ 26295 et seq. [Orange County Regional Justice Facilities Act], 26299.000 et seq. [County Regional Justice Facilities Financing Act], both discussed in *Howard Jarvis Taxpayers' Assn. v. State Bd. of Equalization* (1993) 20 Cal.App.4th 1598 [25 Cal.Rptr.2d 330].)

¹⁹(See also, e.g., Pub. Util. Code, §§ 130000 et seq. [County Transportation Commissions Act, discussed in *Richmond*, *supra*, 31 Cal.3d 197], 132000 et seq. [San Diego County Regional Transportation Commission Act], 140000 et seq. [Santa Clara County Commuter Relief Act].)

County (1860) 17 Cal. 23), and today may be found throughout our codes: including those just cited, more than 60 statutes currently prescribe such a requirement. A few relate to matters other than taxation (e.g., local option laws); but most, like section 53722, authorize local governments to levy various kinds of taxes on condition that they first obtain the approval of their electorates. Of these, approximately one-half require such approval by a simple majority,²⁰ while the other half require approval, as here, by a two-thirds vote.²¹ To accede to petitioner's argument would cast into doubt the validity of this entire body of statutory law.²²

Petitioner endeavors to avoid the effect of article XIII, section 24, by offering a narrow reading of the provision. Petitioner reasons that even without article XIII, section 24, the Legislature would have the power to authorize local governments to impose taxes, because that power is necessarily included in—and hence inferable from—the Legislature's plenary power to tax under article IV, section 1, of the Constitution. We may grant the premise for purposes of argument. From this premise, however, petitioner concludes that the second clause of article XIII, section 24, declaring that the Legislature may authorize local governments to impose taxes, “is surplusage unless it is construed to mean that the Legislature has simply two options in respect to local taxation: it may either grant such power or withhold such power. The Legislature is not given a third option under the Constitution of conditioning such power upon voter approval.”

We cannot agree with petitioner's conclusion. First, it is too harsh to condemn the second clause of article XIII, section 24, as “surplusage.” (14) To be sure, the principal purpose of article XIII, section 24, is to

²⁰(See, e.g., Ed. Code, §§ 39274, 39312; Gov. Code, §§ 26292.1, 29561, 60125, 61755.5, 68059.7; Health & Saf. Code, §§ 20101, 32203, 32221; Pub. Resources Code, §§ 85104, 5545.1, 5784.13; Pub. Util. Code, §§ 130350, 130401, 131102, 132301, 140251, 142250, 150201, 180201, 190300, 240301; Rev. & Tax. Code, §§ 2280.01, 2286, 7285, 7285.5, 7288.3, 9502, 11103.)

²¹(See, e.g., Ed. Code, § 43041; Gov. Code, §§ 26172.3, 26298.2, 50079, 50079.1, 53328, 53717, 53730.01, 53978, 66013, 66014; Health & Saf. Code, §§ 2303, 32205, 41081; Pub. Resources Code, §§ 33804, 35172; Pub. Util. Code, §§ 12891.5, 16641.5, 22909; Rev. & Tax. Code, §§ 7262.5, 7262.6, 7262.7, 7286.20, 7286.32, 7286.40, 7286.45, 7287, 11152; Sts. & Hy. Code, §§ 1178, 5832.8, 8195.)

²²Without analysis, petitioner suggests that any such risk of wholesale unconstitutionality could be avoided by “severing” the voter approval requirements of such statutes from their provisions granting taxing power to local governments. But the rules of severability (see, e.g., *Californ Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821-822 [258 Cal.Rptr. 161], 771 P.2d 1247) are to be applied on a statute-by-statute basis, and under those rules we would have great difficulty in concluding that the electorate would have adopted section 53722 without the voter approval requirement. (See, e.g., 73 Cal. Ops. Att’y Gen., *supra*, 111, 115-117 [voter approval requirement of Revenue and Taxation Code section 7285, not severable].)

3

APPENDIX

Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution. This initiative measure adds sections to the Government Code; therefore, the new provisions proposed to be added are printed in italic type to indicate that they are new.

PROPOSED LAW

Article 3.7 is hereby added to Chapter 4 (Financial Affairs) of Part 1 (Powers and Duties Common to Cities, Counties and other Agencies) of Title 5 (Local Agencies) of the Government Code, commencing with Section 53720.

ARTICLE 3.7

VOLENTARY PROPOSAL OF TAXES

53720. DEFINITIONS.

As used in this Article:

(a) "local government" means any county, city, city and county, including a chartered city or county, or any public or municipal corporation; and

(b) "district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

53721. All taxes are either special taxes or general taxes. General taxes are taxes imposed for general governmental purposes. Special taxes are taxes imposed for specific purposes.

53722. No local government or district may impose any special tax unless and until such special tax is submitted to the electorate of the local government, or district and approved by a two-thirds vote of the voters voting in an election on the issue.

53723. No local government or district, whether or not authorized to levy a property tax, may impose any general tax unless and until such general tax is submitted to the electorate of the local government, or district and approved by a majority vote of the voters voting in an election on the issue.

53724. (a) A tax subject to the vote requirements prescribed by Section 53722 or

53726. Except as set forth in Section 53727, this Article shall not be construed to repeal or affect any statute enacted prior to August 1, 1985 which authorizes the imposition of a special tax.

53727. (a) Neither this Article, nor Article XIII A of the California Constitution, nor Article 3.5 of Division 1 of Title 5 of the Government Code (commencing with Section 50075) shall be construed to authorize any local government or district to impose any general or special tax which it is not otherwise authorized to impose; provided, however, that any special tax imposed pursuant to Article 3.5 of Division 1 of Title 5 of the Government Code prior to August 1, 1985 shall not be affected by this section.

(b) Any tax imposed by any local government or district on or after August 1, 1985, and prior to the effective date of this Article, shall not be affected by this section.

53728. If any local government or district imposes any tax without complying with the requirements of this Article, or in excess of its authority as clarified by Section 53727, whether or not any provision of Section 53727 is held not applicable to such jurisdiction, the amount of property tax revenue allocated to the jurisdiction pursuant to Chapter 6 of part 0.5 of Division 1 of the Revenue and Taxation Code (commencing with Section 95) shall be reduced by one dollar (\$1.00) for each one dollar (\$1.00) of revenue attributable to such tax for each year that the tax is collected. Nothing in this section shall impair the right of any citizen or taxpayer to maintain any action to annul any tax imposed in violation of this Article.

53729. This Article may only be amended by vote of the electorate of the State of California.

53730. Any application thereof to any person, organization, local government, district, or circumstance is held invalid or unconstitutional, the provision to other persons, organizations, local governments, districts, or circumstances shall not be affected thereby but shall remain in full force and effect.

Section 53723 shall be proposed by an ordinance or resolution of the legislative body of the local government or district. The ordinance or resolution proposing such tax shall include the type of tax and rate of tax to be levied, the method of collection, the date upon which an election shall be held on the issue, and, if a special tax, the purpose or service for which its imposition is sought.

(b) No tax subject to the vote requirements described by Section 53723 shall be presented at an election unless the ordinance or resolution proposing such tax is approved by a two-thirds vote of the members of the legislative body of the local government or district.

(c) Except as provided in subdivision (d), the election on any tax proposed pursuant to this Article shall be held on the same date as the primary election, or a regularly scheduled local election, or at which all of the electors of the local government or district are entitled to vote.

(d) Notwithstanding subdivision (c), the legislative body of the local government or district may provide that the election on any tax proposed pursuant to this Article shall be held at any date otherwise permitted by law. The local government or district shall bear the cost of any election held pursuant to this subdivision. An election held pursuant to this subdivision shall be deemed at the request of the local government or district causing such election, and shall not be deemed a state mon-

(e) The revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose.

53725. (a) Except as permitted in Section 1 of Article XIII A of the California Constitution, no local government or district may impose any ad valorem taxes on real property. No local government or district may impose any transaction tax or sales tax on the sale of real property within the city, county or district.

(b) Taxes permitted by Subdivision (b) of Section 1 of Article XIII A of the California Constitution shall not be subject to the vote requirements prescribed by this Article.

54

LOCAL AGENCY LEVY POWERS
Pt. 1.7

§ 7284.4

Historical and Statutory Notes

Section 6 of Stats.1993, c. 1282 (S.B.626), provides:

"This act shall not become operative unless Senate Constitutional Amendment 15 of the 1993-94 Regular Session [Stats.1993, Res. ch. 67, Prop. 176] is approved by the voters [Approved by the voters at the June 7, 1994, election], and, in that event, shall become operative on the same date as that measure."

Section 1 of Stats.1996, c. 692 (A.B.2523), provides:

"The Legislature finds and declares all of the following:

"(a) California has specifically created certain requirements in order to be eligible for tax-exempt status under Article 1 (commencing with Section 23701) of Chapter 4 of Part 11.

"(b) There are approximately 120,000 public benefit, mutual benefit, and religious benefit nonprofit organizations chartered by the Secretary of State.

"(c) These nonprofit organizations provide a large variety of health, human, charitable, and religious services to the residents of this state, many of which are provided in the public inter-

est so as to obviate the need for public agencies to provide those services.

"(d) The voters of California adopted Proposition 176 in 1994, which amended Section 26 of Article XIII of the California Constitution to exempt nonprofit organizations from any business license tax or fee measured by income or gross receipts that is levied by a county or city, whether charter or general law, a city and county, a school district, a special district, or any other local agency.

"(e) Section 7284.1 was enacted to implement the provisions of the constitutional amendment and was designed to prevent any business license fees from being imposed upon any tax exempt nonprofit organization, as well as upon any minister, clergyman, Christian Science practitioner, rabbi, or priest of any tax exempt religious organization.

"(f) The Attorney General issued Opinion 94-1204 on August 23, 1995, which concluded that a city or county may impose a business license tax upon a nonprofit organization if the tax is not measured by the organization's income or gross receipts."

Notes of Decisions

Authorized tax or levy 1

as the tax is not measured by the organization's income or gross receipts. 78 Op.Atty.Gen. 274 (1995).

1. Authorized tax or levy

A city or county may impose a business license tax upon a nonprofit organization so long

§ 7284.2. Utility user tax; levy

The board of supervisors of any county may levy a utility user tax on the consumption of electricity, gas, water, sewer, telephone, telegraph, and cable television services in the unincorporated area of the county.

(Formerly § 7285, added by Stats.1990, c. 466 (S.B.2557), § 6. Renumbered § 7284.2 and amended by Stats.1991, c. 1091 (A.B.1487), § 145.)

§ 7284.4. Approval of levies; use of revenues

Any tax levied pursuant to this chapter shall be subject to any applicable voter approval requirement imposed by any other provision of law. Revenues collected pursuant to any tax imposed pursuant to this chapter may be reserved for local purposes as determined by the board of supervisors of the county imposing the tax.

(Formerly § 7286, added by Stats.1990, c. 466 (S.B.2557), § 6. Renumbered § 7284.4 and amended by Stats.1991, c. 1091 (A.B.1487), § 146.)

65

ORDINANCE REPEALING AND RE-ENACTING CHAPTER 4.25
TO THE SANTA CRUZ COUNTY CODE
IMPOSING A .UTILITY USERS TAX

The Board of Supervisors of the County of Santa Cruz ordains
as follows:

SECTION I

Chapter 4.25 of the Santa Cruz County Code as adopted by
Ordinance No. 4083 is hereby repealed.

SECTION II

The Santa Cruz County Code is hereby amended by adding new
Chapter 4.25 to read as follows:

Chapter. 4.25

UTILITY USERS TAX

- 4.25.010 Short title.
- 4.25.020 **Tax imposed.**
- 4.25.030 Disposition of **tax** revenue.
- 4.25.040 Definitions.
- 4.25.050 Exemptions.
- 4.25.060 Electricity users tax.
- 4.25.070 Gas users tax.
- 4.25.080 Business rebate,
- 4.25.090 Sewer users tax.
- 4.25.100 Cable television users tax.
- 4.25.110 Telephone users tax.
- 4.25.120 Board of Supervisors authorization to suspend
collection of a portion of tax **for** limited periods
of time.
- 4.25.130 Collection **of** tax.
- 4.25.140 Reporting and remitting.
- 4.25.150 Penalties for delinquency.
- 4.25.160 Records.
- 4.25.170 Failure to pay tax--Administrative remedy.
- 4.25.180 Actions to collect.
- 4.25.190 Refunds.
- 4.25.200 **Rules**, regulations and agreements.
- 4.25.210 Severability.

4.25.010 Short title.

This chapter shall be known as the "Utility Users Tax
Ordinance."

56
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results of such agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter. A copy of such rules and regulations and a copy of any such agreement shall be on file and available for public examination in the Clerk of the Board of Supervisors. Failure or refusal to comply with any such rules, regulations or agreements promulgated under this section shall be deemed a violation of this chapter.

4.25.210 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or any part thereof, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

SECTION III

This ordinance shall take effect immediately as a tax measure. The tax imposed by this ordinance shall be operative as to services furnished from the beginning of the first regular billing period commencing on or after March 1, 1991; provided that the tax on sewer users shall be operative as to sewer services furnished from the beginning of the 1991-92 fiscal year.

PASSED AND ADOPTED this 26th day of February, 1991, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS Beautz, Levy, Patton, Belgard & Keeley
NOES: SUPERVISORS None
ABSENT: SUPERVISORS None
ABSTAIN: SUPERVISORS None

Attest:

[Signature]
Clerk of the Board

APPROVED AS TO FORM:

Dwight L. Herr
DWIGHT L. HERR, COUNTY COUNSEL

DISTRIBUTION: County Counsel
County Administrative Office
Treasurer-Tax Collector
Auditor-Controller

[Signature]
Chairperson of the
Board of Supervisors

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THE CLERK'S OFFICE AND THAT THE SAME IS THE PROPERTY OF THE COUNTY OF SANTA CRUZ, CALIFORNIA.

BY Betty By DEPUTY

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[No. F014631. Fifth Dist. May 29, 1991.]

CITY OF WOODLAKE, Plaintiff and Appellant, v.
THOMAS C. LOGAN, as County Auditor, etc., Defendant and
Respondent.**SUMMARY**

A county auditor withheld portions of a city's share of general property taxes as a penalty for the city's failure to submit a general utility tax it had enacted to its electorate for approval, as required by Proposition 62 (Gov. Code, § 53720 et seq.). The city filed a petition for writ of mandate and a complaint for declaratory relief, seeking release of the property taxes and challenging the constitutionality of the proposition. The trial court granted the auditor's motion for summary judgment. (Superior Court of Tulare County, No. 140220, David L. Allen, Judge.)

The Court of Appeal reversed, and directed the trial court to grant the city's cross-motion for summary judgment. The court held that the portions of Gov. Code, §§ 53723, 53724, and 53728, requiring submission of local taxes to the voters for approval and authorizing the withholding of a local government's share of property taxes as a penalty for the failure to do so, violated Cal. Const., art. II, §§ 9 and 11, which confer on state and local electors the power of referendum, but prohibit the use of that power to attack tax laws. The court also held, however, that the unconstitutional portions of Proposition 62 were severable from its remaining provisions. (Opinion by Thaxter, J., with Best, P. J., and Martin, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1a-1e) Initiative and Referendum § 3—Constitutional Provisions—
Statutes Requiring Submission of Tax Measures for Voter Approval—Constitutionality.—The trial court erred in granting summary

(Gov. Code, § 53728), as a per utility tax to the local elector Code, §§ 53723 and 53724. The and 11, which confer on local prohibit use of the referendum endum power, being of constitu statute that contravenes the cc The statutes do not merely am to levy general taxes without voter approval but rather impose a requirement, analogous to that tax measures automatically be submitted thus attempting to invoke the referendum power an initiative, Proposition 62.

[Construction and application of constitutional provisions expressly excepting certain laws from A.L.R.2d 314. See also Cal.Jur.3d, Initiative Witkin, Summary of Cal. Law (9th ed. 1 § 123.)]

(2a-2c) Initiative and Referendum § 2—Definition of Comparison of Initiative and Referendum. of the electorate to approve or reject, under act or law passed by the legislative body. Initiative power of the electorate to propose bills and them at the polls. The initiative process at statutes in the same manner as the legislative in subject matter. By definition, the referendum are a sharing of the power to legislate.

(3)

(4)

(5)

Supes' Wrangle Over Business Tax Goes Public

The quiet consent that the Board of Supervisors gave Monday to a \$79 million settlement of a lawsuit challenging the constitutionality of San Francisco's business tax code was in pointed contrast to two previous sessions, when debate over the city's best course of action threatened to vanish in an ideological fog.

Several of the voices raised in public comment in an April 9 meeting called for rebellion in the streets against the corporations that had sued the city. Before the board initially approved a settlement proposal April 16, Supervisor Chris Daly "thanked" City Attorney Louise Renne for "making corporate greed easier for me to swallow," and then voted against the settlement.

Daly's colleague Matt Gonzalez, a former deputy public defender, also wanted the city to pursue litigation, but it was his colloquy with constitutional lawyer Karen Snell, whom the city attorney retained as outside counsel, that crystallized that

REPORTER'S

NOTEBOOK

■ CIVIL LITIGATION

MATTHEW KING

that private attorneys take great pains to keep secret, and illustrated the complexity of the attorney-client relationship when the client also happens to be a lawyer.

"Their early advice was misguided," Gonzalez said of Snell and Renne. "It's unfortunate because great deference is given to the city attorney by non-lawyers."

Gonzalez's stance on the settlement and the role of the city attorney stem in part from his criminal defense background.

"In criminal cases, you learn to do what your client wants," Gonzalez said. "You try not to influence them too much. If you come back too many times urging a particular course of action, you send a message that you don't believe in the case. I've had clients reject probation or a very short term when they're facing life. You learn to get behind the program."

Snell is no stranger to criminal defense work and, in theory at least, doesn't disagree with Gonzalez.

"I just try to give my client the best advice about the chances of success in trial," she said recently. "It's always the client's decision, but in this case Matt Gonzalez is not our only client. We kept giving our opinion because members of the board kept asking for it."

That they continually asked for it in public presented no additional problem for Renne, who said she is frus-

trated that Snell has been forced to publicly undermine the very arguments she will have to make to the appellate panel should the case not ultimately settle.

"There's no question it's a problem. Our case has been in a fishbowl," she said. "No private attorney has to bring a settlement offer to their clients in a fishbowl as I must. It's absolutely a potential problem for the public, but that's what the public wants so that's what we do."

And many members of the public, as evidenced in the hearings, do not want to settle even though California appellate courts have previously found measures similar to San Francisco's unconstitutional.

In 1995, Los Angeles' business tax code was deemed discriminatory in *General Motors Corp. v. City of Los Angeles*, 35 Cal. App. 4th 1736, a dispute related to the city's tax on the sale of cars. In 1999, the city lost a suit against San Francisco in *General Motors Corp. v. City and County of San Francisco*, 69 Cal. App. 4th 448.

An amendment to the city's tax code that allows businesses that think they are being overcharged to petition for a refund didn't solve the problem; last May, San Francisco Superior Court Judge Ronald Quindachay reversed his own earlier decision and ordered the city to repay \$310 million in back taxes to corporations that had claimed that out-of-town businesses were taxed unfairly. *General Motors Corp. v. City and County of San Francisco*, 301510.

Though Renne has maintained all along that the city's tax code is legal, she now questions whether it makes sense to continue to defend it in court. Every case law that her deputies and Snell pored over led them, to one conclusion: unjust as it may be, the city was facing almost certain defeat.

So Renne, to the disgust of virtually every public interest and advocacy group in the city, urged the board to accept a settlement offer that would cost the city about \$8 million annually over 10 years.

"It was a judgment call as much as anything else," Renne said. "If it were my money, I would love to go forward. But with the money we're talking about, you have to decide whether you're going to adopt a prudent course or let the devil take the hindmost."

To Renne and Snell, settlement seems the prudent course. Gonzalez sees the legal issues differently, and he stresses that, in spite of his social activist reputation, his opposition to the proposed settlement is grounded in the law.

"Maybe some of my colleagues are approaching it differently, but I'm looking strictly at the merits of the case," he said. "That it affects the city's social services is just a more compelling reason to hold the line and fight

it out."

Snell believes that an adverse appellate judgment could cost the city close to \$600 million if it affirms Quindachay's ruling in full and also orders additional refunds for 2001.

But even if the city loses, Gonzalez contends that the likely remedy is that the city will be ordered to pay back only the excess tax that wouldn't have been collected under a valid tax code, or considerably less than \$100 million.

Just such a remedy was prescribed by the U.S. Supreme Court in a Florida case, *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18 1990.

Gonzalez believes that ruling limits the city's exposure to about \$60 million. "They originally told us that this could cost the city \$800 million, but the more we looked at it independently, the more that figure came down," he said. "It was irresponsible for them to suggest that the maximum penalty was even possible."

In addition to the uncertainty over a McKesson remedy, there are statute-of-limitation questions that might limit the city's liability.

Until 1997, city law allowed refund claims to be made as late as three years after payment, but current law allows only a six-month window. Gonzalez believes the 1st DCA will hold the city accountable only as far back as 1998, but it's possible the city may owe refunds reaching back to 1995.

"I think it's just a question of risk analysis," Snell said. "I've tried to be as accurate as any lawyer can be when you're dealing with unconcluded questions of law. We have a good argument about the statute of limitations, but I'm unwilling to tell the city there's a strong likelihood a judge will rule in our favor on the issue."

In fact, Snell and Renne don't quibble at all with Gonzalez's arguments.

"I've told a number of people that instead of Supervisor Gonzalez, he was Judge Gonzalez," Renne told the Daily Journal. "He's making the same arguments we've been making all along."

She also believes that the Gonzalez-Snell colloquy is based in part on healthy professional rivalry.

"All lawyers like to play games with one another," Renne said. "It's just until stakes are so high."

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