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To: Finance Committee

From: Sharon L. Anderson, County Counsel
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Re: **ANALYSIS OF UNIFORMITY REQUIREMENT IN PARCEL TAX MEASURES**

SUMMARY

This responds to the Finance Committee's request for an analysis of *Borikas v. Alameda Unified School District* (2013) 214 Cal.App.4th 135, a case involving a school district parcel tax with different rates for different types of properties. In *Borikas*, the Court of Appeal invalidated the district's parcel tax because the same tax rate was not applied to all parcels regardless of the parcel's size or characteristics. The Court invalidated the tax because the statute authorizing the tax required the tax to be applied uniformly to all property and taxpayers. But not all enabling statutes include a requirement that parcel taxes must be applied uniformly. Whether a court upholds a parcel tax measure with different tax rates based on a parcel's use or size depends on whether the tax measure's authorizing statute includes a uniformity requirement.

DISCUSSION

1. Parcel Taxes Generally

A parcel tax is a tax collected on the property tax roll that is based on either a flat, per-parcel rate or a rate that varies based on other factors such as parcel size, use, or other physical attributes other than value. (*Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 487.) Parcel taxes based upon the value of the property are invalid as a violation of Proposition 13's limits on ad valorem property taxes -- i.e., taxes based on the assessed value of property. (Cal. Const., art. XIII A, § 1; see *City of Oakland v. Digre* (1988) 205 Cal.App.3d 99, 110.) Section 3 of article XIII D limits the types of taxes that can be imposed upon a parcel of property to two types -- the ad valorem property tax imposed pursuant to article XIII and article XIII A, and any special tax receiving a two-thirds vote pursuant to Section 4 of article XIII A. Accordingly, a parcel tax may be imposed only as a special tax. (*Nielson v. City of California City* (2006) 133 Cal.App.4th 1296, 1312.) A special tax means "any tax imposed for specific purposes," including a tax imposed for specific purposes and placed into a general fund. (Cal. Const., art. XIII C, § 1(d).) The California Supreme Court has described a special tax as a tax "levied to fund a specific governmental project or program." (*Rider v. County of San Diego* (1991) 1

Cal.4th 1, 15.)[1]

2. Analysis of *Borikas v. Alameda Unified School District*

In *Borikas*, the First District Court of Appeal considered whether it was appropriate to impose a parcel tax with varied rates based on different property types. The lawsuit arose out of a 2008 vote on Measure H, a parcel tax measure for the Alameda Unified School District that was narrowly approved by the voters. The measure imposed a parcel tax with differing rates based on use and size of the parcel. A taxpayer sued, arguing that the tax had to be the same rate for each parcel because the law that authorized the tax included a uniformity requirement. The school district's defense was that rationally-based classifications were permissible.

The Court of Appeal agreed with the plaintiff, noting that with limited exceptions, the statute on which the tax was based required that it "apply uniformly" to all taxpayers or all real property within the school district.[2] In reviewing the legislative intent behind the statute, the court concluded: "It is … apparent that when the Legislature added the 'apply uniformly' language to these enabling statutes, it also viewed classification and differential tax rates as matters requiring *express* authorization." (*Borikas, supra*, 214 Cal.App.4th at pp. 163-164.) Based on this analysis, the Court concluded that the enabling statute at issue did not empower school districts to classify taxpayers and property, and impose different tax rates. (*Borikas, supra*, 214 Cal.App.4th at p. 151.) The Alameda Unified School District appealed to the California Supreme Court; however, the Supreme Court denied the request for rehearing, which meant that the District was required to repay about $7 million in taxes it collected under the invalid tax measure.

3. Other Authorizing Statutes

A county's power to tax arises from statute. (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 247-249.) Like the statute at issue in *Borikas*, some statutes that authorize counties to impose a parcel tax include a uniformity requirement. For example, a library tax levied under Government Code section 53717 must "apply uniformly to all taxpayers or all real property within the city, county, city and county, or library district." Similarly, the parcel tax authorization found in the County Service Area Law, Government Code section 25215.2, specifically requires that special taxes imposed to support County Service Area services must be "applied uniformly to all taxpayers or all real property within the county service area, except that unimproved property may be taxed at a lower rate than improved property."

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[1] The analysis on tax uniformity in this memo applies only to parcel taxes. It does not apply to sales taxes, the "transactions and use tax" imposed under Division 2, Part 1.7, Chapter 2 of the Revenue and Taxation Code.

[2] The statute at issue in *Borikas* was Government Code section 50079, which provides in pertinent part: "(a) Subject to Section 4 of Article XIII A of the California Constitution, any school district may impose qualified special taxes within the district pursuant to the procedures established in Article 3.5 (commencing with Section 50075) and any other applicable procedures provided by law. (b) (1) As used in this section, "qualified special taxes" means special taxes *that apply uniformly to all taxpayers or all real property within the school district*, except that unimproved property may be taxed at a lower rate than improved property." [Emphasis added.]

In contrast, other parcel tax enabling statutes do not include a uniformity requirement. For example, a Mello-Roos Community Facilities District special parcel tax may "be on or based on a benefit received by parcels of real property, the cost of making facilities or authorized services available to each parcel, or some other reasonable basis as determined by the legislative body." (Gov. Code, § 53325.3.) Similarly, a special tax for police or fire under Government Code section 53978 can be applied in zones and can vary based on the class of improvement on property or the use of property.

CONCLUSION

Whether to adopt an ordinance to authorize the levy of a special parcel tax is a policy decision for the Board of Supervisors, subject to final approval by the voters. If the Board of Supervisors authorizes the preparation of a parcel tax measure to be placed on an upcoming ballot, this office will work with the County Administrator's Office to prepare the ordinance and analyze whether the authorizing statute for the Board's proposed measure includes a uniformity requirement.

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