

## Memorandum

**TO:** Brian Helmick and Regina Rubier

**FROM:** Shayna van Hoften and Nicole Witt

**DATE:** November 28, 2018

**RE:** **Revenue Options Guide**

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This guide serves as a tool to assist staff in quickly ascertaining which of the revenue generation vehicles below (A) may be implemented without going to the voters (**green**); (B) could be implemented, but requires (1) going to the voters and/or (2) entering into a (likely long-term) agreement with one or more local agencies (**yellow**); or (C) may not be implemented without State legislation or further action by other agencies (**red**).

Option	Description	Implementation Evaluation
<b>Service and Regulatory Fees</b>	Fees to cover the cost of any service provided by the District or to enforce any regulation for which a fee is charged. (Cal. Health & Safety ("H&S") Code § 13916). The amount of the fee may not exceed the cost reasonably borne by the District in providing the services or enforcing the regulation. ( <i>Id.</i> )	To adopt a fee, the District must hold a hearing, prepare data indicating the cost of the service provided or cost of enforcing the subject regulation, and enact an ordinance. (Cal. H&S Code § 13916).  <i>Examples: ECCFPD's Emergency First-Responder Fee; Fire Protection, Hazardous Material Emergency Response and Rescue Services Fees; Fire Prevention Fees</i>
<b>Charitable Contributions; Non-Profit Public Benefit Corporation</b>	Various types of private entities can make contributions to government agencies and receive beneficial tax treatment of such expenditures.  A specific non-profit public benefit corporation may be formed for any public or charitable purpose, such as supporting fire services. (Cal. Corp. Code § 5111). "Charitable purposes include . . . governmental or municipal purposes." ( <i>Lynch v. Spilman</i> , 67 Cal. 2d 251, 261 (1967).) Nonprofit public benefit corporations are specifically authorized to make donations for the public welfare or for civic or similar purposes. (Cal. Corp. Code § 5140(h).)	The District can accept contributions pursuant to Cal. H&S Code section 13898. One or more established for-profit or nonprofit entities may be willing and able to fundraise for the District.  The District, as a government agency, likely meets the definition of a "person" under the Corporations Code and may create a new nonprofit corporation. The process to form a nonprofit corporation is relatively simple, but requires time for obtaining tax exempt status, etc. Also, it takes time for a nonprofit to build up its fundraising apparatus.  Non-profits created by or with involvement of public agencies can be subject to government ethics and transparency laws.

Option	Description	Implementation Evaluation
<p><b>Health &amp; Safety Code Special Taxes</b></p>	<p><u>Section 13911 Special Taxes:</u>            A tax applied for a specific purpose. (Cal. Government ("Gov.") Code §50075.1). Authority is limited to types of taxes specifically authorized for imposition by Fire Protection Districts.</p> <p><u>Section 13913 Special Parcel Tax:</u>            A special tax on a parcel, class of improvement to the property, or use of property, to fund fire suppression services. (Cal. Gov. Code § 53978). Sometimes referred to as "<i>Fire Flow Tax</i>" if based on amount of water needed to extinguish fire at particular property. The tax may be applied to zones or areas within the District. The tax may not be only applicable to, or higher for, new construction. The tax cannot be set based on the value of the property ("ad valorem").</p>	<p><u>Section 13911 Special Taxes:</u>            The District is authorized to impose a special tax pursuant to Cal. H&amp;S Code Section 13911 and Cal. Gov. Code Section 50075. Requires a public hearing, Board approval of a measure, and 2/3 voter approval. (Cal. Gov. Code §50075.1).</p> <p><u>Section 13913 Special Parcel Tax:</u> The District is authorized to impose a special parcel tax pursuant to Cal. H&amp;S Code Section 13913 and Cal. Gov. Code Section 53978. Requires 2/3 voter approval. If the tax will be applied within a zone or area, only voters registered in that area are included in the election. Note: This is an election of registered voters without regard to whether they own taxable property.</p> <p><i>Examples: ECCFPD's unsuccessful Measure S in 2012.</i></p>
<p><b>Mello-Roos Community Facilities Act</b></p>	<p>A community facilities district (CFD) established to finance fire protection and suppression services and ambulance and paramedic services. (Cal. Gov. Code §53313). A CFD's tax can fund operating and/or capital costs. Any tax approved may only finance services to the extent they are <b>additional</b> to those provided before the establishment of the CFD. (<i>Id.</i>) The CFD may also finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or the related planning and design work. (Cal. Gov. Code §53313.5). CFDs can apply to existing and/or new development.</p>	<p>The District is authorized to establish a CFD pursuant to Cal. H&amp;S Code Section 13912 and Cal. Gov. Code Section 53312.7. The process for establishing a CFD involves a petition by members of the legislative body, voters or landowners of the proposed district. The legislative body must adopt a resolution of its intent to establish a CFD. Once the CFD is established, it must put the proposed special tax to its voters for two-thirds approval. (See Cal. Gov. Code §53318 et seq.). In a CFD with fewer than 12 registered voters, the vote is of landowners rather than the general electorate (e.g., developers of a new neighborhood).</p> <p>The District also can be part of a joint CFD with other agencies by agreement.</p> <p><i>Examples: Summer/Cypress Lakes CFD, Delta Coves CFD, Gilbert CFD.</i></p>

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<b>Fire Suppression Assessments</b>	<p>Property assessments based on the fire protection benefits to the assessed properties. (Cal. Gov. Code § 50078.2). The assessment on each property must be proportional to the measure of the special benefit to the property, and must meet other constitutional requirements (primarily under Proposition 218) and implementing statutes.</p>	<p>The District may enact and levy an assessment to fund fire suppression <b>services</b> pursuant to Cal. H&amp;S Code Section 13914 and Cal. Gov. Code Section 50078. Assessments may only be enacted after a public comment and hearing process and a property-owner protest ballot proceeding. (Cal. Gov. Code § 50078.6). Property owners' ballots are weighted based on the relative sizes of the associated assessments. For example, if a property is to be assessed at \$15 per year and another property at \$30, the ballot for the second property counts twice as much as the ballot for the first property; accordingly, properties expected to receive the greatest special benefit, and therefore pay the highest assessments, also will carry the greatest weight in the ballot process. If a majority of the weighted ballots cast opposes the assessment, the agency cannot enact and levy the assessment. (Cal. Gov. Code § 53753).</p> <p><i>Example: ECCFPD's unsuccessful Fire Suppression Assessment proceeding in 2015.</i></p>
<b>Assessments to Finance Capital Improvements</b>	<p>Assessments to finance capital improvements including pipes, hydrants, and improvements for fire protection. (See Cal. Streets and Highways Code §§ 5101, 10100). The assessments may also support bond issuances. (See Cal. Streets and Highways Code § 8500 <i>et seq.</i>) Proportionality requirements mirror those described above.</p>	<p>The District also may enact and levy an assessment to fund fire suppression <b>capital needs</b> and issue related bonds pursuant to Cal. H&amp;S Code Section 13915 and Cal. Streets &amp; Highways Code Sections 5000, 8500 and 10000.</p> <p>To levy an assessment, the District must complete the notice, public hearing and protest ballot process generally described above.</p>
<b>General Obligation Bonds</b>	<p>Bonds for the acquisition or construction of real property or other capital expense or for funding or refunding of any outstanding indebtedness. (Cal. H&amp;S Code § 13925).</p>	<p>The District may issue General Obligation bonds with 2/3 voter approval. (Cal. H&amp;S Code § 13928).</p>

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<b>Intergovernmental Revenue Transfer Agreements</b>	The District may enter into one or more agreements with other government agencies to transfer revenue collected by that agency to the District. (Cal. H&S Code § 13898).	With an intergovernmental agreement, the District is not in the position of imposing the tax or fee, though its local partner may do so. These agreements typically can be terminated by either party and, as such, may not be very durable.  <i>Example: Multijurisdictional Task Force MOU between cities of Brentwood and Oakley, Contra Costa County and ECCFPD in 2016-17.</i>
<b>Joint Powers Agreement</b>	The District may enter into a joint powers agreement with another local agency(ies) in order to form a joint powers authority (JPA). A JPA is a separate agency, with a separate board of directors, is formed through the execution of the associated Joint Exercise of Powers Agreement and can implement revenue-generating measures.	While JPA's are more easily formed than a new special district, they usually are more complicated in formation and termination than an intergovernmental agreement that does not create a new entity. The powers of the JPA will be limited to the powers common to the member agencies. (Cal. Gov. Code § 6502). As such, a JPA would not expand the District's authority to implement revenue options. The exception is that a JPA <i>may</i> be authorized to issue different bonds for purposes including the construction or acquisition of a fire station. (Cal. Gov. Code § 6546). JPA's require separate administration, employer-employee relationships, alteration to employee benefits and retirement system involvement, etc.
<b>County Services Area</b>	The County may form a county service area (CSA) to provide or supplement services offered in contiguous or non-contiguous unincorporated areas of the county. (Cal. Gov. Code § 25210.7). All or any part of a city may be included in a county service area only if the city gives its consent. ( <i>Id.</i> ) CSAs are new agencies, separate from the county.	A CSA may be formed by petition and must follow the LAFCO process. (Cal. Gov. Code §§ 25211.1; 25211.4). CSAs have access to certain County revenues. In the District's case, a CSA would be authorized to provide fire protection and other emergency services; the CSA could, however, contract with the District to provide such services through an intergovernmental agreement.

Option	Description	Implementation Evaluation
<p><b>Taxes that can <u>Only</u> be Imposed by Other Agencies Absent Legislative Changes</b></p>	<ul style="list-style-type: none"> <li>• Sales Tax</li> <li>• Transient Occupancy Tax</li> <li>• Utility User Tax</li> <li>• Documentary Transfer Tax</li> <li>• Business License Tax</li> <li>• Property Transfer Tax</li> <li>• Admissions Tax</li> <li>• Payroll Tax</li> </ul> <p><i>Note: Special districts cannot enact general taxes (subject to 50% voter approval) whereas cities and counties can.</i></p> <p><i>The District cannot pursue any of these taxes directly unless a new State law authorizes it.</i></p>	<ul style="list-style-type: none"> <li>• <u>Sales Tax</u>: May be imposed by cities, counties and some special districts. Local sales taxes generally are limited to 2%. If total local sales taxes in one city are 2%, no new sales taxes can be implemented by the city, the county where the city is located, or special district providing services in the city without a legislative exception.</li> <li>• <u>Transient Occupancy Tax</u>: May be imposed by cities and counties.</li> <li>• <u>Utility User Tax</u>: May be imposed by cities and counties.</li> <li>• <u>Documentary Transfer Tax</u>; <u>Property Transfer Tax</u>: May be imposed by cities and counties.</li> <li>• <u>Business License Tax</u>: May be imposed by cities and counties.</li> <li>• <u>Admissions Tax</u>: May be imposed by cities for admission to golf courses, theme parks, etc.; very little use state-wide (e.g., Anaheim, Santa Cruz).</li> <li>• <u>Payroll Tax</u>: May be imposed by local agencies authorized by law to tax earnings; very little use state-wide (e.g., San Francisco).</li> </ul>

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<b>Impact Fees</b>	The Mitigation Fee Act authorizes local agencies to impose fees to offset the impacts of new development in the form of new services and/or facilities required. The Mitigation Fee Act also imposes a variety of administrative requirements on the fees collected. No voter approval is required to impose impact fees.	Fire districts may not impose fees on new construction or development. (Cal. H&S Code 13916(a).) As a result, obtaining authorization to impose impact fees would require state legislation. However, cities, counties and some other types of special districts, which in some cases can be forwarded to the District for fire-related projects. The District is currently working with Brentwood, Oakley, and the County to update their impact fees to more accurately reflect the costs of providing fire protection service.  <i>Examples: City of Brentwood, City of Oakley Impact Fees</i>
<b>Revenue Bonds</b>	Revenue bonds finance income-producing projects and are paid off by the specified revenue stream.	The District does not utilize an "enterprise" and generate revenues as defined by the Government Code.
<b>Marijuana Permits and Licenses</b>	Fees imposed upon businesses in the recreational and medical marijuana industry.	The District may not impose a tax directly, but there may be an opportunity for the County to devote such tax revenues to the District.

**Funds from the following revenue sources may not be used for District services:**

1. **Gas Tax:** Revenue only for transit.
2. **Vehicle License Fee:** Revenue for rapid transit only.
3. **Vehicle Registration Fee:** Revenue only to fund senior and disabled services, to maintain streets, and to reduce water pollution from runoff.
4. **Business Improvement District:** Services provided by the District do not meet the statutory definition of "improvements."
5. **Vehicle Parking District:** Revenue may only be used for vehicle parking facilities.
6. **Landscape and Lighting District:** Revenue may only be used for the financing of costs for landscaping and lighting public areas.
7. **Community Rehabilitation Districts:** Revenue may be used to finance the rehabilitation of existing public infrastructure; districts can only be formed by cities and counties.
8. **Street Lighting Districts:** Revenue may be used for the costs of street lighting.
9. **Geological Hazard Abatement District:** Revenue may be used to finance the prevention, mitigation, abatement and control of a geological hazard related to movement of land or earth.
10. **Integrated Finance District:** Used to assist developers in financing multi-phase projects.

11. **Maintenance Districts:** Revenues may be used to finance the costs of maintaining open spaces, parks, playgrounds, and other public areas.
12. **Standby Charges:** May only be imposed by a local agency providing water or sewer services to ensure adequate water or sewer service is available when needed.
13. **Street Improvement Districts:** Revenues may be used to finance the cost of building and maintaining public roads and highways.

**2019 Contra Costa County Election Schedule:**

As of January 1, 2019, the established standard election dates will be as follows:

1. The second Tuesday of April in each *even-numbered* year.
2. The first Tuesday after the first Monday in March of each *odd-numbered* year.
3. The first Tuesday after the first Monday in November of *each* year.
4. The first Tuesday after the first Monday in March in each *even-numbered* year.

As of January 1, 2019, California's election dates no longer include a June date. Accordingly, standard election dates for 2019 are 03/05/2019 and 11/05/2019. It would be impracticable for the District to place any measures on the ballot for an election in March 2019. The key dates leading up to a November 2019 election are:

<b><i>Election date minus # days</i></b>	<b><i>11/05/2019 Election Schedule</i></b>	<b><i>Benchmark activity</i></b>
E-88	08/09/2019	Last day to place a measure on the ballot. (Elec. Code § 10403)
E-76	08/21/2019	Deadline for primary arguments. (Elec. Code § 9163)*
E-71	08/26/2019	Deadline for rebuttal arguments. (Elec. Code § 9167)*
E	11/05/2019	ELECTION DAY (Elec. Code § 1000)

\*The Contra Costa County Elections Office has not yet published its official 2019 schedule, so these dates are based on past elections and statutory provisions.

California also permits certain elections to be held as all-mail-ballot elections. All-mail-ballot election days are:

1. The first Tuesday after the first Monday in May of *each* year.
2. The first Tuesday after the first Monday in March of each *even-numbered* year.
3. The last Tuesday in August of *each* year.

*Note:* Property-owner ballot/majority protest processes do not follow an established election schedule and can be scheduled by the entity holding such process.