

Proposition 218 – the “Right to Vote on Taxes Act”

In November 1996, California voters approved Proposition 218 (Prop 218), the “Right to Vote on Taxes Act.” Prop 218 is a constitutional initiative that ensures that all taxes and charges on property owners are subject to voter approval. Prop 218 also gives voters the ability to repeal or reduce any local tax, assessment or fee by voter initiative.

This brief analysis will provide an overview of the vocabulary of Prop 218, changes to local finance and governance under Prop 218, and requirements for local governments to raise new revenues in compliance with Prop 218.

Prop 218 Vocabulary

Table 1 below explains some of the relevant vocabulary used by Prop 218. While these terms are legally distinct, local governments may use them interchangeably, resulting in some confusion as to what charges must comply with Prop 218.

TABLE 1	
Vocabulary of Proposition 218	
<i>“Understanding Proposition 218,” Legislative Analyst’s Office, December 1996</i>	
TAX	A charge on an individual or business that pays for government services and facilities that benefit the general public
<i>Special tax</i>	A charge whose revenues are used for a specific purpose (must be approved by a two-thirds vote)
<i>General tax</i>	A charge whose revenues can be used for any governmental purpose (must be approved by a majority vote)
ASSESSMENT	A charge imposed on property to pay for improvements or services that benefit the property (such as flood control improvements, landscaping, streets and lighting)
FEE	A charge on an individual or business for a government service or facility provided directly to that individual or business
<i>Property-related fee</i>	“An incident of property ownership” – fees that a property owner cannot avoid (possibly including water delivery, garbage service, sewer service, and storm water management fees)
BENEFIT	
<i>Special benefit</i>	A distinct benefit to real property in a specific area
<i>General benefit</i>	Benefits to public health or safety, or general improvements to property values

Changes to local finance and governance

Prop 218 focuses on the local revenue tools not controlled under Proposition 13 (Prop 13), the “People’s Initiative to Limit Property Taxation.” Prop 13 was approved by California voters in 1978 and constrained the ability of local governments to raise property taxes. It also specified that any local tax imposed to pay for specific government programs or services must be approved by two-thirds of voters.¹ As a result of these constraints, local

¹ For more information on Prop 13, see SDCTA staff analysis

governments turned to other revenue sources, such as general purpose taxes, property-related fees, and assessments. Prop 218 focuses specifically on taxes, assessments and fees.

As seen in Table 1 below, most local government revenues are not affected by Prop 218. However, many local governments have experienced increased costs due to compliance requirements, including costs associated with elections and property-owner notifications.

TABLE 2	
Local Revenues Affected by Proposition 218	
Affected	Not Affected
Taxes	
“General taxes” <i>(eg. City of San Diego Transient Occupancy Tax)</i>	Property taxes Bradley-Burns sales taxes Special taxes Vehicle license taxes Redevelopment revenues Mello-Roos taxes* Timber taxes
Assessments	
All new or increased assessments Some existing assessments <i>(eg. San Diego County Street Lighting District)</i>	Most existing assessments
Fees	
Property-related fees (fees resulting from property ownership) <i>(eg. San Miguel Fire Protection District)</i>	Fees that are <i>not</i> property-related Gas and electric fees Developer fees
<small>“Understanding Proposition 218,” Legislative Analyst’s Office, December 1996 * Taxes imposed on new subdivisions to pay for infrastructure</small>	

Prop 218 also changed the roles and responsibilities of local residents, property owners and local governments. Before Prop 218, local residents and property owners had a limited role in approving most local revenue-raising measures. Under Prop 218, most of the power over local taxation shifted from local governing bodies to local residents and property owners, constraining the powers of local governments. Specifically, local governments have little authority to raise revenue without a vote of local residents or property owners.

Requirements for local governments to raise new revenues

In order to raise a new tax, assessment or property-related fee, local governments must comply with the requirements of Prop 218. Namely, local governments may only use assessments and property-related fees to fund projects and services that directly benefit that property. For more restrictions on the use of taxes, assessments and fees under Prop 218, see Table 3 below.

TABLE 3
Restrictions on the use of Taxes, Assessments and Fees

Taxes
- New general taxes cannot be imposed or increased without majority approval
- New special taxes cannot be imposed or increased without two-thirds approval
Assessments
- Cannot be used to finance projects and services that do not provide a special benefit to a specific property
Fees (property-related)
- Cannot be imposed to pay for general governmental services
- Cannot be levied for a service not used by or immediately available to the specific property owner
- Cannot be used to finance programs that are not property-related

Furthermore, most revenue-raising measures must be approved in an election. See Table 4 below for information on the vote needed for new or increased taxes, assessments and fees under Prop 218.

TABLE 4
Vote needed for new or increased taxes, assessments, and fees

Type	Vote Needed	Who Votes	Vote Requirement
Taxes			
General	Yes	All voters in community or affected area	Majority
Special	Yes	All voters in community or affected area	Two-thirds
Assessments			
All	Yes	Property owners in affected area (and renters responsible for paying assessment)	Majority Weighted in proportion to assessment each property owner pays
Fees			
Property related	Yes (for any service other than water, sewer, or garbage collection)	Local government chooses: <ul style="list-style-type: none"> • Property owners in affected area • Total electorate in affected area 	<ul style="list-style-type: none"> • Majority of property owners • Two-thirds of total electorate Local governments may choose to weight ballots in proportion to fee liability

“Understanding Proposition 218,” Legislative Analyst’s Office, December 1996

Requirements for new taxes:

In order to institute or increase a tax, local governments must comply with the provisions of Prop 218:

- All general taxes must be approved by a majority vote of all voters in the community or affected area.
- Elections for general taxes must be held with a regularly scheduled election for members of the local governing body. In the instance of an emergency, an election can be held if the local governing body unanimously approves the election.

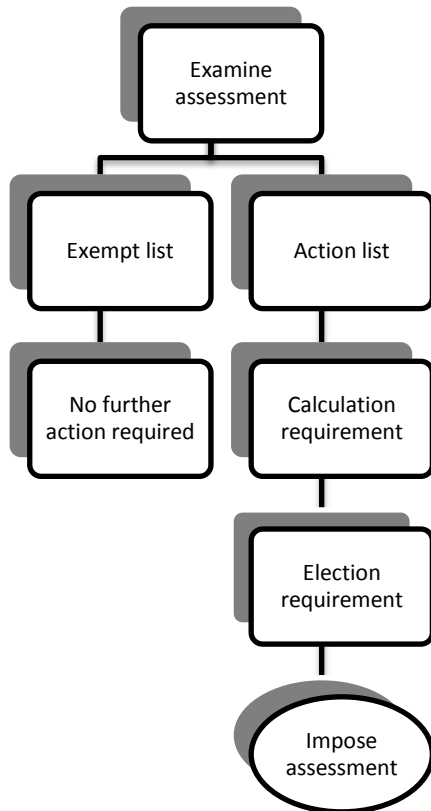
- Taxes imposed for a specific purpose are considered “special taxes,” even if the revenue is placed in the community’s general fund.
- All special taxes must be approved by a two-thirds vote of all voters in the community or affected area.

Requirements for new assessments:

Local governments must go through several steps to ensure that new and increased assessments are in compliance with Prop 218. Figure 1 below shows this process.

All new and increased assessments must be examined to determine whether they are exempt from Proposition 218. Assessments are “exempt” if:

**FIGURE 1:
Actions required for new assessments**



- The assessment was previously approved by voters or all property owners at the time the assessment was created, prior to the implementation of Prop 218

- All assessment proceeds are pledged to repaying bonds related to the assessment

- All assessment proceeds are used to pay for sidewalks, streets, sewers, water, flood control, drainage systems, or vector control

If an assessment is not exempt, then the assessment must adhere to Prop 218’s calculation and election requirements before it can be imposed.

Under Prop 218’s calculation requirement, local governments must undertake three provisions.

First, the local government must **determine whether a government project or service financed by an assessment will provide property owners with a “special benefit,”** as

defined above. If the project or service does not provide a special benefit, then the project or service cannot be funded by an assessment.

Second, the local government must use an Engineering Report that **estimates the amount of special benefit and general benefit that landowners would receive from the project or service.** Under Prop 218, local governments are only allowed to use assessments to recoup the proportionate share of the cost to provide the special benefit. In other words, if special benefits represent 25 percent of total benefits resulting from the project or service,

then the local government can use revenue from the assessment to recoup one quarter of the total cost of the project or service. Furthermore, revenue raised must be used for the reason raised: for example, assessment revenues cannot be used to pay for salary increases.

Third, within an Engineering Report, the local government must ***set individual assessment charges so that no property owner pays more than his or her proportional share of the total cost of the assessment.***

After calculating the proposed assessment, all landowners and property owners must vote on the assessment. The local government must send information regarding the assessment to all property owners, as well as a mail-in ballot. Local governments must also hold a public hearing before tabulating the ballots. Ballots are weighted in proportion to the amount of the assessment charge each property owner would pay. New assessments can only be proposed if 50 percent or more of the weighted ballots support the assessment.

Requirements for new fees

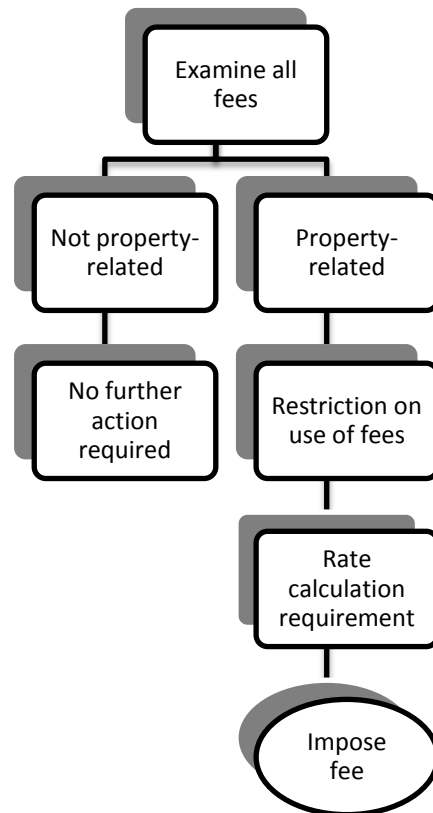
Local governments must go through a similar process in order to ensure that new and increased fees are in compliance with Prop 218. Figure 2 below shows this process.

Local governments must first determine whether the proposed fee is a “property-related” fee, as defined above. Fees that are property-related must comply with Prop 218’s stated restrictions on the use of fee revenues and rate calculation requirements. Prop 218 places new restrictions on the use of fees, so that property-related fees cannot be:

- Imposed to pay for a general governmental services
- Levied for a service not used by or immediately available to the specific property owner
- Used to finance programs that are not property-related

Local governments must also use an engineering report ensure that any new or increased fees comply with Prop 218’s calculation requirements. Specifically, ***no property owner’s fee can be greater than the proportionate cost to provide the property-related service to***

**FIGURE 2:
Actions required for new fees**



his or her property. This fee rate calculation is often called the “proportionality” requirement.

Local governments must also mail information regarding the proposed fee to all property owners (or the total electorate) in the community or affected area and hold a public hearing regarding the fee at least 45 days after the mailing. The proposed fee must be rejected if the majority of the affected property owners present written protests. An election must be held for all property-related fees excepting fees for water, sewer, or garbage collection.