

UTILITY USER TAX

Vision and Victory *How Changing UUT Impacts You* What to do now

Presenters

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February 8, 2017
2:30 pm - 3:45 pm



Background

- Prior to 1986 most UUTs were adopted by the vote of the City Council.
- The tax is levied by the local on the consumer of the utility services and collected by the utility then remitted to the local.
- Keeping up with change threatened this vital funding for essential services.
- Proposition 218 impact.
- Reducing the tax base in anticipation of changing technology.



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History Matters

- A small number of cities in the 1980s began imposing an excise tax, known as a utility users tax or UUT, on the use of certain utility services within their cities.
- The initial UUT ordinance was jointly written by the League and a few utility representatives.
- The monolithic gas and telephone industries experienced dramatic institutional changes meaning more utility providers, competition, and complicated gas bills
- The result was opportunity for non-compliance in the collection of the UUT.



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History Matters

- A brand new telecommunication industry, called “cellular” or “wireless”, prominently appeared on the scene in the early 1990s.
- California Legislature in the 2000s enacted legislation to formalize the electric deregulation process.
- AB 1717 in 2014 created a mechanism for the collection of revenue from prepaid wireless revenues.
- The past complicated the collection of the UUT with many new utility providers offering new or differentiated services.



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UUT Revenue

Cities and Counties With UUTs as of 7/1/2015

	Cities	Counties	Total	California Population covered
Number with UUT	158	4	162	50%
Telephone UUTs	150	4	154	49%
Electricity	157	4	161	49%
Gas	157	4	161	49%
Cable TV	90	1	91	20%
Water	86	1	87	21%
Sewer	14	1	15	4%
Garbage	12	0	12	1%

CaliforniaCityFinance.Com



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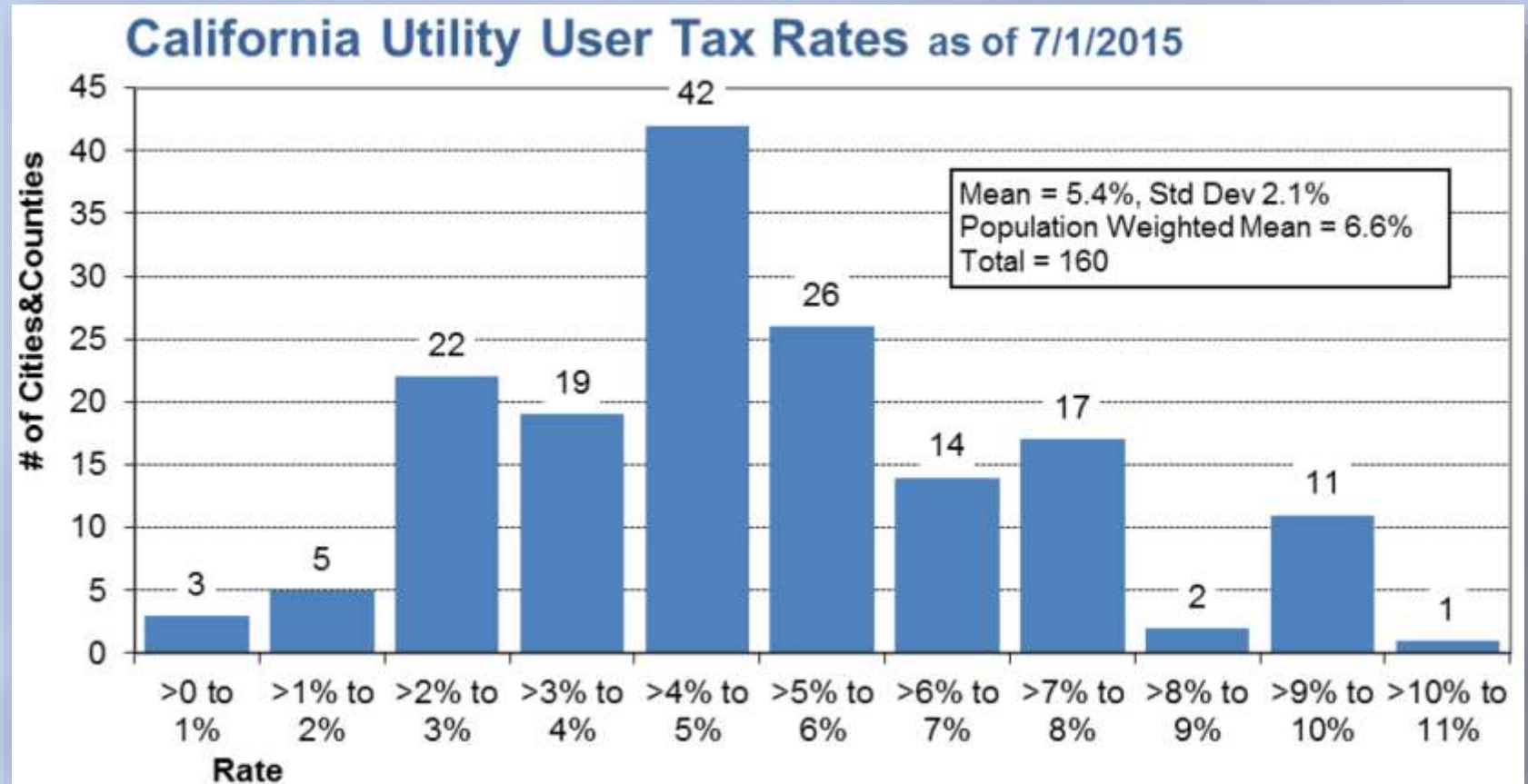
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UUT Revenue



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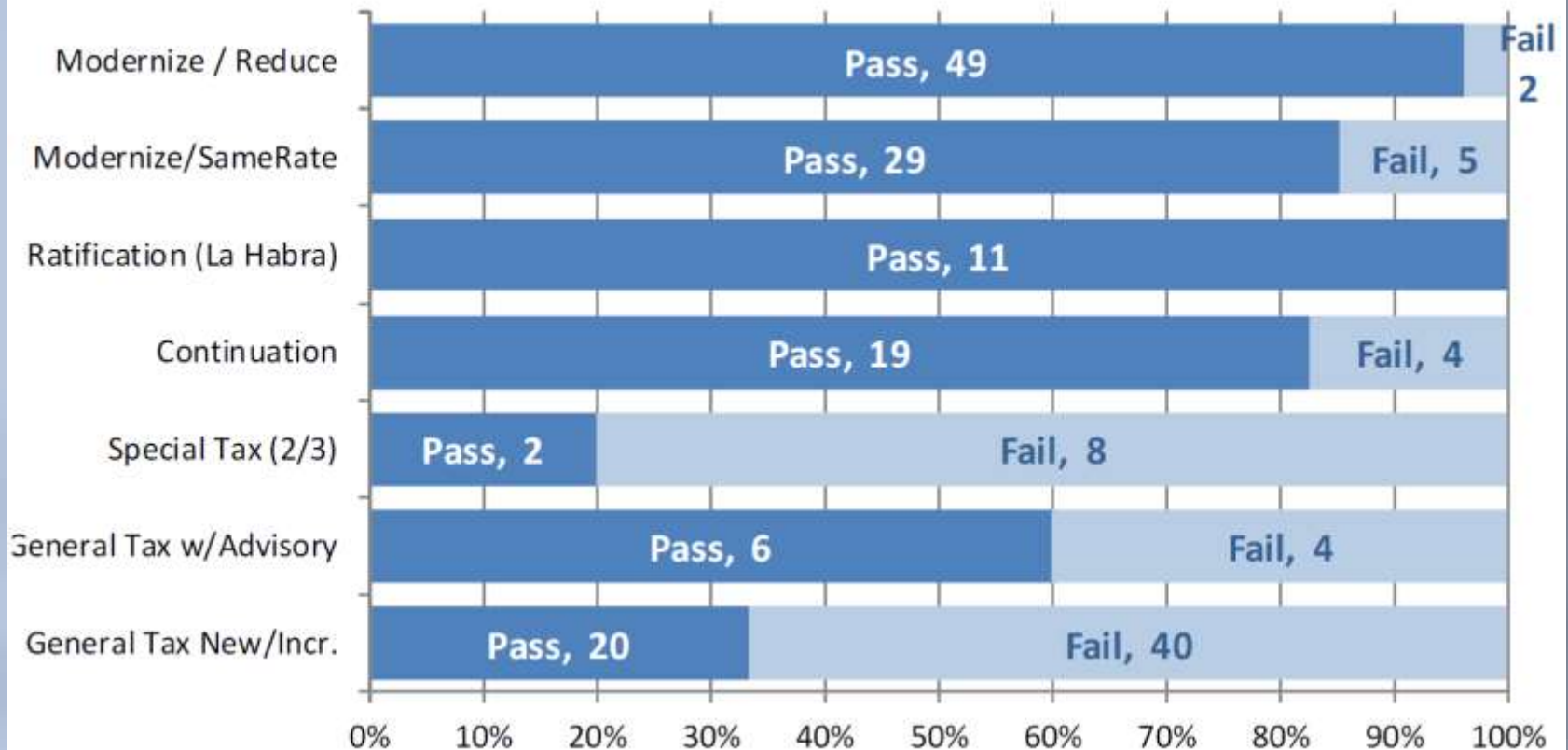
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UUT Revenue

Utility User Tax Measures (increase or expand) June 2002 - June 2015

Cities and counties



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Successful 2010 to 2016 UUT Ballot Measures

- Burbank (S): passed 67%
- Modesto (R): passed 75%
- Hayward (N): passed 73%
- Hercules (S): passed 73%
- Santa Rosa (S&E): passed 71%
- Berkeley (S &E): passed 85%
- San Luis Obispo (E & R) passed 84%
- Palo Alto (E & R) passed 85%
- Riverside (New) passed 51%
- Glendale (repeal) failed 71%



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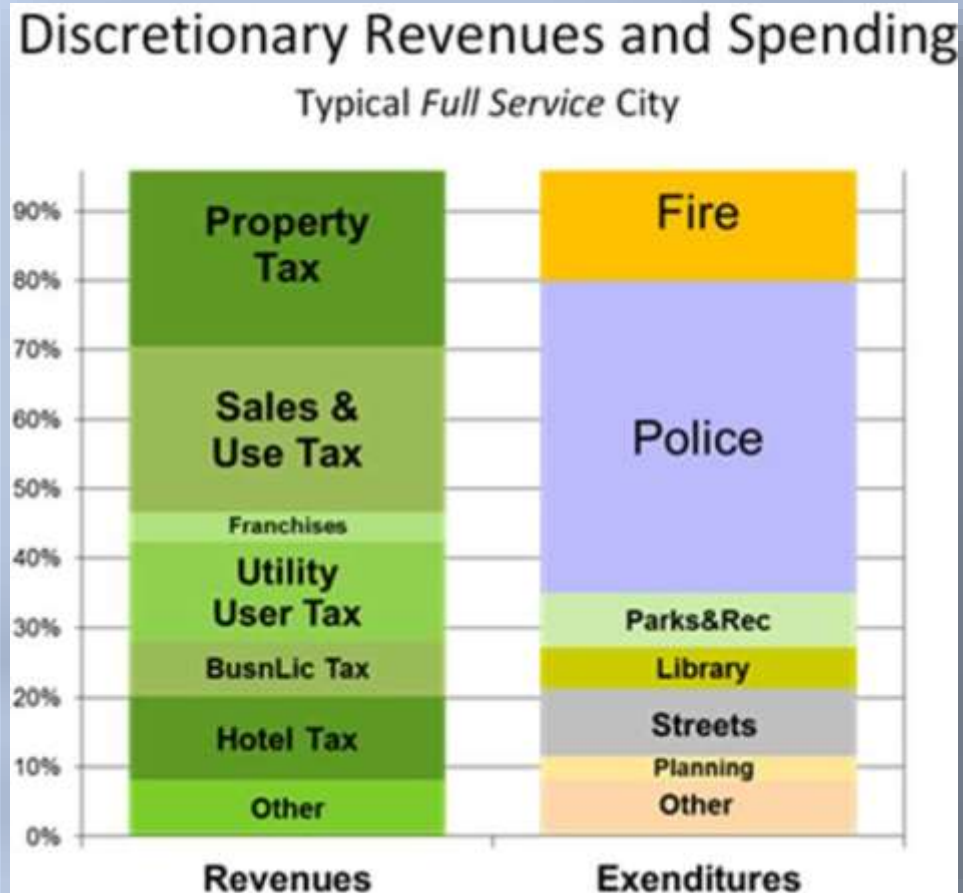
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UUT Revenue



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The Risks

- First, UUT ordinance language that fails to reflect new technologies for delivering traditional utility services may result in ambiguity that produces loopholes and unintended tax subsidies for those new technologies and services, at the expense of citizens that can least afford the new technologies and services. Importantly, ambiguities in tax ordinances are strictly construed in favor of the taxpayer, and against the public agency.



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The Risks

- Second, through such neglect, UUT ordinances may become legally invalid, in part or in whole, when similar utility services (though delivered through different means, e.g., wired versus wireless telecommunication services) are treated differently without a rationale for such different treatment.
- Third, ambiguously worded UUT ordinances will invite legal challenges regarding the scope of a UUT or the collection responsibilities of the collecting party, resulting in possibly avoidable litigation. In the case of an adverse judicial decision, it may even result in a refund obligation and a permanent reduction in UUT revenues.



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Challenges

*Local Governments
Had the Foresight
that Technology
Was Changing and
Began Adopting
Updated
Ordinances*

- All jurisdictions with a UUT face the challenge of keeping pace with changes to telephone, electric, gas, and CATV industries.
- Approximately 97 jurisdictions in the State have an updated ordinance.



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Challenges

*Local Governments
Had the Foresight
that Technology
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Updated
Ordinances*

- UUT ordinance language that fails to reflect new technologies for delivering traditional utility services may result in ambiguity that produces loopholes and unintended tax subsidies for those new technologies and services.
- UUT ordinances are threatened as invalid when similar utility services are treated differently without a rationale for such different treatment.



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Transparency Legislation

- Statement of money raised by the initiative: AB 809 (2015) (Chaptered)
- Local ballots: AB 2265 (2016) requires county ballot measures to provide an impartial analysis for local ballots (Chaptered)



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Another Tool

Administrative Rulings

The Tax Administrator, from time to time, may issue and disseminate to telecommunication service supplies which are subject to tax collection requirements

- “Tax Administrator” may adopt administrative rules for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes imposed by the UUT ordinance.
- Administrative Rulings have been adopted in order to participate in AB 1717.
- Must be on file by the municipality (posted on UUT-ORG).



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EASE: Evaluating Local Revenue Source

- **Equity:** The tax burden falls equally across all businesses and / or individuals.
- **Administrative:** Minimizing the cost of compliance on taxpayers, minimizing the cost to the City to enforce the tax policy and maximize taxpayer compliance.
- **Stability:** Focuses on how the tax in question would affect the volatility of the revenue.
- **Economic Benefits:** The tax promotes the City's economic objectives with minimum disruption to the taxpayer.



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City of Salinas



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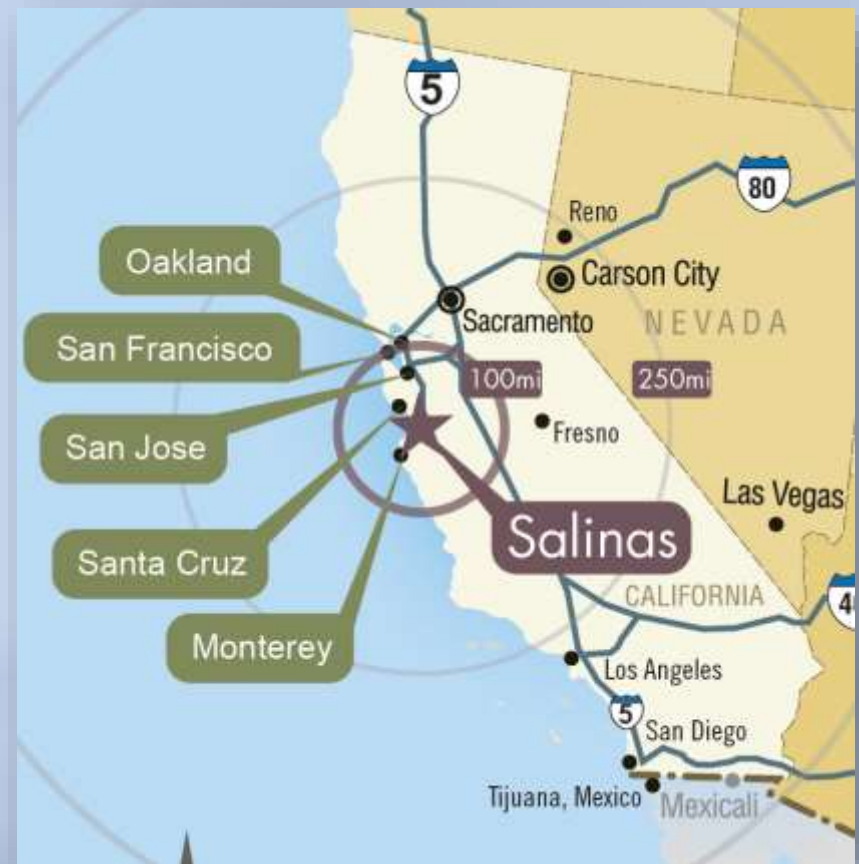
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City of Salinas

- Incorporated 1874
- Population 161,042
- 34th largest in the state



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MONTEREY County Map, California



- Monterey County
- Largest City in County
- County Seat



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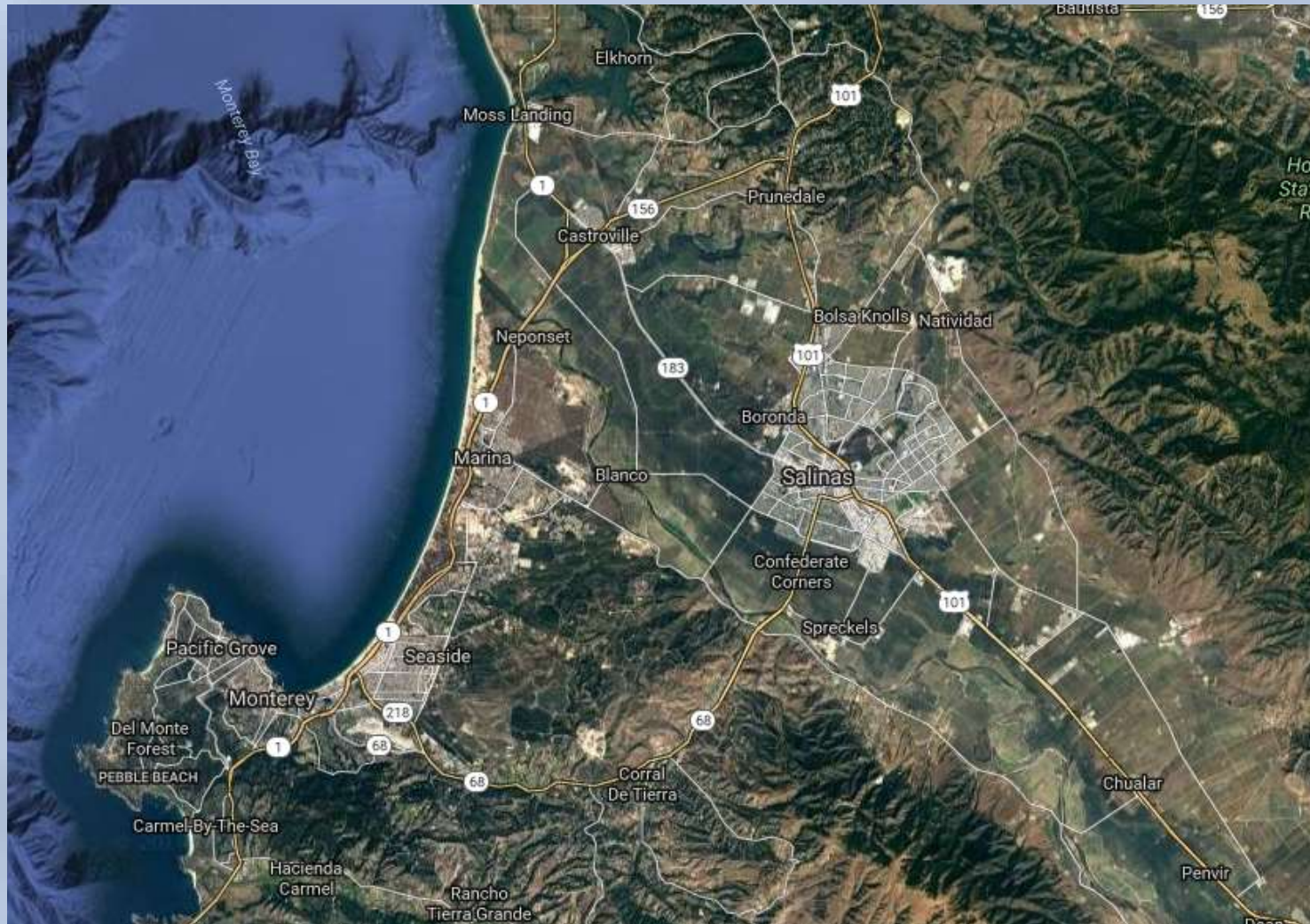
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● 23 square miles



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● Surrounded by a sea of agriculture



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- Surrounded by a sea of agriculture



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City of Salinas

- Known as and for:
 - Salad Bowl of the World
 - Clean air



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Salinas Home to:



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Home to:



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City of Salinas

- Full Service City
- 35th largest UUT revenue in the state



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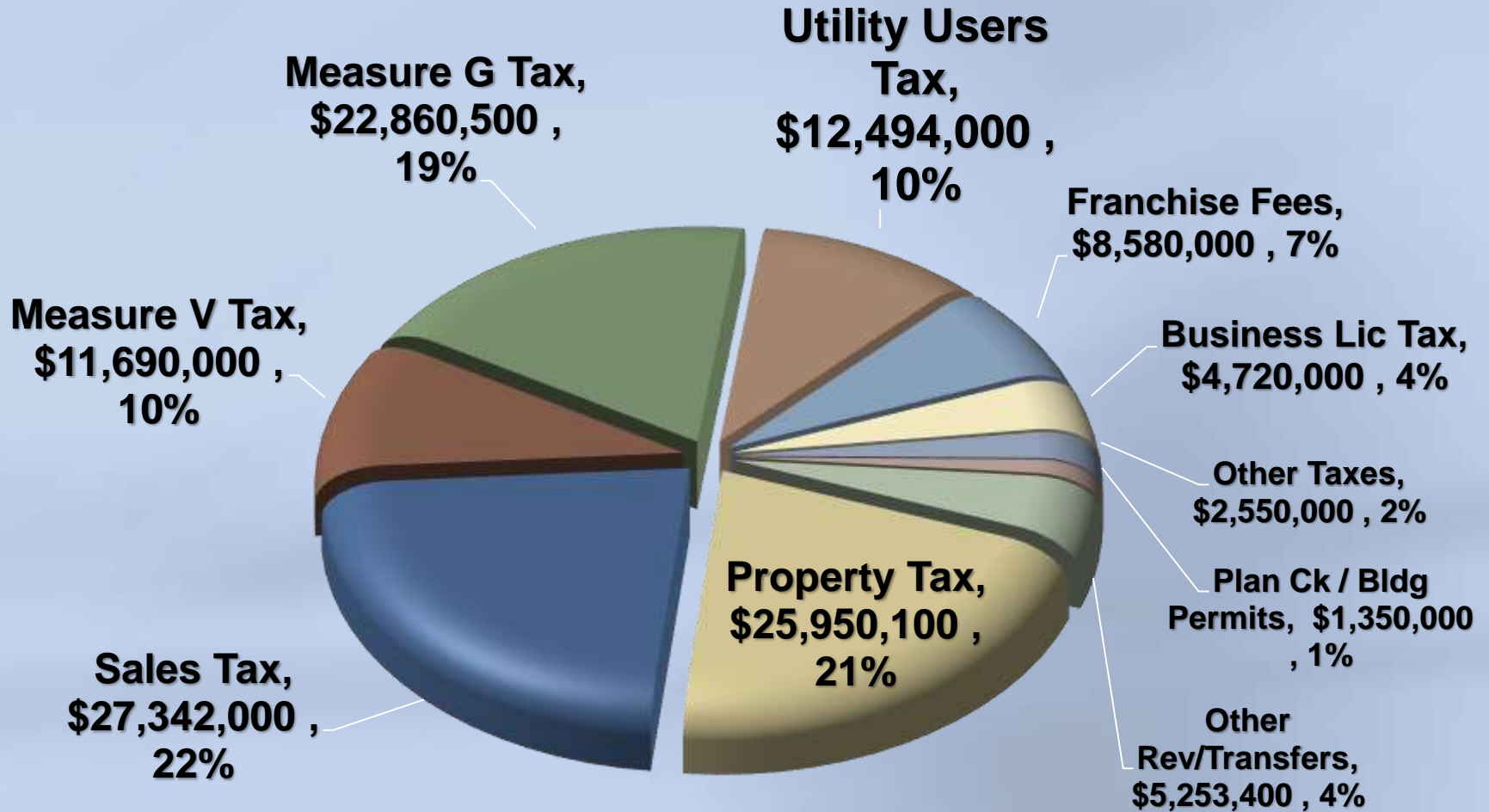
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General Fund and Measures V & G

Salinas FY 2016-17 Revenue Budget \$122,790,000



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City of Salinas – UUT Categories

1. Electricity
 2. Gas
 3. Water
 4. Telephone (land line only)
 5. Cable TV
- All at 6%
 - Cap of \$2,000 / utility



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What did Salinas do

- Goal
 - Tax new technology that was replacing the current Cable TV and land line phone service.
 - Be consistent with current practices across the State
 - Be fair and equitable
 - Stop the loss of revenue



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What did we do - Strategy

- Reduce Utility Users Tax (UUT) rate – for telecommunications / CATV
- Modernize the UUT ordinance
 - All services are treated the same regardless of technology (broaden what is covered)
 - Definitions - Using definitions that are agreed to by the industry
 - Remove outdated language that is the subject of litigation in other agencies
 - Exempt Seniors



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What did Salinas do

- Modernize City UUT Ordinance
 - Added new technology
 - Cell phones
 - Online video programing
 - Pre-paid phones



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Salinas - Old vs. New Ordinance

	Old	New		
Utility	Rate	Rate	Old	New
Electricity & Gas	6%	6%	Yes	Yes
Water	6%	6%	Yes	Yes
Video	6%	5%	Yes	Yes
CATV			Yes	Yes
Uverse			Yes	Yes
Dish Satellite			No	No
IPTV and OTT			No	Possibly
Telecom	6%	5%	Yes	Yes
Local AT&T			Yes	Yes
Interstate or Internal			No	Yes
Cell, Prepaid, or VoIP			Yes	Yes
Private (T-1)			No	Yes
Paging or Text Mess.			No	Yes



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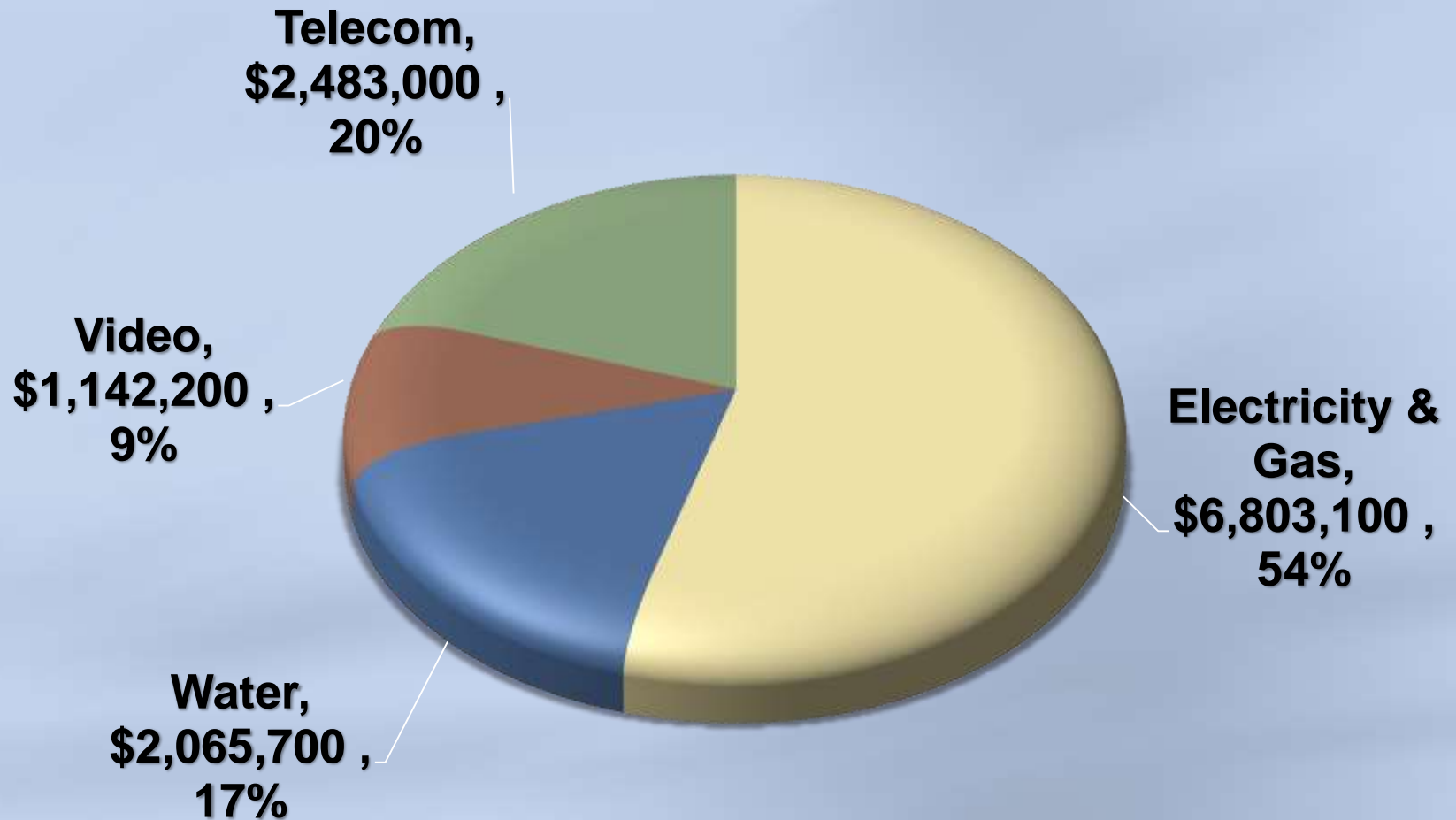
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Salinas - UUT Tax Revenue - \$12,494,000



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Salinas - What did we do - Process

- Public Polling
- Community Outreach
 - Hire Communication Firm
- June – Adopt Resolution calling an election
 - Draft Ordinance (to voted on)
- November 4, 2014 election



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Salinas Ballot Measure

“Shall the Utility Users Tax Ordinance be amended to reduce the tax on telecommunications and video users from 6 percent to 5 percent; exempt seniors; modernize the ordinance to include wireless and other technologies and treat taxpayers the same regardless of technology; help fund essential city services including: public safety, fire protection, youth programs, parks and recreation, and street repairs and maintenance, and all money staying local for services and facilities in the City of Salinas?”



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Salinas Faced Litigation Risk

- **Federal Excise Tax**

- The Federal Excise Tax was been repealed by Congress
- Agencies who have not updated their UUT ordinance may have a tax that is invalid



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Modern “Communications Tax” Ordinance

- Addresses most litigation and technology risks
- Modern definitions: hedge against preemptive state or federal law
- Technology-neutral: All users and services suppliers treated the same – tax equity.



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Model Ordinance: Key Issues

- **Uniform definitions:** SSUTA (Streamline Sales and Use Tax) definitions that industry supports and enjoys ease of administration



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Ballot Measure (Sample 1)

“Shall an ordinance be adopted to modernize the City’s Utility Users’ Tax on telecommunication and video services at the existing rate: To preserve funding of general City services, such as Police, Fire, Streets, Libraries and Parks; To reflect technological advances in communications; To treat taxpayers equally regardless of technology used; To retain existing exemptions for eligible low income persons; And to require an annual independent audit?”



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Ballot Measure (Sample 2)

“Shall an ordinance be adopted to reduce the City’s tax on telecommunication and video services from 6% to 5.75%; modernize the ordinance to treat taxpayers equally regardless of technology used; continue the existing exemptions for eligible low income persons; to fund general municipal services, such as 911, police, fire protection, street maintenance, parks and libraries; subject to an annual independent audit?”



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2017 Trends

- **OTT Service:** Developing a consensus on the taxation of certain OTT services, there is currently a lack of clarity on the issue of “nexus.”
- **Updating Nexus Rules:** Pursuing federal laws that will replace outdated “physical presence” nexus rules with modern “economic presence” rules for the taxation of digital goods or sales over the internet.
- **Prepaid Wireless Reviews:** Compliance reviews of major remitters of prepaid wireless UUT (direct sellers and large retail stores) to verify they are applying and remitting the UUT properly.



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2017 Trends

- **BOE as a “UUT Tax Collector”:** Evaluating AB 1717 (expiration date of 2020) as a cost-effective tool for collecting prepaid wireless UUT.
- **Internet Tax Freedom Act (ITFA):** “California exception for voter-approved ordinance” should remain a priority.
- **UUT for Water, Sewer and Garbage:** Cities may want to consider imposing a UUT on water, sewer, and garbage.



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2017 Trends

- **Gas and Electricity, Conservation:** Including more energy efficient products will continue to reduce energy consumption. Renewable resources like solar will likely continue to be off-limits for local taxes (currently under a moratorium ban). In 2020, the state goal is that 35% of the electricity in California will come from non-taxable renewables.



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What to do now

- Be transparent
- Work with Senior City leadership elected officials and senior management
- Build consensus
- Educate stakeholders and citizens
- Keeping up with changing technology
- Kept current on new trends



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Questions?



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