

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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**Citizens for Fair REU Rates**, et al.  
*Plaintiffs and Appellants,*

v.

**City of Redding**, et al.  
*Defendants and Respondents.*

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SUPREME COURT  
FILED

JUL 21 2015

Frank A. McGuire Clerk  

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Deputy

**NOTICE OF MOTION AND MOTION  
FOR JUDICIAL NOTICE IN SUPPORT OF  
CITY OF REDDING'S REPLY BRIEF**

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Of a Published Decision of the  
Third Appellate District, Case No. C071906

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Reversing a Judgment of the Superior Court of  
the State of California for the County of Shasta,  
Case No. 171377 (Consolidated with Case No. 172960)  
Honorable William D. Gallagher, Judge Presiding

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Attorneys for Respondent City of Redding

**To the Honorable Chief Justice and Associate Justices of the  
Supreme Court of the State of California:**

Pursuant to California Rules of Court, rule 8.520(g) and rule 8.252(a), and California Evidence Code, sections 452 subdivision (h) and 459, Respondent City of Redding hereby moves this Court to take judicial notice of the following document attached hereto as Exhibit A to the Declaration of Michael G. Colantuono:

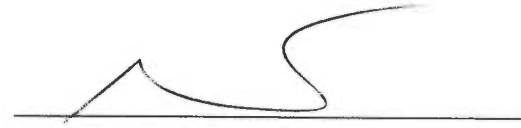
- A. Pages 107 – 109 from Coleman, *The California Municipal Revenue Sources Handbook* (2014 ed.).

These pages are relevant to the appeal because they rebut Citizens' argument that a payment in lieu of taxes (PILOT) is collected for "general revenue purposes" and for that reason a "tax." (Ans. at p. 21.) The document bolsters the City's argument that a payment does not become a tax simply because it is transferred to a city's general fund. Moreover, many cities support their general funds with fees for use of government property and fines and penalties. This document was not presented to the trial court but the City seeks notice nonetheless because it is secondary authority addressing a relevant legal issue. The City provides this document to aid the Court's analysis.

This motion is based on the attached Memorandum of Points and Authorities, Declaration of Michael G. Colantuono, Exhibit A attached hereto, the complete records and files of this Court, and the accompanying proposed order granting this motion.

DATED: July 15, 2015

**COLANTUONO, HIGHSMITH  
& WHATLEY, PC**

A handwritten signature in black ink, appearing to read 'M. G. Colantuono', is written above a horizontal line.

MICHAEL G. COLANTUONO

MICHAEL R. COBDEN

MEGAN S. KNIZE

Attorneys for Respondent

City of Redding

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. IT IS APPROPRIATE TO TAKE JUDICIAL NOTICE OF A SECONDARY RESOURCE ON CALIFORNIA MUNICIPAL REVENUES

#### A. GENERAL PRINCIPLES OF JUDICIAL NOTICE

A reviewing court may take judicial notice of any matter specified in Evidence Code section 452. (Evid. Code, § 459.) The Court may notice “facts ... that are not reasonably subject to dispute.” (Evid. Code, § 452, subd. (h).) Judicial notice of such facts is mandatory in the trial court upon request where the opposing party is permitted to raise objections and the court has enough information about the facts to make a determination that they come within a category subject to notice. (Evid. Code, § 453, subd. (b).) A reviewing court is permitted to notice facts just as is a trial court. (Evid. Code § 459, subd. (a).)

“Judicial notice is the recognition and acceptance by the court, for use ... by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Lockley v. Law Office of Cantrell, Green, et al.* (2001) 91 Cal.App.4th 875, 882, citations and quotations omitted.) “The underlying theory of judicial notice is that the matter being judicially noticed is a law or fact that is **not reasonably subject to dispute.**” (*Ibid.*, original emphasis; Evid. Code, § 452, subd. (h).)

**B. THE COURT SHOULD NOTICE A HANDBOOK OF COMMON PRACTICES FOR TRANSFER OF FEES TO CITY GENERAL FUNDS**

Exhibit A is a three-page excerpt from Coleman, *The California Municipal Revenue Sources Handbook* (2014 ed.). The Court should judicially notice this excerpt from a published book whose existence is not reasonably subject to dispute. (Evid. Code, § 452, subd. (h); see also *Gallagher v. Boller* (1964) 231 Cal.App.2d 482, 489 [judicial notice of book]; *Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716, 1727 [judicial notice of handbook].) The pages provide the context for the City's argument that a payment does not become a tax simply because it is transferred to a city's general fund. This is because many cities support their general funds with fees for use of government property and with fines and penalties.

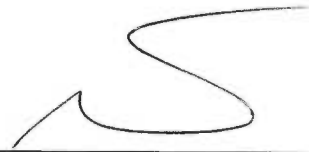
These pages are judicially noticeable as "facts ... that are not reasonably subject to dispute." (Evid. Code, § 452, subd. (h).) The League of California Cities (League) publishes the book from which these pages are excerpted. The League publishes *The California Municipal Revenue Sources Handbook* to inform those interested on substantive issues in local government finance. This book is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy: the League of California Cities and its website, which publishes and sells the book, as well as online retailers, such as Amazon, which also sell it.

## CONCLUSION

The City respectfully requests this Court grant the City's Motion to notice Exhibit A to the Declaration of Michael G. Colantuono filed concurrently herewith. The City requests this Court consider this document in support of its Reply Brief.

DATED: July 15, 2015

**COLANTUONO, HIGHSMITH  
& WHATLEY, PC**



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MICHAEL G. COLANTUONO  
MICHAEL R. COBDEN  
MEGAN S. KNIZE  
Attorneys for Respondent  
City of Redding

**DECLARATION OF MICHAEL G. COLANTUONO**  
**[Cal. Rules of Court, rule 8.54, subdivision (a)(2)]**

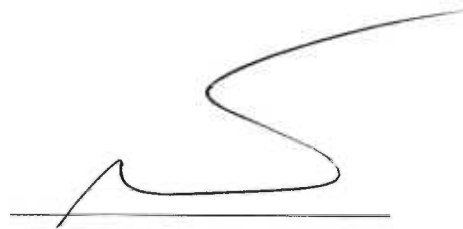
I, MICHAEL G. COLANTUONO, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court and counsel of record for the City of Redding.

2. Attached hereto as Exhibit A is a true and correct copy of pages 107 – 109 from Coleman, The California Municipal Revenue Sources Handbook (2014 ed.). My firm received this book directly from its publisher, the League of California Cities. The book is available for purchase at <https://www.cacities.org/Special-Pages/E-shop/Publications/Publications>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 18, 2015 at Los Angeles, California.

A handwritten signature in black ink, consisting of a stylized 'M' and 'C' followed by a horizontal line.

MICHAEL G. COLANTUONO

[Proposed]

**ORDER TAKING JUDICIAL NOTICE OF  
DOCUMENTS**

Good cause appearing, IT IS HEREBY ORDERED that Respondent City of Redding's Motion for Judicial Notice in Support of its Reply Brief is granted. IT IS ORDERED that this Court shall take judicial notice of the following:

1. Pages 107 – 109 from Coleman, The California Municipal Revenue Sources Handbook (2014 ed.).

DATED: \_\_\_\_\_ By: \_\_\_\_\_  
Chief Justice



# **EXHIBIT A**

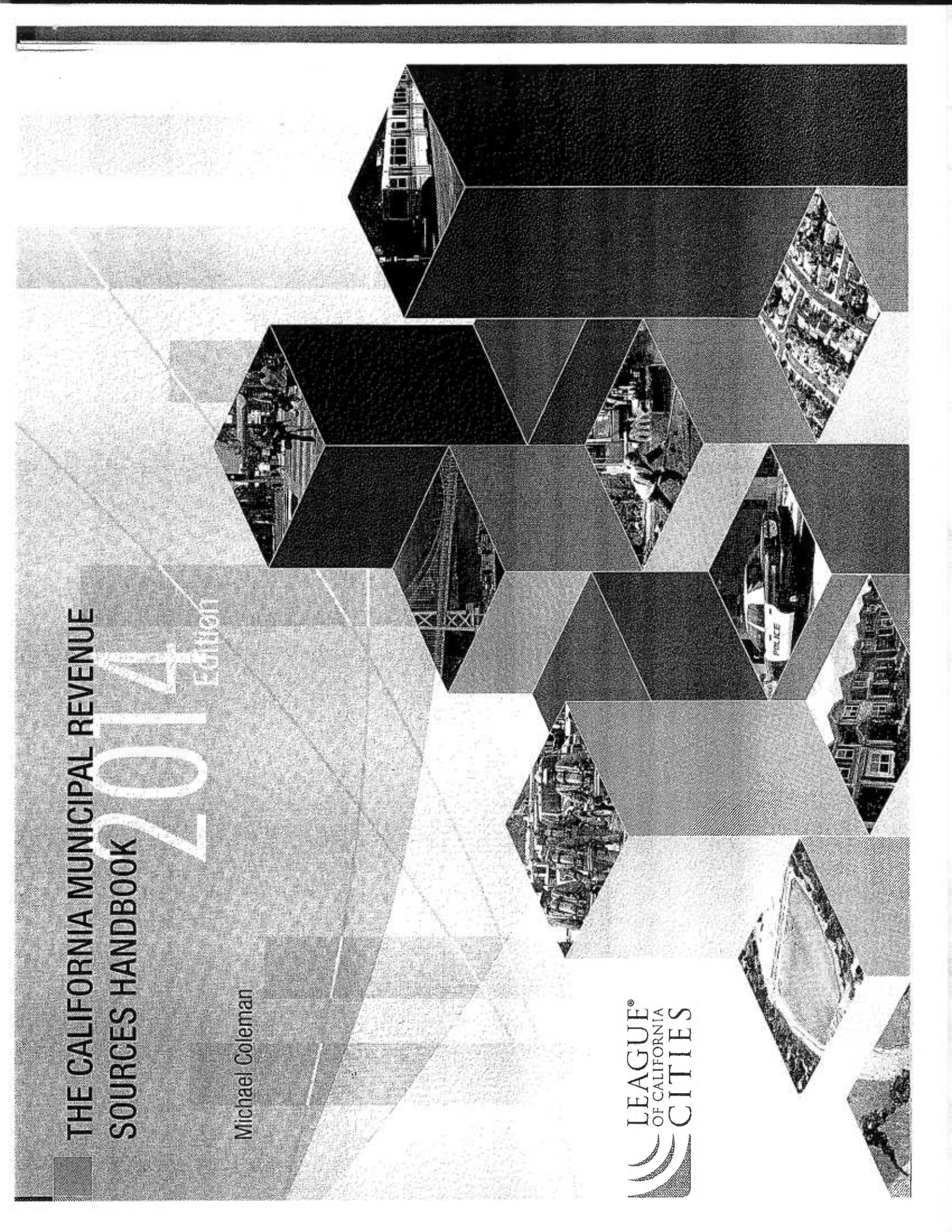
THE CALIFORNIA MUNICIPAL REVENUE  
SOURCES HANDBOOK

2014

Edition

Michael Coleman

LEAGUE<sup>®</sup>  
OF CALIFORNIA  
CITIES



## 5.05 Fines, Forfeitures and Penalties

**Description:** Revenues received and/or bail monies forfeited upon conviction of a misdemeanor or municipal infraction.

**Authority:** Penal Code, §1463 (distribution of revenues); Government Code §36900 (civil penalties for local ordinances). Proposition 26 (2010) which defines "taxes" stipulates that a "charge imposed for entrance to or use of local government property or the purchase rental or lease of local government property" is not a tax.

**Administering Agency:** City, county or other law enforcement agency.

**Use of Revenues:** Most revenue from fines and forfeitures may be expended for any legal municipal service. However, certain limitations may apply to vehicle code violations. California Constitution Article XIIIc §1(e)(4).

Fines paid and bail moneys forfeited following conviction of a misdemeanor or infraction committed within city boundaries are allocated to the state, county and city in which the offense occurred according to various state laws depending on the nature of the offense. (Penal Code sections 1463, 1463.001, 1463.002.) Parking fine revenues are allocated according to California Vehicle Code §40200.3. A city establishes the bail amount for violations of its municipal code.

### Fines

The amount paid by a defendant includes the fine, and various penalties and assessments,<sup>23</sup> and may include restitution.<sup>24</sup> These "add-ons" are changed by the Legislature frequently and may exceed the amount of the fine. Unless modified by a judge (often pursuant to a plea agreement), the base fine is derived from the Uniform Bail and Penalty Schedule as adopted by the Judicial Council (infractions),<sup>25</sup> or county judges (misdemeanors and felonies).<sup>26</sup> Judicial Council Bail and Penalty Schedules are available online at [www.courtinfo.ca.gov/reference/documents/2007\\_jcbail.pdf](http://www.courtinfo.ca.gov/reference/documents/2007_jcbail.pdf).

### Bail Bonds

If a bail bond is forfeited, the amount collected by the county pursuant to the summary judgment is distributed pursuant to California Penal Code §1463.001.

### Parking Fines

Cities and other agencies which issue parking citations have the responsibility for administering and collecting parking fines. These agencies, rather than the county courts, are the primary administrative and adjudicative bodies. A city may contract with the county, another city or with a private vendor to perform these services.

Parking violations generally are violations of city or other local agency "no parking" ordinances. Each local agency establishes parking fine amounts and retains all of the parking fine revenue. However, counties may levy a parking penalty surcharge of \$2.50 per citation for courthouse construction and/or criminal justice facilities construction. For parking citations issued by the California Highway Patrol, the citation is processed and the money collected and retained by the local jurisdiction in which the citations are issued.

Local agencies must establish a process for administrative adjudication of contested parking tickets, which meets certain statutory criteria.<sup>27</sup> The citing officer is not required to attend the hearing. The burden of proof is modified from "beyond a reasonable doubt" to "preponderance of the evidence." A violator objecting to the determination is entitled to seek review by filing appeal with the municipal or justice court.

If a violator fails to pay the parking fine, the city may fail a hold upon registration with the Department of Motor Vehicles. The delinquent fine and penalties would then be collected by DMV prior to issuing the registration. If the delinquent fine and penalty exceed \$400, the city may pursue a civil money judgment from the court.

## 5.05: Fines, Forfeitures and Penalties

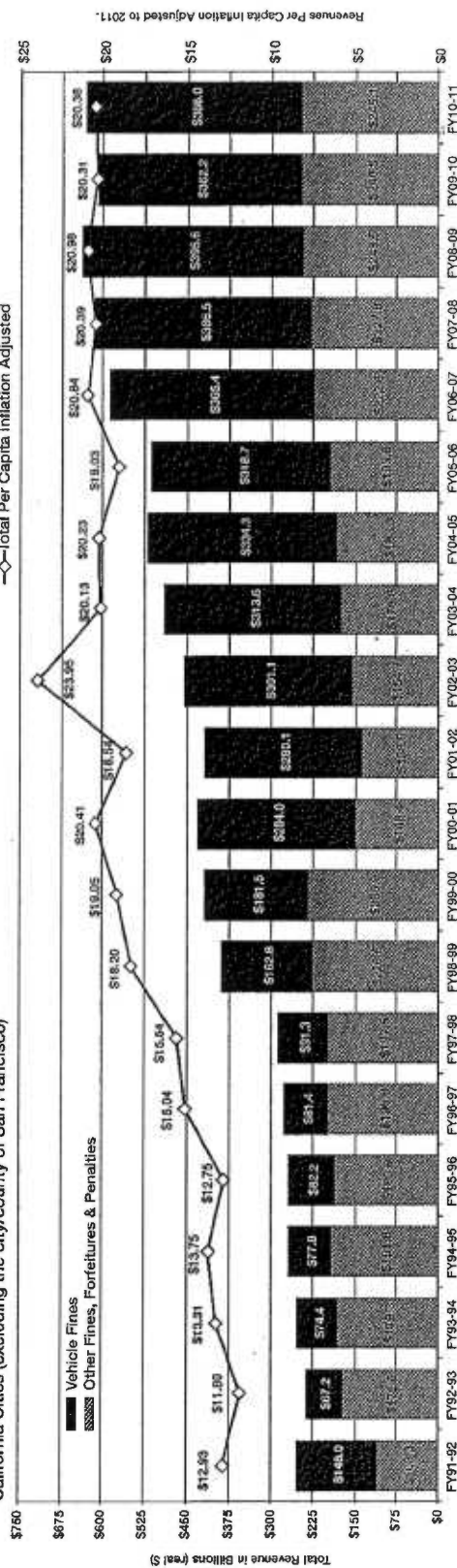
### Other Civil Penalties

A violation of a municipal code may be cited as a criminal misdemeanor or infraction, or may be pursued civilly. If a civil citation is issued, the city may establish the amount of the civil penalty. The civil penalty is imposed if, after compliance with a hearing process

that safeguards the procedural due process rights of the violator, a violation of the municipal code is confirmed. The entire amount of the civil penalty is retained by the city.

### Fines, Forfeitures and Penalty Revenues

California Cities (excluding the city/county of San Francisco)



Source: CaliforniaCityFinance.com computations from data from California State Controller (revenues), California State Department of Finance (population, CPI)

## 5.06: Rents, Royalties and Concessions

### 5.06 Rents, Royalties and Concessions

**Description:** Revenues from rental or use of city property and/or resources. Franchise fees, which are sometimes considered rent for the use of public property, are discussed in Sections 5.01, 5.02, and 5.03.

**Authority:** California Constitution Article XI, §7 gives cities and counties reasonable exercise of police power. Article XI, §9 gives cities authority to provide for certain public works including transportation, light, water, heat and power. Authority for various other types of leases is provided in various specific statutes. Proposition 26 (2010) which defines "taxes" stipulates that a "charge imposed as a condition of property development" is not a tax.

**Administering Agency:** City, county or other public agency.

**Use of Revenues:** Unrestricted unless indicated otherwise by agreement.

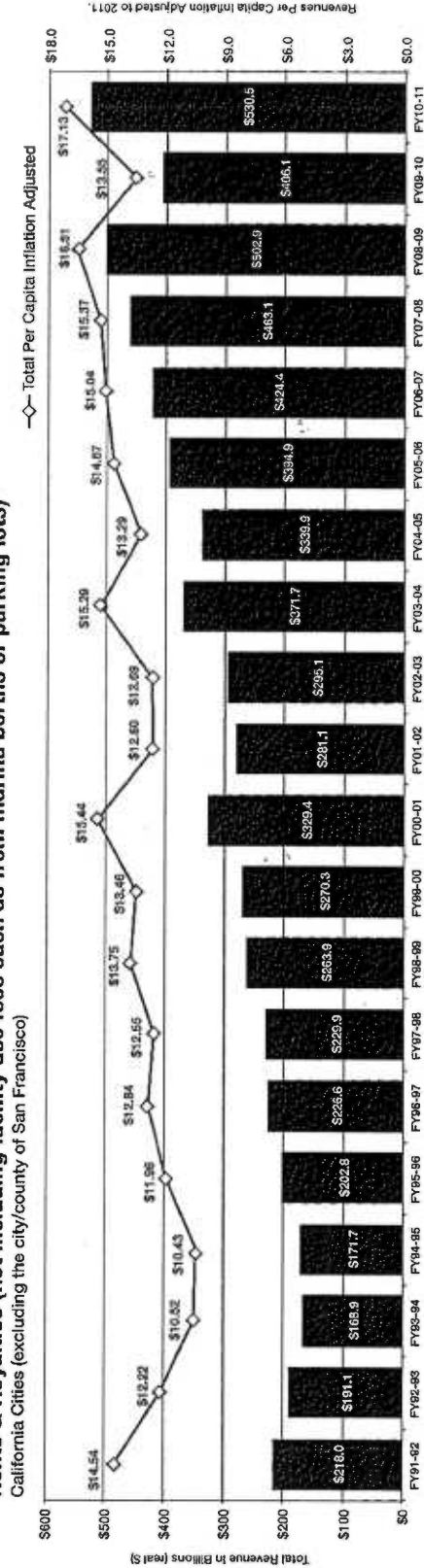
A charge, such as rent, that is payment for use of local government property, is not a tax and therefore voter approval is not required. California Constitution Article XIII(C), section 1(e)(4).

Municipalities receive revenue from a variety of payments for the use by a private person or enterprise of public property. For instance, a local agency may rent, lease or license its real and personal property, such as allowing advertisements on sides of publicly owned buses or wireless communications companies may lease public property for their facilities. State law establishes the maximum terms for many types of leases.<sup>28</sup>

Some cities receive royalties from natural resources that are extracted from public property by private companies. Many cities receive payment from concessionaires operating under contract on city property. Local agencies may be entitled to some royalties or concessions through statute although some revenues may be capped. However, most of this revenue can be negotiated by a local agency at its own discretion.

Leases and licenses of city property must be by written agreement that includes certain basic terms: a description of the property; the term; the rent or other payment due; the permitted and prohibited uses; the allocation of risk of loss between the city and the lessee (indemnification); insurance requirements; incidents of default; and termination.

#### Rents & Royalties (not including facility use fees such as from marina berths or parking lots)



**PROOF OF SERVICE**

*Citizens for Fair REU Rates v. City Of Redding*  
Third District Court of Appeal Case No. C071906  
California Supreme Court Case No. S224779

I, Ashley A. Lloyd, declare:

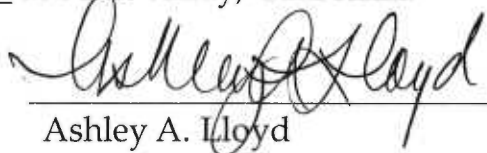
I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 11364 Pleasant Valley Road, Penn Valley, California 95946. On JULY 20, 2015 I served the document(s) described as **NOTICE OF MOTION AND MOTION FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF REDDING'S REPLY BRIEF** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED LIST**

BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Penn Valley, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on JULY 20, 2015 at Penn Valley, California.

  
\_\_\_\_\_  
Ashley A. Lloyd

## SERVICE LIST

*Citizens for Fair REU Rates v. City of Redding*  
Third District Court of Appeal Case No. C071906  
California Supreme Court Case No. S224779

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