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## **TAX - CALIFORNIA**

### [Zolly v. City of Oakland](#)

**Supreme Court of California - August 11, 2022 - P.3d - 2022 WL 3270058**

Solid waste disposal customers brought action to challenge constitutionality of franchise fees which city charged waste management entities, a portion of which was redesignated as a solid waste management fee.

The Superior Court sustained city's demurrer, and taxpayers appealed. The First District Court of Appeal affirmed in part and reversed in part, holding, among other things, that customers adequately alleged city's challenged fees did not bear reasonable relationship to franchises' values. The Supreme Court granted city's petition for review.

The Supreme Court held that:

- Customers alleged adequate injury-in-fact to support standing;
- Voluntary franchise fees were levies, charges, or exactions "imposed by" city within meaning of constitutional definition of "tax";
- Customers adequately alleged that waste disposal franchise did not constitute local government property; and
- Customers adequately alleged that franchise fees did not constitute charges imposed for use of local government property.

Alleged economic injury caused to solid waste disposal customers by franchise fees which city charged to waste management entities constituted injury-in-fact that conferred standing upon customers to challenge city's fees under constitutional provision governing taxes, even though customers were not obligated to pay charges related to franchise fees directly to city, where customers alleged that fees caused their waste collection rates to increase every month.

Fees that city required waste management entities to pay in exchange for waste disposal franchise rights within city, pursuant to contractual negotiations, were levies, charges, or exactions imposed by local government, as necessary to constitute "tax" within meaning of California Constitution, even if negotiations were voluntary rather than coerced; term "impose" meant "establish," without any coercive connotation, as indicated by constitutional provision's use of term "imposed" in context of voluntary charges.

Waste disposal customers adequately alleged that solid waste disposal franchise did not constitute "local government property" within meaning of constitutional exemption from definition of "tax" for charges imposed to enter or use local government property or to purchase, rent, or lease local government property, supporting customers' claim against city for violation of constitutional requirements for approval of taxes; term "local government property" in constitutional article governing voter approval of local tax levies referred to physical objects under control of local government, such as streets, franchise did not exist as local government's property before it vested in franchise owner, and fees were not paid for city's property interest in antecedent right to grant franchise.

Waste disposal customers adequately alleged that fees franchisees paid to city for waste disposal franchises did not constitute “charges imposed for use of local government property” within meaning of Constitution’s exemption of such charges from definition of “tax,” as necessary to support customers’ claim against city for violation of constitutional requirements for voter approval of special taxes, even though ordinances stated franchises included right to use public streets or other public places; entities did not pay fees in exchange for specific use of government property that they would not have otherwise enjoyed, and provision exempted only fees paid as consideration for specific use of government property, such as park entrance fee, as indicated by statutory language “imposed for.”