

# **Bond Case Briefs**

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## **FRANCHISE FEES - CALIFORNIA**

### **Zolly v. City of Oakland**

**Court of Appeal, First District, Division 1, California - March 30, 2020 - Cal.Rptr.3d - 2020 WL 1498339 - 20 Cal. Daily Op. Serv. 2827**

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 Court of Appeal held that:

- Complaint sufficiently stated claim that franchise fee which city charged waste haulers was not reasonably related to the value received and thus was a tax requiring voter approval;
- Challenge that city's future redesignated franchise fee increases for solid waste haulers was an unconstitutional tax did not present an actual controversy proper for adjudication and thus was not ripe; and
- Customers' payment of solid waste disposal fee did not cause customers to incur hardship, as required for claim to be ripe.

Complaint sufficiently stated claim that franchise fee which city charged waste haulers was not reasonably related to the value received and thus was a tax requiring voter approval; complaint noted that contracts required initial franchise fees, asserted that the contracts were not the product of bona fide negotiations and that various financial analyses were not performed, and that grand jury found the franchise fees were disproportionately higher than fees in surrounding area and that city's procurement process was mishandled and subject to political considerations, and complaint noted that waste hauling rate increases for customers ranged from 79.76 percent to 155.37 percent.

Challenge that portion of city's future franchise fee increases for solid waste haulers, which had been redesignated as solid waste disposal fees, was an unconstitutional tax did not present an actual controversy proper for adjudication and thus was not ripe; while the ordinance imposing the redesignated fee provided for fee increases, it was uncertain whether or when those will occur, as increases were not implemented if hauler's gross receipts for the prior calendar year were less than the calendar year before that, actual amount of any such increase also was uncertain, and court could not assess whether those future unknown increases exceeded the city's future costs.

Customers' payment of solid waste disposal fee, which consisted of part of redesignated franchise fee for waste hauling contracts, did not cause customers to incur hardship, as required for customers' declaratory judgment action claiming fee was an unconstitutional tax to be ripe; challenge to the current redesignated fee was time-barred such that any harm currently incurred was based on their own failure to timely challenge the fee, any harm they might incur from future fee increases was uncertain, and customers did not show they would be unable to pursue appropriate legal remedies should the anticipated harm ever materialize.

