

Utility User Tax Facts

The Utility User Tax (UUT) may be imposed by a city on the consumption of utility services, including (but not limited to) electricity, gas, water, sewer, telephone (including cell phone and long distance), sanitation and cable television.ⁱ A county may levy a UUT on the consumption of electricity, gas, water, sewer, telephone, telegraph and cable television services in the unincorporated area.ⁱⁱ The Isla Vista Community Services District is the only special district authorized to levy a UUT.ⁱⁱⁱ

The rate of the tax and the use of its revenues are determined by the local agency. The tax is levied by the city/county/district on the consumer of the utility services, collected by the utility as a part of its regular billing procedure, and then remitted to the city/county/district.

Most of the cities and counties with UUTs adopted the taxes prior to 1986 by vote of the city council (or in the case of a county UUT, the county board of supervisors). Any increase or extension of a local tax now requires voter approval. Most city UUT levies in California are general taxes. Statewide, local utility user taxes generate about \$1.8 billion per year.

Exemptions

State and federal government agencies, and gas and water used by utility companies to generate electricity are exempt from utility user taxes.

UUTs on Telephony

The application of utility user taxes to certain telephone services has been a topic of substantial legal and legislative turmoil due to changes in technology and federal law.

UUTs and the FET

Many Utility User Taxes in California include reference to the Federal Excise Tax (“FET”)^{iv} commonly limiting the application of the utility user taxes to charges that are “subject to” the FET. Telephone calls which are not charged based on both time and distance — such as those paid by coin in phone booths — are exempt from the FET. By reference, these types of calls are also exempt from some local UUT ordinances. Many cell phone bills are based upon a package which provides a mix of local and long-distance calling for a flat rate.

California Utility User Taxes as of 1/1/2021

	Cities	Counties	Special District*	Total	Calif Population covered
Number with UUT	158	4	1	163	54.0%
Telephone UUTs	150	4	0	154	49.5%
Electricity	156	4	1	161	52.7%
Gas	156	4	1	161	52.7%
Cable TV	92	1	0	93	22.8%
Water	85	1	1	87	24.7%
Sewer	14	1	1	16	2.7%
Garbage	13	0	1	14	1.3%

San Francisco is counted as a county

* Under special state legislation, the Isla Vista Community Services District (Santa Barbara County) has a voter approved 8 percent UUT on electric, gas, water, sewer and garbage.

Source: californiacityfinance.com analysis of League of California Cities Survey data.

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In 2007, several federal courts and the IRS ruled that telephone service packages which provide a mix of local and long-distance calling for a flat rate or a fixed fee are based on neither time nor distance and are therefore not subject to the FET.^v The IRS subsequently adopted a regulation incorporating these rulings.^{vi} That meant that if a city wished to continue to impose its UUT on cell phone or other telephone calls which are not charged on both time and distance, it must amend its ordinance to remove the reference to this exemption to the FET.

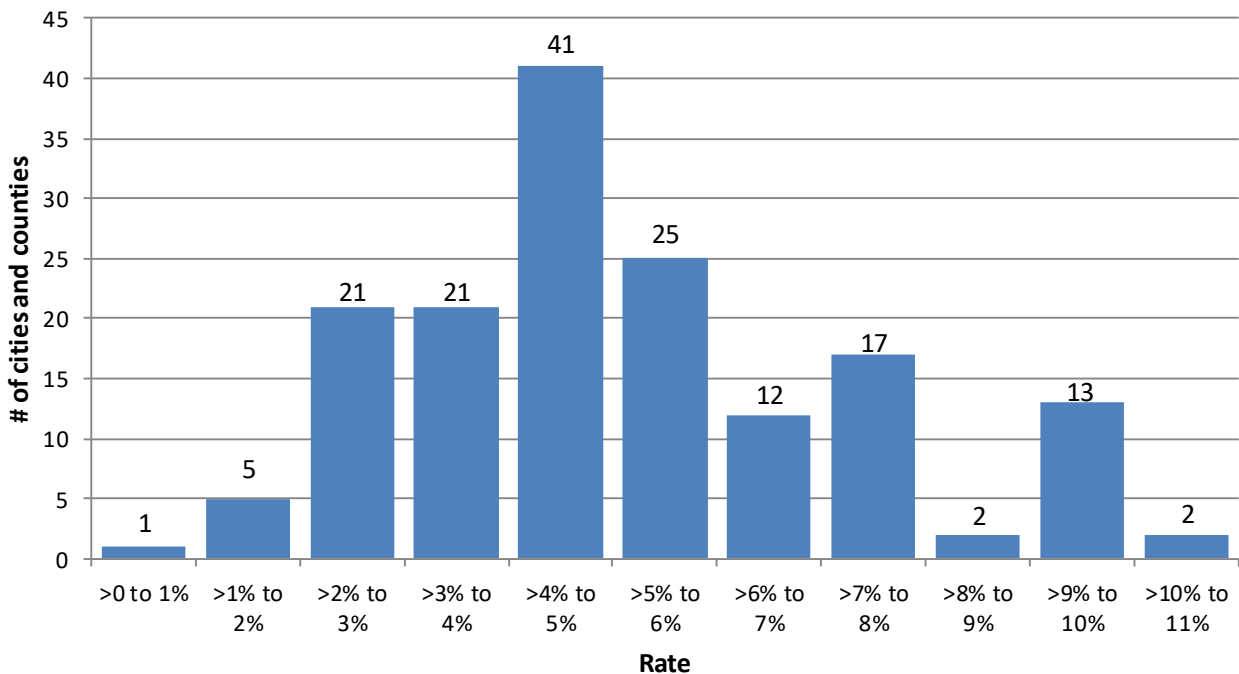
A number of cities have amended their UUT ordinances to clarify that they did not wish to adopt the IRS’ new practice, but rather wished to continue to impose their UUTs as they had historically been imposed (i.e. on charges based on time or distance). At the time of this writing, several localities are challenging the right of local taxing authorities to amend their ordinances without voter approval, or to continue to collect this revenue without amendment. The lawsuits argue that an amendment to an ordinance to bring it into conformity with the FET ruling is an “increase” subject to voter approval under Proposition 218.

UUTs and the MTSA

Prior to the adoption of the Mobile Telecommunications Sourcing Act of 2000 (MTSA)^{vii} by Congress, cellular carriers had argued that the federal Constitution forbade the application of a utility user tax to telephone calls which neither originated nor terminated within the taxing agency. The MTSA expanded the permissible nexus for taxation to all cellular telephone charges for accounts with a primary place of use in the jurisdiction. However, carriers have argued in the courts that the California Constitution Article XIII C prohibits cities and counties from applying the MTSA nexus rules without voter approval.^{viii}

California Utility User Tax Rates as of 1/1/2021

Cities (158), Counties (4) and Special District (1)

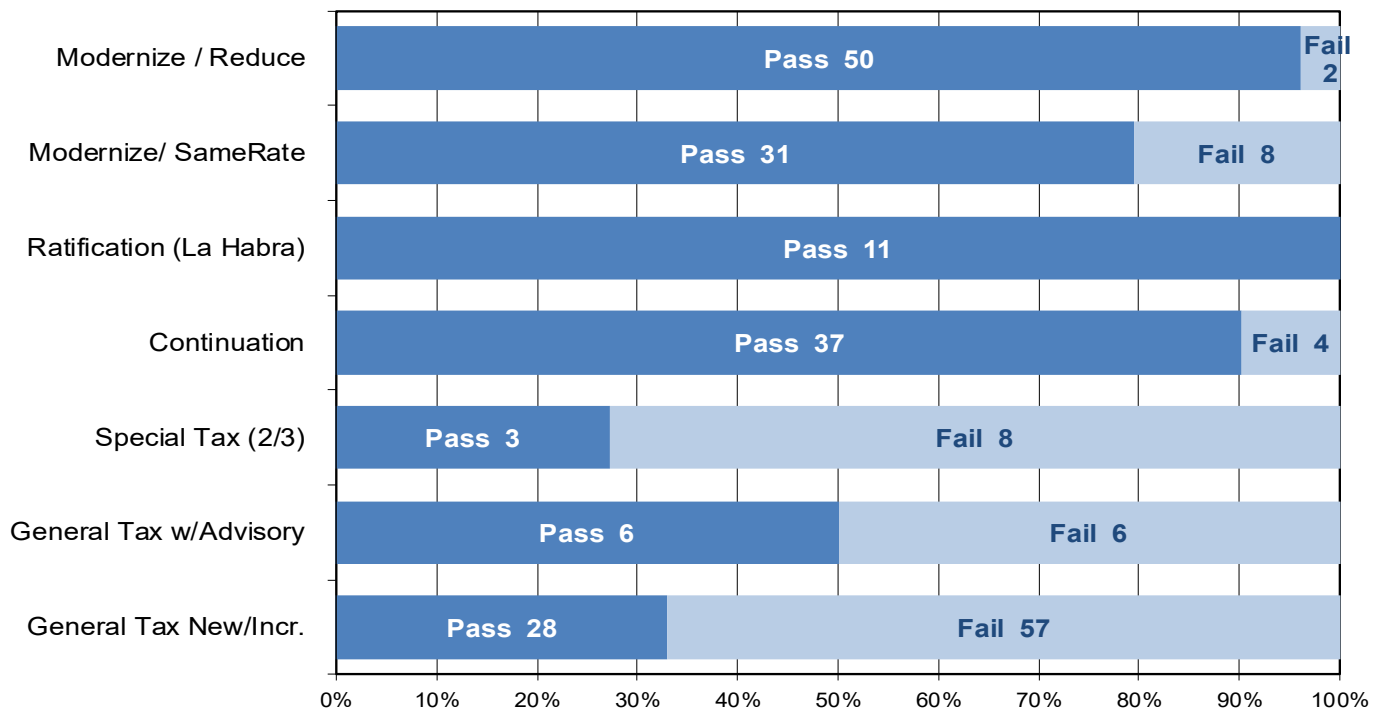


As a result of these events, doubt has been cast over the application of some outdated local UUT ordinances to certain types of telephone service. Proposition 218 requires voter approval of any change in the “methodology” by which a tax is administered if the change increases the amount of the tax paid by the taxpayer.^{ix} Many agencies that rely on UUTs on telephony have successfully sought voter approval of an updated ordinance that reflects the realities of the modern telecommunications industry.

Recent Voter Approval Record

From June 2002 through November 2020, there were 97 measures to increase or adopt a new UUT, all by cities except one special district. Eleven were special taxes designated for a specific purpose and requiring two-thirds voter approval. Among the 86 general taxes, 12 were accompanied by advisory measures indicating the use of the funds, the so called “a/b strategy.”

Utility User Tax Measures 2002 through November 2020
 Cities and Counties



Currently, all UUTs are general taxes except two. Desert Hot Springs’ 7 percent rate is dedicated to public safety, Mammoth Lakes’ 2.5 percent rate is dedicated to “Mobility, Recreation, and Arts & Culture.”

Referenda to Reduce or Repeal UUTs Have Rarely Succeeded

Since 2001 there have been 166 successful utility tax measures including validations, extensions, expansions and increases. During this time there were just **two** successful referenda to repeal or reduce a UUT among 18 qualifying attempts in 12 different cities and one county. Eleven of these measures were decided November 6, 2002 with all failing except a measure reducing the UUT in Greenfield from 6% to

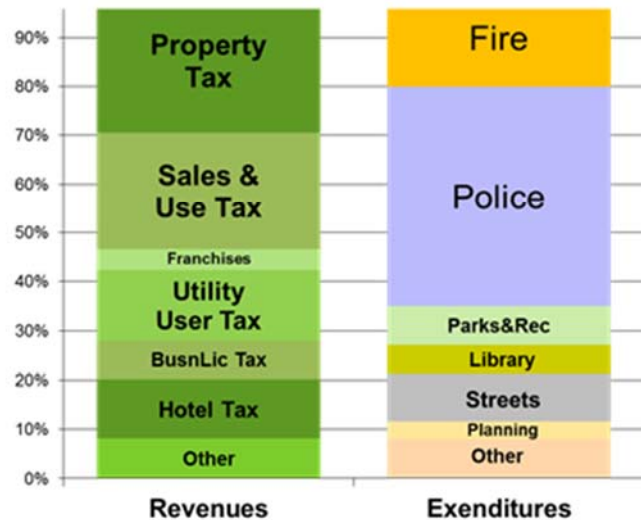
3% passed in 2002. Just three cities and one county have considered UUT repeals or reductions since then. Of the seven measures (multiple in Seaside and Holtville) voters in the County of Santa Cruz were alone in deciding to repeal their UUT (March 2003).

The UUT is Vital to Funding Essential Municipal Services

Utility user tax rates range from 1 percent to 11 percent. The particular utilities to which the tax is applied varies. In some localities, different rates apply to residential versus commercial users. The most common rate is 5 percent, applied broadly among many types of utilities. The average rate (mean) is 5.4 percent with a standard deviation of 2.1 percent. Because most large cities have UUTs, roughly half of California residents and businesses pay a utility user tax. Four of the 58 counties levy a UUT (Alameda, Los Angeles, Sacramento and San Francisco).

The UUT is a vital element in the funding of critical city services. On average, the UUT provides 15 percent of general-purpose revenue in cities that levy it. In some cities, the UUT provides as much as one third of the General Fund.

Discretionary Revenues and Spending
Typical Full Service City



Highest Utility User Tax \$ Dependencies

City	UUT as % of General Revenues	City	UUT as % of General Revenues	City	UUT as % of General Revenues
Firebaugh	30.7% ^b	Desert Hot Springs	17.9% ^d	Guadalupe	15.0% ^b
Richmond	29.4% ^a	Los Alamitos	17.8% ^d	Irwindale	14.8% ^e
Holtville	24.3% ^b	Torrance	17.8% ^a	Oroville	14.5% ^b
Vernon	24.2% ^a	Pomona	17.6% ^a	Orange Cove	14.4% ^d
Sierra Madre	23.4% ^a	Claremont	17.5% ^d	Pinole	14.2% ^b
Waterford	21.8% ^d	Rialto	17.5% ^b	Seal Beach	14.2% ^b
Hercules	20.1% ^d	Porterville	17.5% ^a	Exeter	14.0% ^b
Portola Valley	20.0% ^d	San Gabriel	17.4% ^b	Benicia	13.8% ^a
Canyon Lake	19.6% ^d	El Segundo	17.1% ^a	Tulare	13.7% ^a
Huntington Park	19.6% ^d	Modesto	16.6% ^b	Stockton	13.4% ^a
San Bernardino	18.8% ^a	Brawley	16.5% ^a	Culver City	13.4% ^b
Winters	18.7% ^b	Glendale	15.9% ^a	Lawndale	13.3% ^d
Lindsay	18.4% ^b	Whittier	15.9% ^e	Inglewood	13.3% ^a
Compton	18.3% ^b	Paramount	15.2% ^d	Lynwood	13.2% ^b
Bell	18.1% ^d	Covina	15.1% ^a	Los Angeles	13.1% ^a

Source: Author's computations from FY2018-19 data reported to the California State Controller.

a= full service city

b=city does not provide/fund fire services

c=city does not provide/fund library or parks services

d=city does not provide/fund fire, or library services

e=city does not provide/fund fire services

Highest Utility User Tax \$ Collections

City	UUT per capita	City	UUT per capita
El Segundo	\$ 710.92	Santa Cruz	\$ 175.02
Richmond	\$ 415.68	Malibu	\$ 173.84
Sand City	\$ 372.97	Benicia	\$ 173.30
Santa Fe Springs	\$ 356.90	Los Alamitos	\$ 167.87
Culver City	\$ 327.92	Burbank	\$ 165.36
Santa Monica	\$ 302.44	Seal Beach	\$ 161.97
Emeryville	\$ 255.46	Los Angeles	\$ 150.09
Palo Alto	\$ 236.35	Santa Barbara	\$ 148.49
Sierra Madre	\$ 228.56	Palm Springs	\$ 145.30
Torrance	\$ 209.45	Hercules	\$ 133.55
Portola Valley	\$ 204.25	Glendale	\$ 129.22
Pasadena	\$ 184.42	Monterey	\$ 126.68

Source: Author's computations from FY2018- 19 data reported to the California State Controller.

* Extreme outliers: Vernon reported \$37,240/resident, Irwindale reported \$2,612/resident.



ⁱ Charter cities: Cal. Const. art. XI §5; General Law cities: Cal. Government Code §37100.5.

ⁱⁱ Revenue and Tax Code §7284.2.

ⁱⁱⁱ Government Code §61250

^{iv} 42 U.S.C. §§4251 et seq.

^v IRS Notice 2006-50.

^{vi} Revenue Bulletin 2007-5 Section 10.

^{vii} 4 U.S.C. §§116 et seq.

^{viii} Verizon Wireless v. Los Angeles, No. B185373, AB Cellular LA, LLC dba AT&T Wireless v. City of Los Angeles, 150 Cal. App. 4th 747 (2007).

^{ix} Government Code §53750(h).