

**FREE WEBINAR**

*Tailored for Local Gov't Leaders*

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# FISCAL MATTERS & LABOR NEGOTIATIONS AMIDST COVID

*Practical Solutions for Local Agencies Navigating COVID*



*Featuring Jon Holtzman  
Founding Partner, RPLG*

**THURSDAY, OCTOBER 1  
10:30 AM - 12:00 PM**

**[WWW.CA-ILG.ORG](http://WWW.CA-ILG.ORG)**

# Thank You for Joining!

## Webinar Host & Moderator

**Randi Kay Stephens**  
Program Manager  
Institute for Local Government



# Webinar Overview

Cities, counties and special districts are facing numerous challenges in 2020 -- ranging from protecting the public's health and safety to providing consistent essential services.

In this webinar, experts in public finance, fiscal preparedness and labor negotiations will explore the unique financial challenges California local governments are facing during COVID and share practical solutions to mitigate problems.

# Today's Agenda

Welcome & Overview

About ILG

Presentations by:

- Jon Holtzman, Founding Partner at Renne Public Law Group
- Kurt Wilson, Consultant and Former City Manager
- Russ Branson, Founder of Russ Branson Consulting

Q&A

Contact Information

# How to Ask a Question During the Webinar

- All webinar participants will be on MUTE during the entire call.
- Please TYPE any questions into the question box at any time during the webinar.
- The moderator will read your questions during the question period at the end of the webinar.



# Non-Profit, Non-Partisan & Here to Help

- ILG is the non-profit training and education affiliate of three statewide local government associations
- Together with our affiliates, we serve over 2,500 local agencies – cities, counties and special districts
- We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground



**California Special  
Districts Association**

*Districts Stronger Together*

# ILG's Programs & Services

## Program Areas

Leadership & Governance

Civics Education & Workforce

Public Engagement

Sustainable & Resilient Communities



## Services

Education & Training

Technical Assistance

Capacity Building

Convening

Our mission is to help local government leaders **navigate complexity, increase capacity & build trust** in their communities

# Free ILG Resources

## COVID-19

- [www.ca-ilg.org/COVID-19](http://www.ca-ilg.org/COVID-19)
  - Local Government Resources
  - State and National Resources
  - Executive Orders
  - Tools and Training Opportunities
  - Local Government Response

## Understanding the Labor Negotiations Process

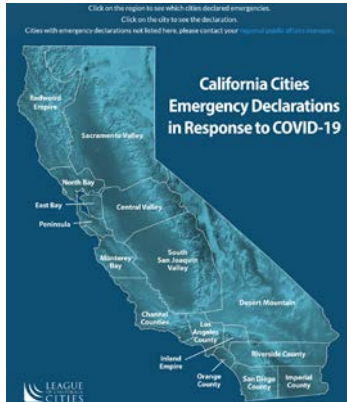
- <https://www.ca-ilg.org/post/understanding-labor-negotiations-process>
  - Resources to help officials understand the basic process of labor negotiations

## Leadership Resources

- [www.ca-ilg.org/leadership](http://www.ca-ilg.org/leadership)
  - Information and resources on effective boards & councils, decision-making, responsibilities and powers and more



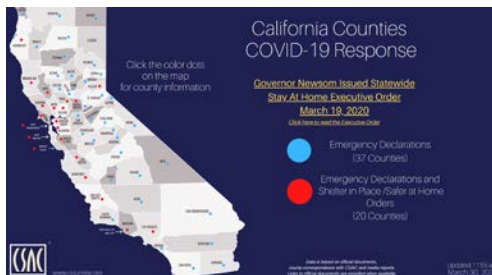
# COVID-19 Resources



[www.cacities.org/Regions/California-Cities](http://www.cacities.org/Regions/California-Cities)

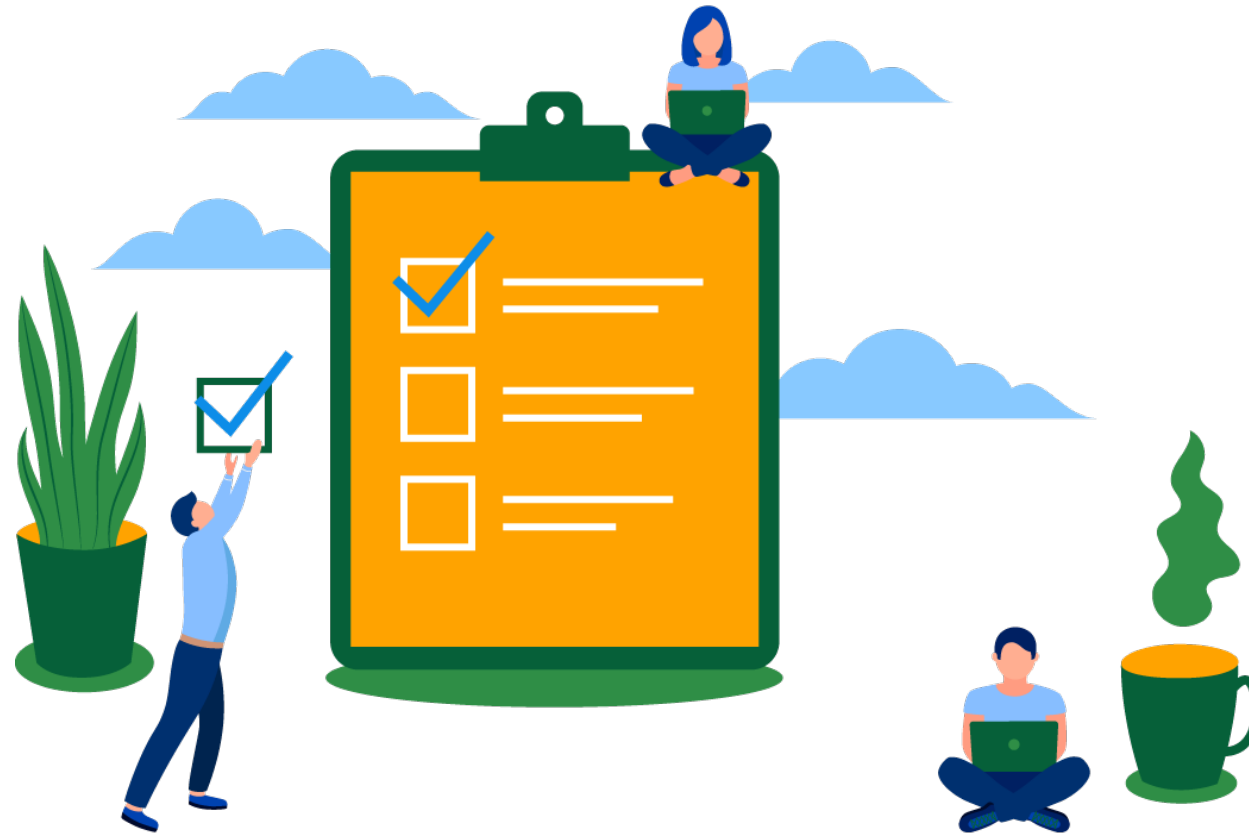


[www.csda.net/covid-19-resources](http://www.csda.net/covid-19-resources)



[www.counties.org/carousel/resources-regarding-coronavirus-covid-19](http://www.counties.org/carousel/resources-regarding-coronavirus-covid-19)

# Tell Us More About You – Audience Poll



# Today's Presenters

**Jon Holtzman**  
Founding Partner  
Renne Public Law Group



**Kurt Wilson**  
Consultant and Former City  
Manager  
Kurt Wilson Consulting



**Russ Branson**  
Consultant and Former Finance  
Director  
Russ Branson Consulting



# Fiscal Matters & Labor Negotiations

Key Points in Evaluating Financial Condition

# What We Are Facing....

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Running out of cash?

Unbalanced budgets?

Figuring this out when its too late!

Uncertainty!!  
!!!!!!!!!!!!!!!!!!!!  
!

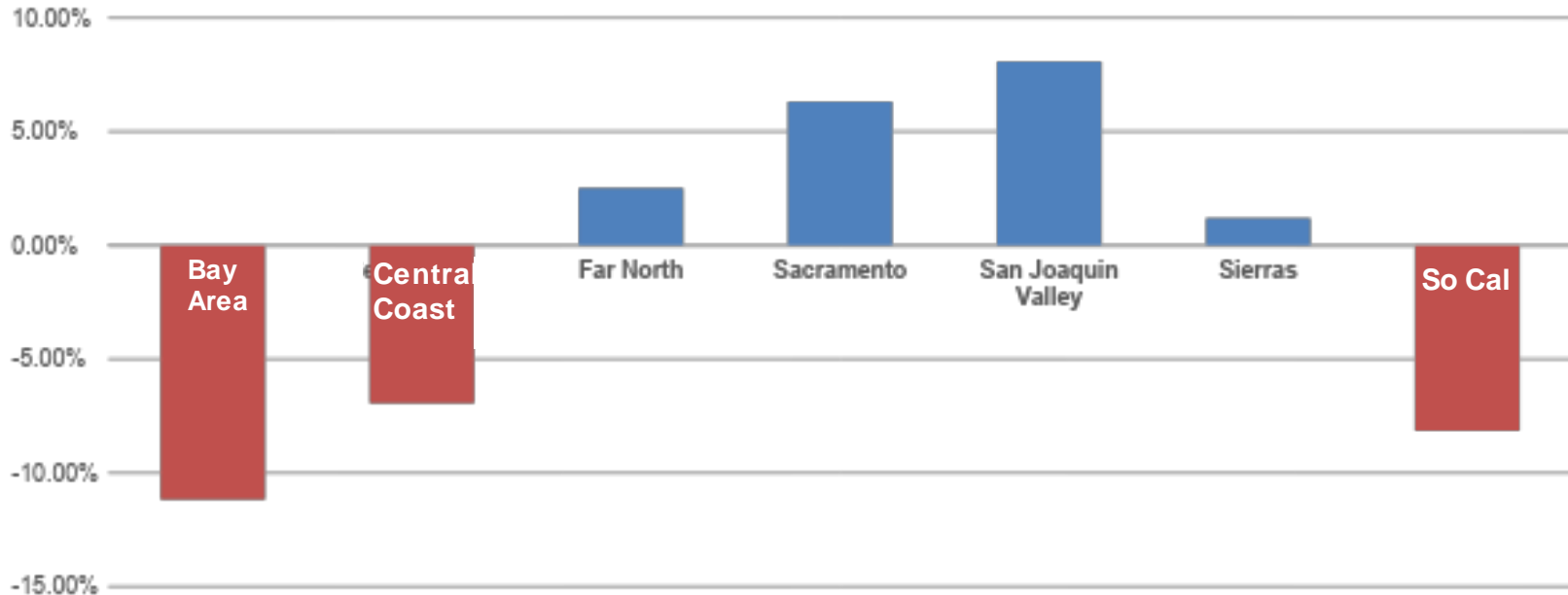
Concession Bargaining?

Bankruptcy ?



# Sales Tax Losses | Uneven Impacts

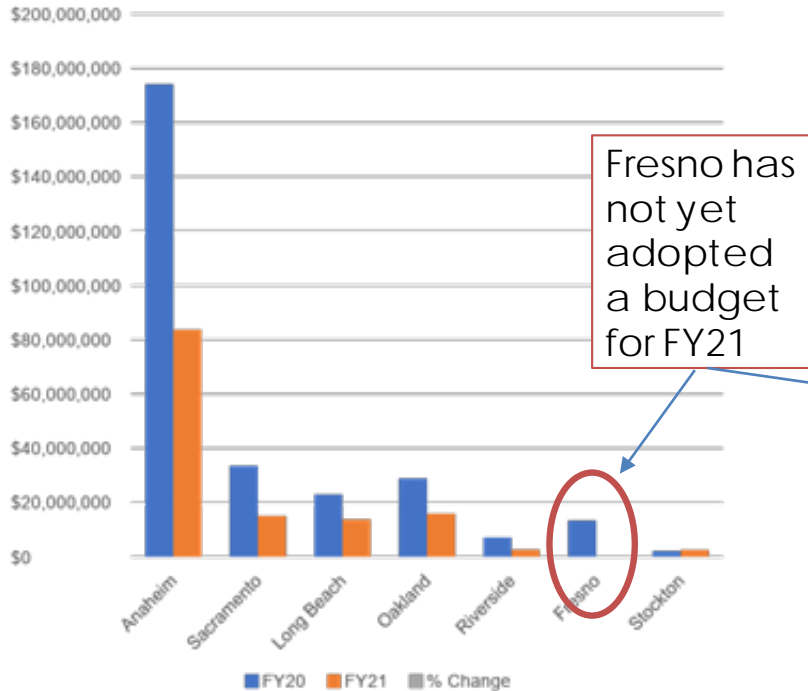
Q4 2020 Sales Tax Change from Q42019  
By Region



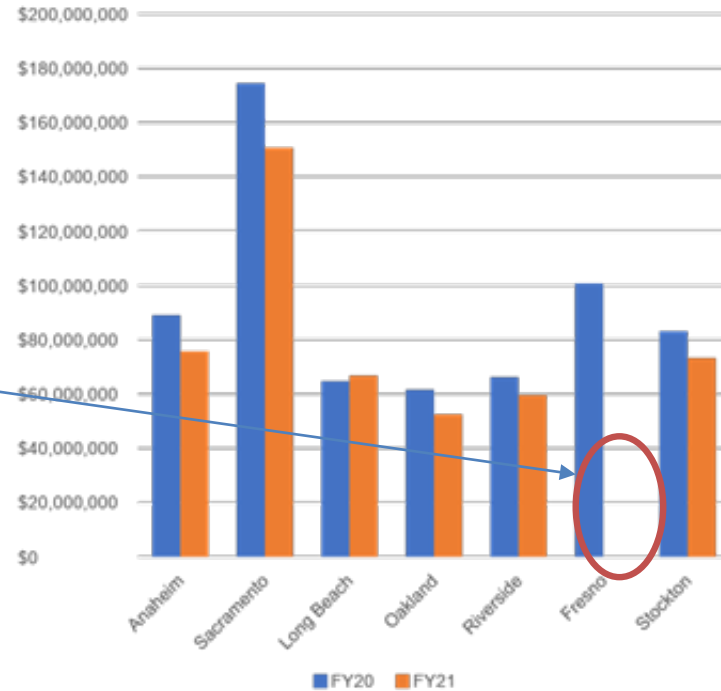
Source: HdL Companies

# Impact on Revenues | Sample Cities

## Impact of TOT on FY21 Budgets in Larger Cities



## Changes in Sales Tax Revenues in Larger Cities



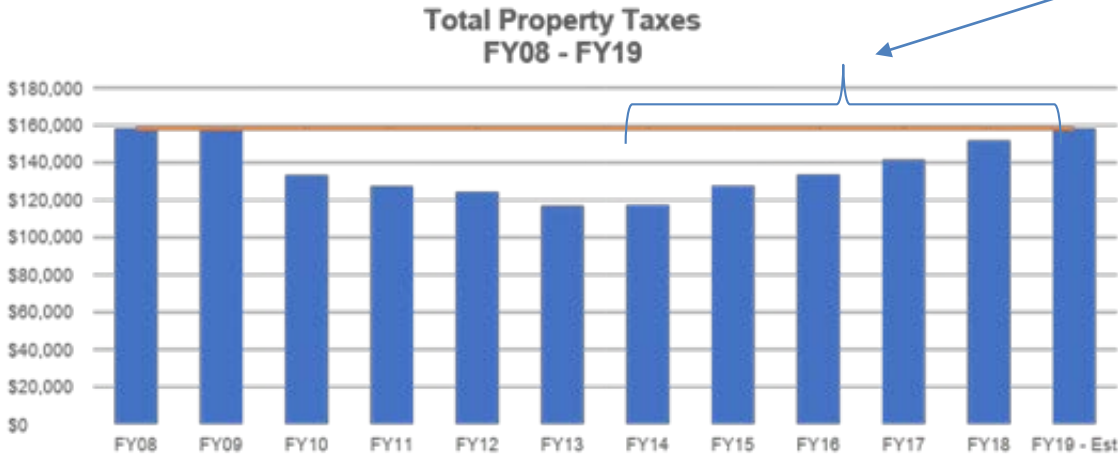
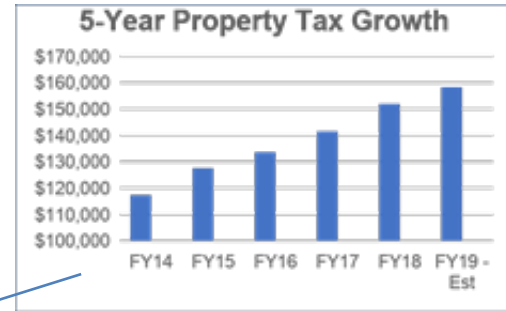
Sources: FY21 adopted budgets (continuing resolution for Fresno)

# Lessons from the Great Recession



# Recovery Was Slow

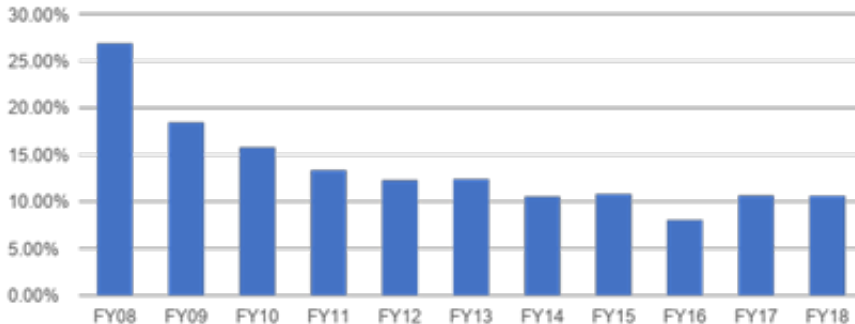
- Many agencies took more than a decade to recover key revenue sources
- In showing these impacts, a recent-term view can tell a misleading story



# Trends in Personnel & Non-Personnel Costs

- No recovery for non-personnel costs
- Dangerously high ratios of personnel cost to total costs

**Non-Personnel Costs  
As % of GF Revenue**



**Personnel Expenses  
As % of GF Revenue**



City's shifted spending and never had enough revenue to catch back up to FY08 funding levels

# Impact on Thinking About Future Budgets

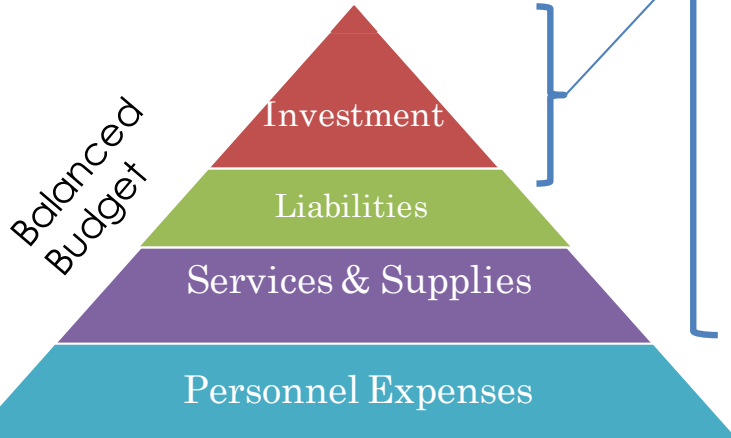
# A Balanced Budget...Is Not

- Being able to pay your bills **this year**
- **Borrowing** to make ends meet
- **Ignoring pressing maintenance needs** because you can't afford to fix them
- **Drawing down reserves**—using one-time money for ongoing expenses—with no plan to rebuild them to policy levels
- **Pushing off other current (or past) expenses to the future** in order to increase compensation... leading to an inability to pay for current or past obligations



# Elements of a Balanced Budget

- If you can't afford what it takes to run your agency...you need to adjust **all** expenses



## Deferred Maintenance

- Streets & Buildings
- Parks & Playgrounds
- Technology



## Retiree Benefits

- Buffer pension increases
- OPEB & Retiree Payoffs

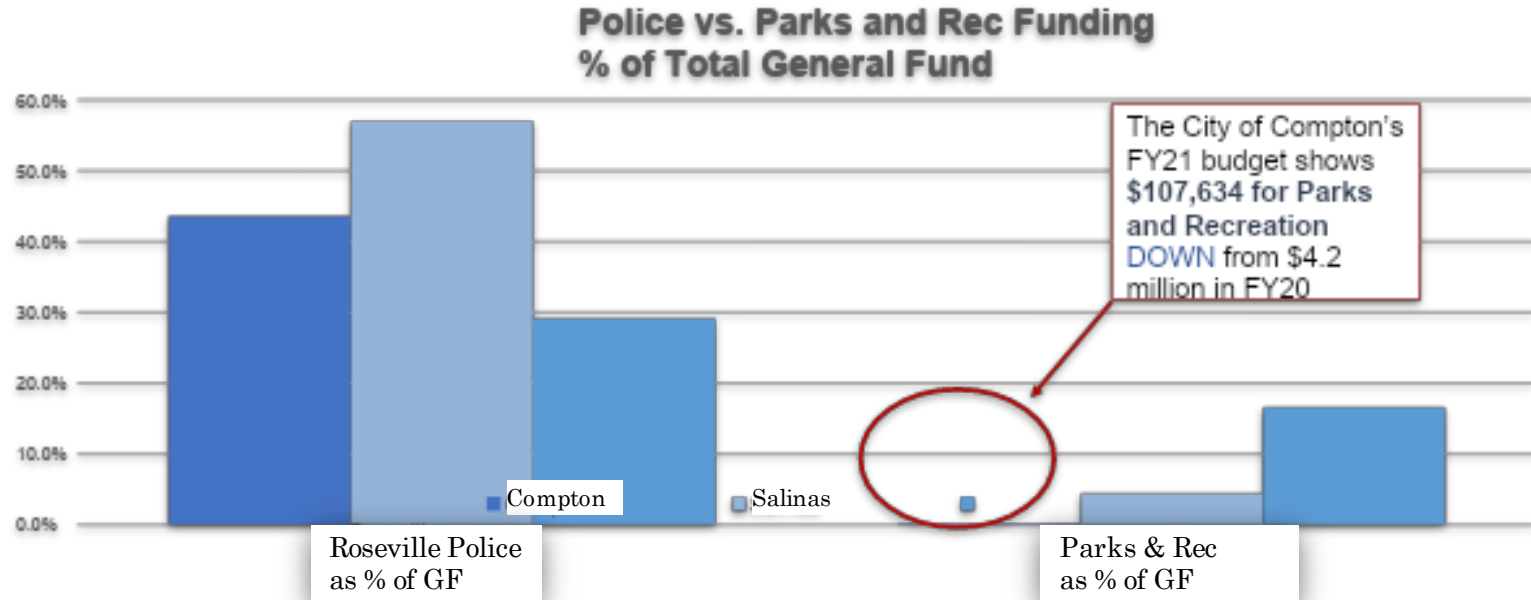


## Community Investments

- Pools/Recreation/Youth Programs
- Community Centers/Libraries

# Impacts of Funding Issues

- When funding is limited, services to vulnerable residents often suffer the most
- A new focus on budgets by the public require agencies to justify what is funded and why



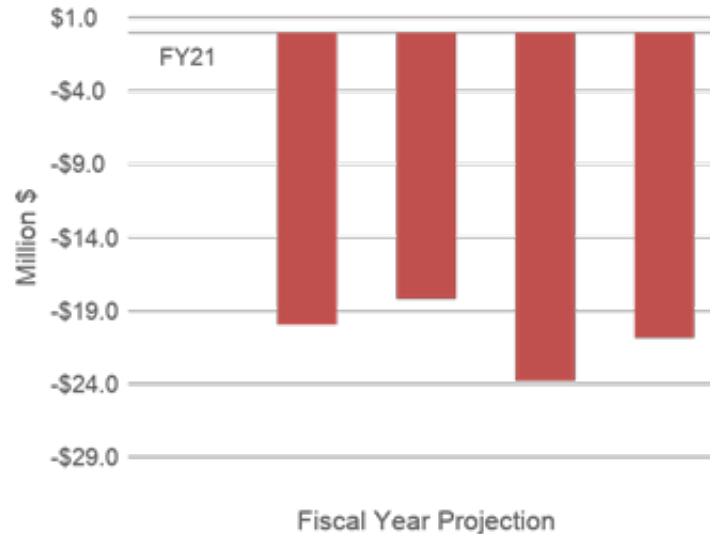
Sources: Online FY21 budgets for Compton, Salinas, and Roseville

# Understand Your 5-Year Forecast

- Should show **all** elements of a balanced budget
- What trends does it show?
- **What does the forecast tell you about what decisions you should make now?**

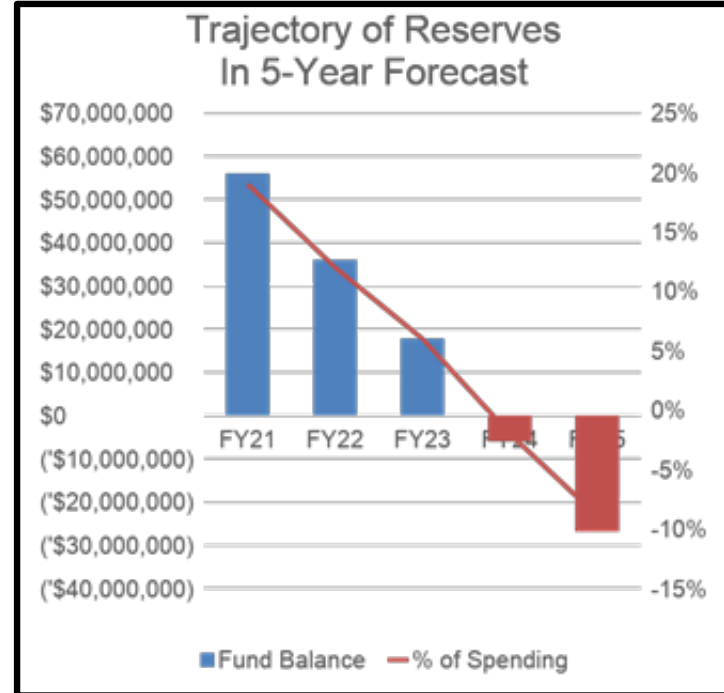
"The future depends on what we do in the present."  
- Mahatma Gandhi

Large Inland-Empire City's  
5-Year Budget Forecast Net  
Revenue



# What is the Trend in Your Reserves?

- If your reserves are on a downward trend, be able to answer these questions:
  - "What is the plan to get to a "balanced" budget?"
  - How do personnel costs contribute to this trend?
  - If it takes you time to institute change, how will you rebuild reserves?





# Are Your Reserves Up to Policy Levels?

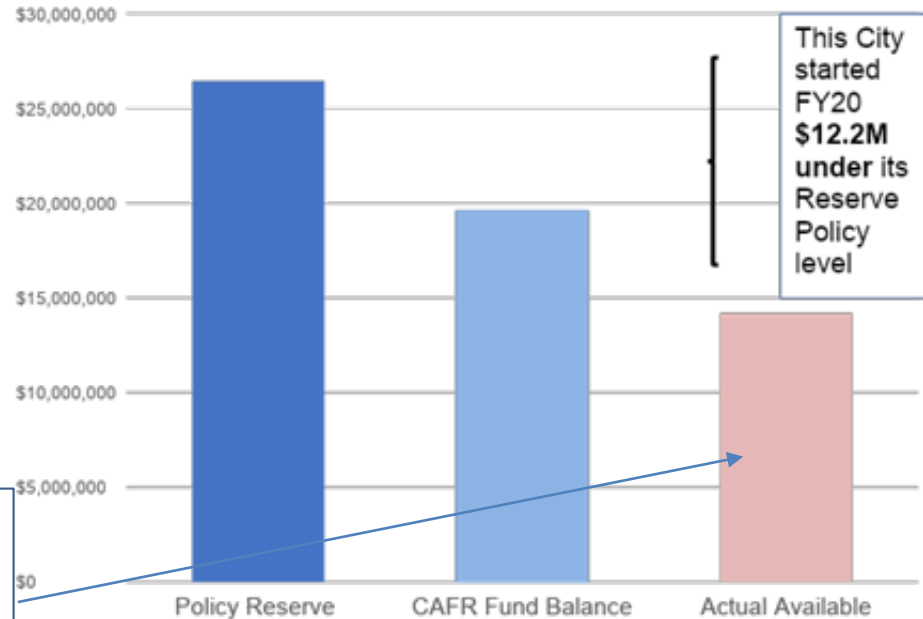
- GFOA recommends a minimum of two-months operating expense reserve...**PLUS**...special risk elements (fire, flood, earthquake, economic disruption, etc.)

....Are your reserves enough?

....Do you even have the reserves you think you do?

Other General Government Funds in this City had a negative unassigned fund balance of \$5.4M, reducing cash availability

### City Cash Reserve Policy vs. Actual Cash



# Let the Facts Do the Work | Telling your story

## Mine your data for your stories

- How fast are you going through your reserves?
- Uncertainty of future revenue levels – quick rebound vs. longer-term impacts
- Longer-term impacts from pension increases, reserve replenishment, critical infrastructure needs
- Show that uncertainty requires both caution and action—just hoping to hang on may not be the right strategy

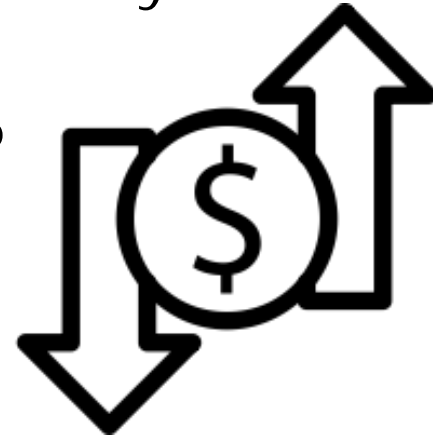


# Decision-making

# Spring 2020

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- US Conference of Mayors Survey: 9 out of 10 Impact Public Safety
- League of CA Cities: \$7 billion over 2 years
- SCAG: Sales Tax losses 26-38%





C·O·E

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# Public Sector Jobs in the Sacramento Region



**24% of all jobs** in the region are public sector jobs.

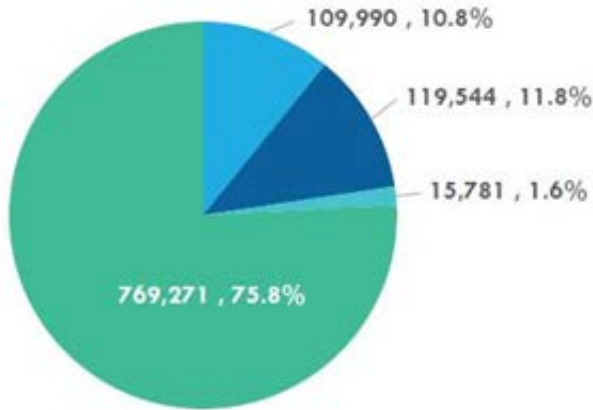
That's **245,000** public sector jobs.\*



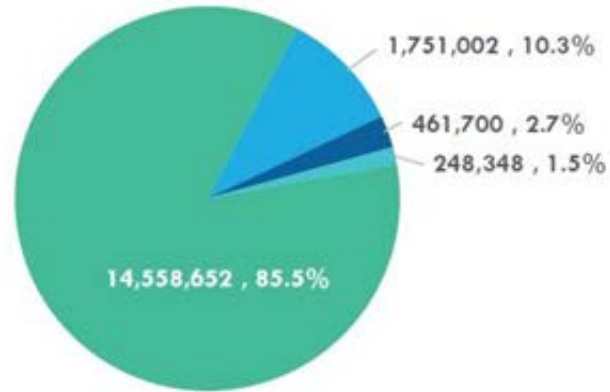
By comparison **14.5%** of all jobs in California are public sector jobs.

\*Source: QCEW, 2017; the totals given and the totals in the pie charts are different due to the aggregation levels counted in the data

Public Sector Jobs in Sacramento Region



Public Sector Jobs in California



Local Government State Government Federal Government Private Sector

Source: QCEW, 2017

# State and Local Government Workforce

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- 19 million
- 10% of US Workforce



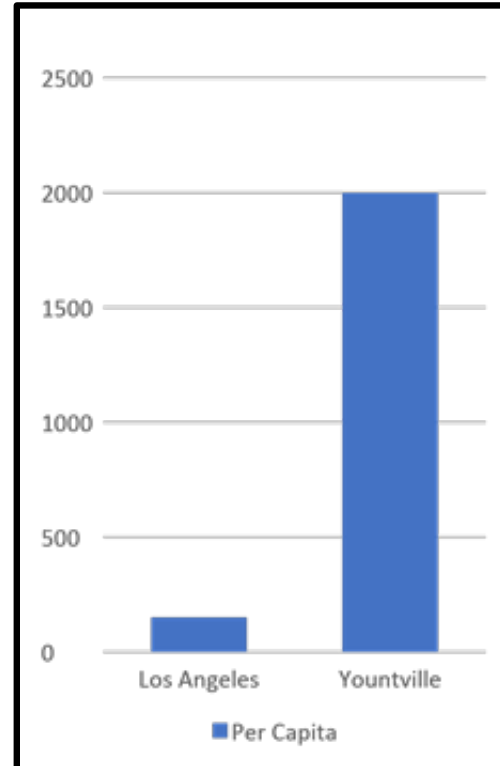
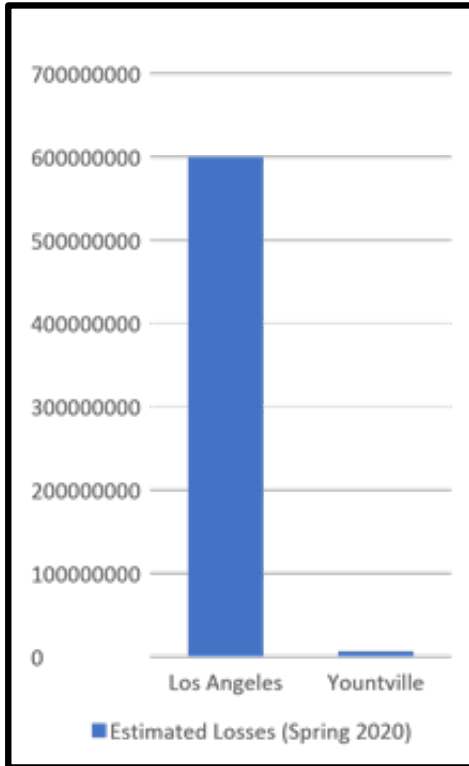
Source: [https://link.springer.com/chapter/10.1057/9781403920171\\_5](https://link.springer.com/chapter/10.1057/9781403920171_5)

# CARES Act

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- \$2 Trillion to assist with public health and economics.
- Dollar amounts public agencies receive are based on the size of the population.
- CARES Dollars
- 500,000 population minimum for Direct Allocation
  - 1.2% of CA Cities
  - <20% of CA population

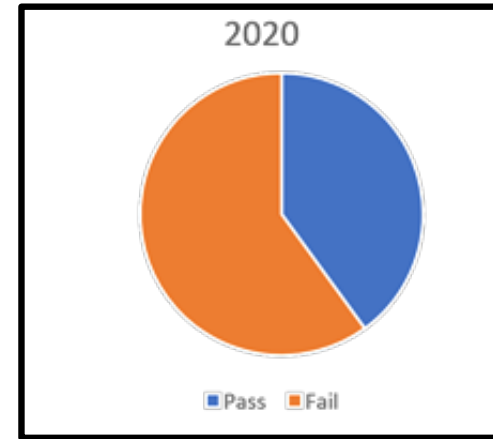
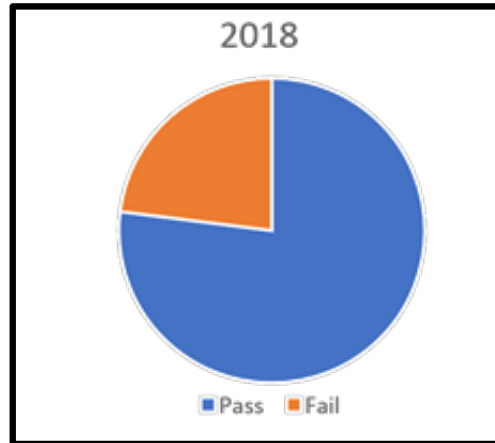
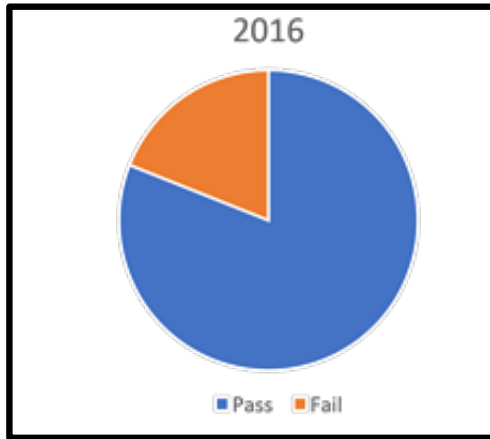
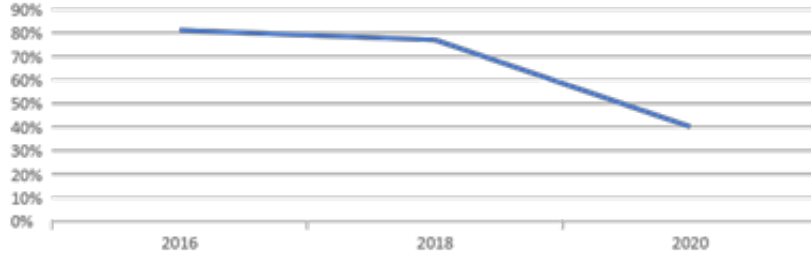
# Who Should Expect Help?



<https://www.cacities.org/Top/News/News-Articles/2020/April/City-Leaders-Share-Devastating-Fiscal-Impact-of-CO>  
<https://www.courthousenews.com/la-signals-massive-budget-shortfall-is-coming-soon/>



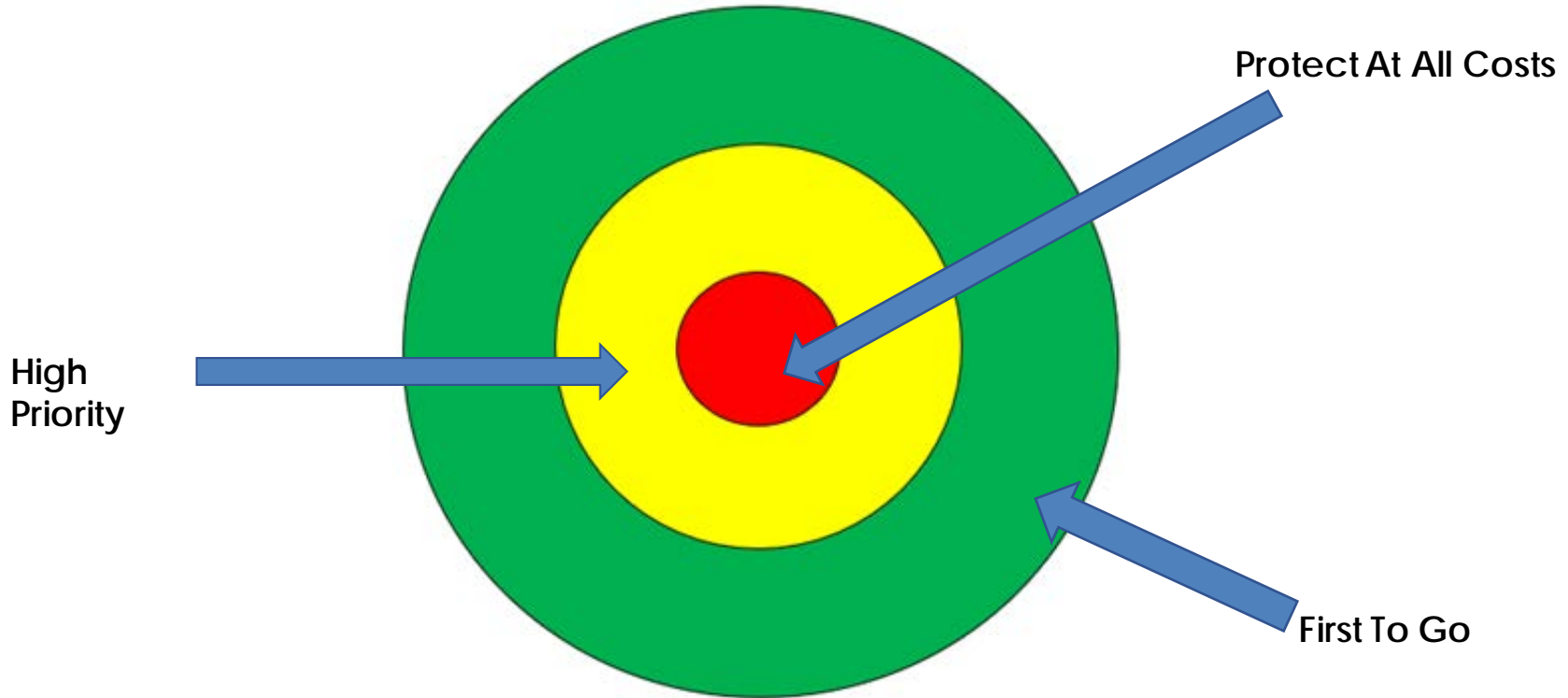
# Tax Passage Rate



<http://californiafinance.com/Votes2003final.pdf>

# Starting Points Vary

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# Tension Points

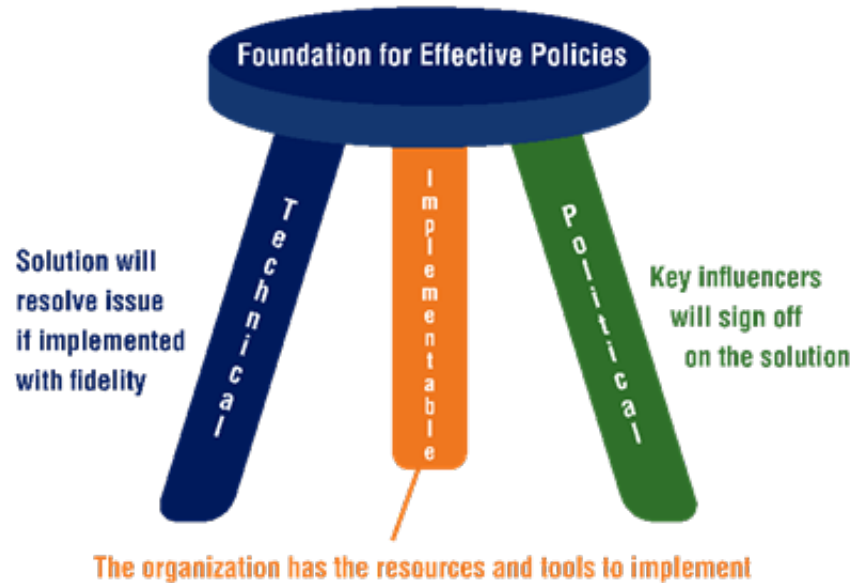
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Popularity	Bureaucracy
Short-term	Long-term
Quality of Life	Core Functions
Public Engagement	Spreadsheet Approval
Worse Over Time	Better Over Time

# Public Policy Triangle

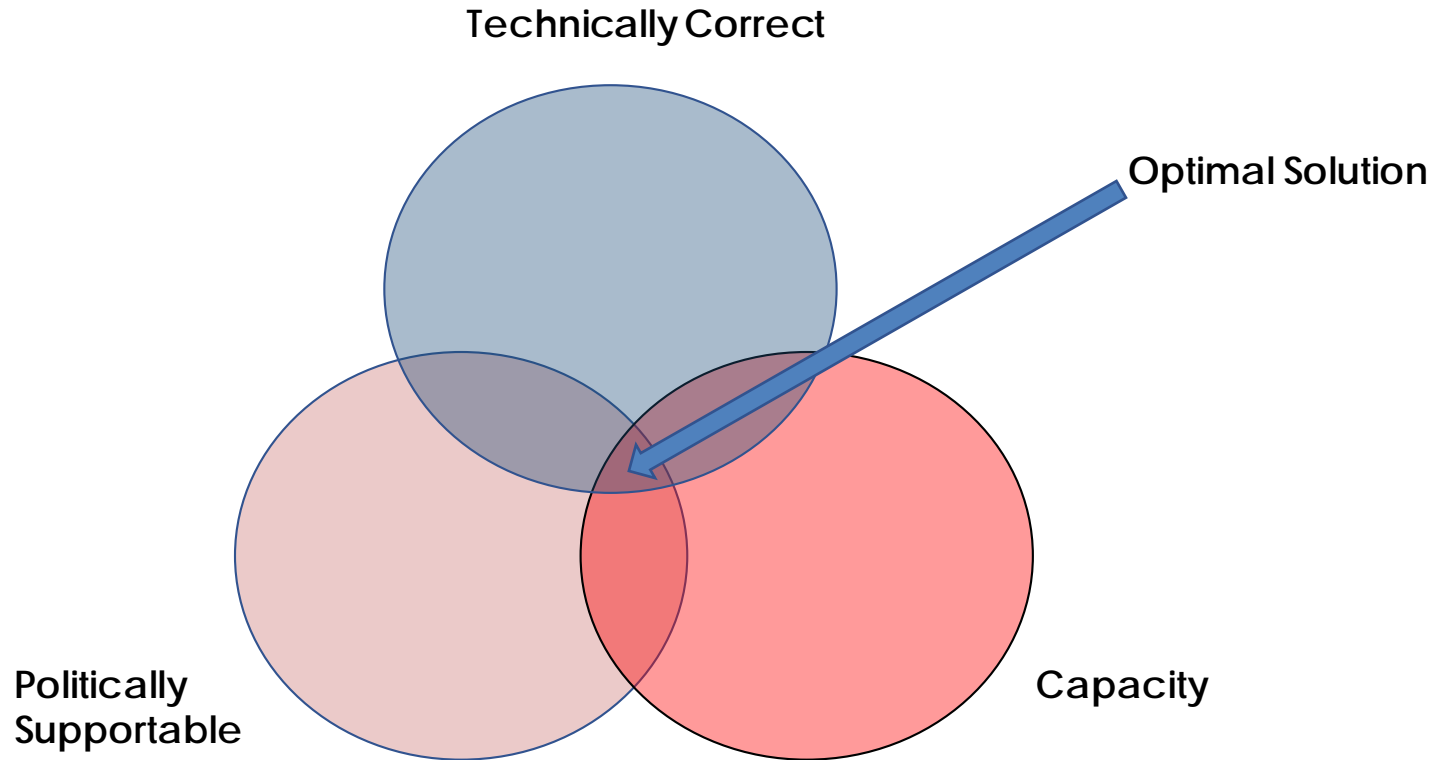
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Blue: technically correct    Orange: organizational implementable    Green: politically supportable



# Range of Solutions

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# How Bargaining Shapes Your Options

# Uncertainty Is the Enemy

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- Many of us have experienced concession bargaining, particularly in the wake of the 2008 Great Recession.
- But the current economic situation is arguably even more difficult
  - No one knows how long the COVID-19 crisis will continue
  - No one knows how many businesses that drive sales tax and TOT will reopen
  - COVID-19 and Zoom may result in significant changes to the workplace and where people live
  - Pension costs are far higher than they were in 2008
  - There is greater sympathy for public employees (except police) now
  - Labor laws have changed in ways that will make it far more difficult for public agencies to pivot quickly.

# Big Change is Needed

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- The magnitude of the problem in some locations may well outstrip the power of the conventional tools labor relations has to offer.
- Therefore, in this presentation, I will focus on some of the tools that may be needed in the absence of assistance from the federal government.

Let's Begin



# Organizational Alignment

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- Make sure everyone is on the same page: your executive team, department heads, operational managers, finance, legal, HR, and elected officials
- Establish clear internal communication channels
- Start with a comprehensive summary of the financial concerns before a single proposal is on the table



# Meyers-Milias Brown Act Emergency

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- The MMBA requires local public employers to:
  1. “meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with” union representatives before “arriving at a determination of policy or course of action” and
  2. give reasonable written notice to unions and the opportunity to meet and confer regarding any “ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the” agency’s governing body or designated boards and commissions.

However, in the cases of emergency, this duty is suspended until “the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation”



# Meyers-Milias Brown Act Emergency

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- The MMBA does not explain what constitutes a local emergency, but according to...
  - The Court of Appeals: “emergency has long been accepted in California as an unforeseen situation calling for immediate action”
    - *Sonoma County Organization etc. Employees v. County of Sonoma* (1991) 1 Cal.App.4th 267, 276.
  - PERB: “under exceptionally limited circumstances, an employer may be excused from negotiating on the basis of true emergency that provides a basis for claiming that a business necessity excused a unilateral change”
    - *County of San Bernardino (Office of Public Defender)* (2015) PERB Decision No. 2424-M, at 54.

# Top Tips

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- Bargain early, set reasonable deadlines
- Carefully consider opening proposals
- Be especially mindful of internal equity issues
- HR folks: know your finances
- Finance folks: know your HR
- Beware of surprises

# Options to Reduce Expenses

To match revenue reductions

# Toolkit for Addressing Labor Costs

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- Layoffs
  - The decision to layoff is generally not bargainable
    - Exceptions:
      - Contracting Out
      - Moving bargaining unit work to another unit
    - However, the effects of layoff *are* bargainable
    - PERB says the effects must be bargained to impasse
    - Also consider MOU noticing requirement
    - Also consider staffing requirements

# Furloughs

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- The decision to furlough is bargainable, unless your agency has an existing furlough rule
- Many MOUs prohibit furloughs
- Furloughs do not generally work for police and fire because of overtime

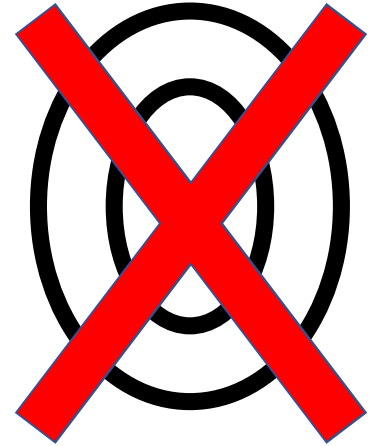
# Open Contracts



# If Zero Won't Do

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- Wage reductions and such
  - Pension cost-sharing
  - Longevity premiums
- Change minimum staffing
- Changes to reduce need for OPEB pre-funding
- Limit cash-outs
- Triggered re-openers



# If the Unions Won't Agree to Reductions

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- Public agency must bargain to impasse
- After impasse, agency must complete AB 646 Fact Finding and any other impasse resolution procedure in charter or rules
- After completing fact finding, agency has the option of implementing its last best offer, or doing nothing, in which case, the status quo continues
- Unions can strike, unless the work stoppage poses an imminent threat to public health or safety
  - Police and fire unions are prohibited from striking
- Injunctions to prevent illegal strikes must be brought through PERB

# Closed Contracts

# Voluntary Reopeners

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- Defer future wage increases
- Wage cuts (perhaps to limit layoffs)
- Staffing reductions (where minimum staffing specified in MOU)
- Additional time off in exchange for wage concessions
- Public agencies have no recourse if union refuses to reopen, except to layoff employees or declare emergency (see below)

# Structural changes

# Joint Power Authorities

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- Types
  - Police/Fire
  - Parks/Public Works
  - Mega
- Benefits
  - Currently, new JPAs are not required to provide defined benefit plans
  - Economies of scale and regional coordination
- Concerns
  - Arguably, shifting work to a JPA may constitute contracting out for the purposes of MMBA
  - Loss of local control

# Contracting Out

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- As a practical matter, PERB now requires full bargaining for any contracting out
- There are also significant limitations on the ability of general law cities to contract out services
- Also, BEWARE that CalPERS is actively policing the contractor/employee distinction
- Amendments to AB 5
- Expect further legislative efforts by unions to limit contracting out

# Limited Relief Available Through CalPERS

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- CalPERS allows local agencies to work on a case by case basis.
- Current options are limited to doing a “fresh start” or a revised amortization policy.
  - If granted, the unfunded liability can be amortized as a level dollar amount or up to a 30-year extension due to severe financial hardship.



# Fiscal Emergencies and Bankruptcy

# Declaration of Fiscal Emergency

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- The case that established the four-part test: *Sonoma County Organization of Public Employees vs. The County of Sonoma*
- The Four-Part Test
  1. The contract modification must arise out of an actual emergency
  2. Relief from the contract must be necessary to protect a basic societal interest rather than for the benefit of a particular group of individuals
  3. The modification or relief must be appropriately tailored to the emergency it was designed to address, and the conditions that result must be reasonable
  4. The modification imposed must be temporary and limited to the exigency that prompted the legislative response

# Declaration of Fiscal Emergency

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- Note: These factors are not necessarily absolute
  - Example: *In United States Trust Company of New York v. New Jersey* – “the existence of an emergency and the limited duration of a relief measure are factors to be assessed in determining the reasonableness of an impairment... they cannot be regarded as essential in every case”
    - “an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose”

# AB 506: A Viable Pre-Bankruptcy Option

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- In order to qualify for bankruptcy protections, a public agency must:
  - Engage in a neutral evaluation process with its creditors with the help of a mediator; *or*
  - Declare a fiscal emergency

# The Neutral Evaluation Process

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- The public agency must notify all interested parties of its request for neutral evaluations
- Interested parties shall respond within 10 business days of receipt of request
  - Failure to do so results in a waiver of the right to participate in the evaluation process for that party
- Interested parties and public agency mutually select a neutral evaluator through a mutually agreed upon process
- All parties shall participate in the neutral evaluation and negotiations in good faith

# Bankruptcy and Pension

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- Under Chapter 9 of the Bankruptcy Code, municipalities can file for bankruptcy if they meet the eligibility requirements
  - Section 365's rejection power
- A municipality's pensions obligation *may* be adjusted as part of a Chapter 9 plan
  - *IN RE: CITY OF STOCKTON, CALIFORNIA, Debtor*
  - *Butner v. United States*; City of Detroit
- Bankruptcy courts must consider the alternatives to adjusting pension obligations, including the impact on employees

# Questions & Answers



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# Recording Available Soon!



The recorded presentation and materials will be shared electronically with all registrants a few days after the webinar.

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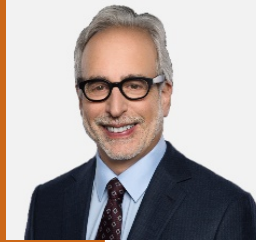


Renne Public Law Group®



# Thank You!

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