

# PASSING A LOCAL SODA TAX IN CALIFORNIA

## WHAT TO CONSIDER, HOW TO PROCEED



# Many cities

and counties in California are interested in imposing a tax on products such as soda and other sugar-sweetened beverages – a policy strategy that could discourage consumption of the product and provide a dedicated source of revenue for local public health programs.

In California, a community’s only viable option is to pass a *business license tax*, which would be imposed on distributors or retailers doing business in that city or county. This fact sheet looks at some of the considerations and procedural requirements involved.

## What Type of Tax?

There are many different kinds of taxes, and several distinctions are important to understand when deciding how to pursue a local tax on sugar-sweetened beverages.

Most broadly, a tax is imposed on a person or property by the government to raise revenue for general public needs. Most people are familiar with *sales taxes*, which are imposed on consumers when they purchase products. Sales taxes are usually measured as a percentage of the sales price. Although the seller is responsible for collecting the tax on behalf of the state or local government, an essential element of a sales tax is that it is passed on to the consumer.

An *excise tax*, however, is often imposed on the business of selling a consumer product. Most state tobacco taxes, for example, are excise taxes.

A sales tax on sugar-sweetened beverage consumers is prohibited by state law (see “Why Not a Sales Tax?” on page 5). But an *excise tax* on businesses – imposed for the privilege of selling such beverages – would be allowed.



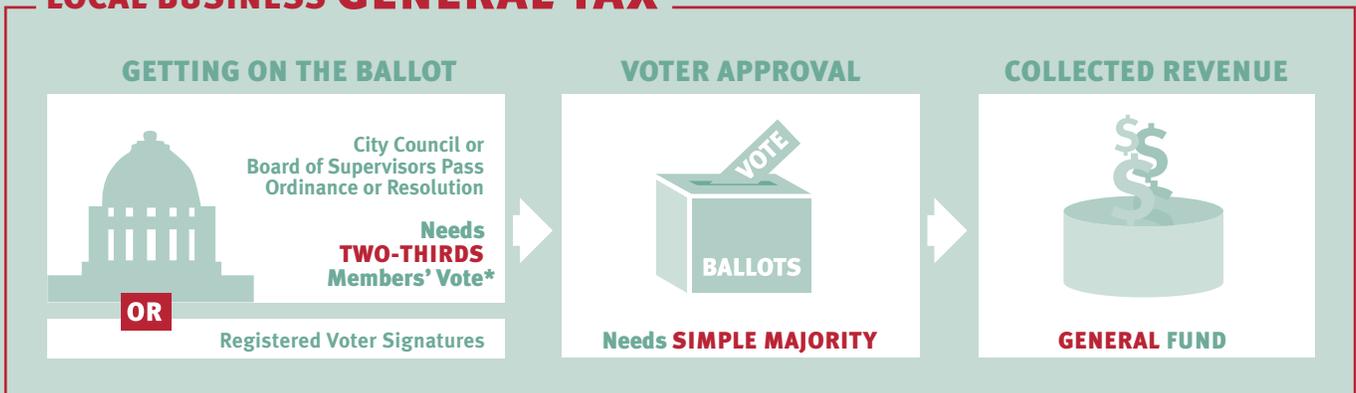
## General vs. Special Tax

A local business license tax is an excise tax, and like any tax, it can be imposed as either a *general* or *special* tax. There are some important differences between the two, both in terms of what it takes to move the proposed tax forward in a city or county and, if it's adopted, how the revenue is directed:

- A **general tax** can be approved by a simple majority of voters, but the proceeds are deposited in the general fund and available for any purpose.
- A **special tax** requires a two-thirds voter approval, but the proceeds are earmarked for specific purposes, such as local public health education and treatment programs.

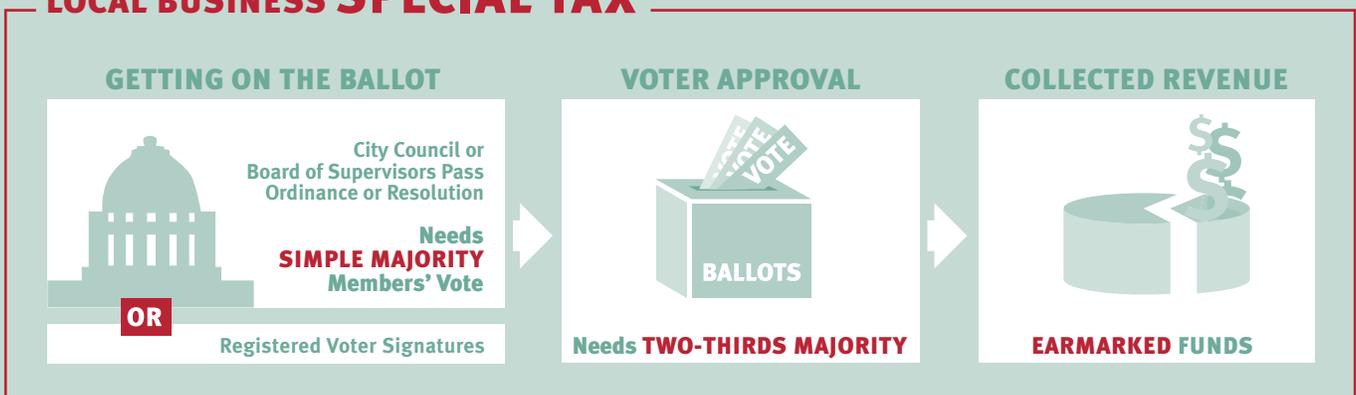
There are also some key differences in what it takes to get a local special tax and a general tax before voters in the first place.

### LOCAL BUSINESS GENERAL TAX



\* Except Charter Cities

### LOCAL BUSINESS SPECIAL TAX



# Getting the Tax on the Ballot

## Local taxes may be proposed in one of two ways:

by gathering signatures from registered voters (similar to the process for statewide ballot initiatives), or by having the city council or board of supervisors pass an ordinance or resolution that sets forth the proposal. Either way, voters must ultimately approve the proposal.

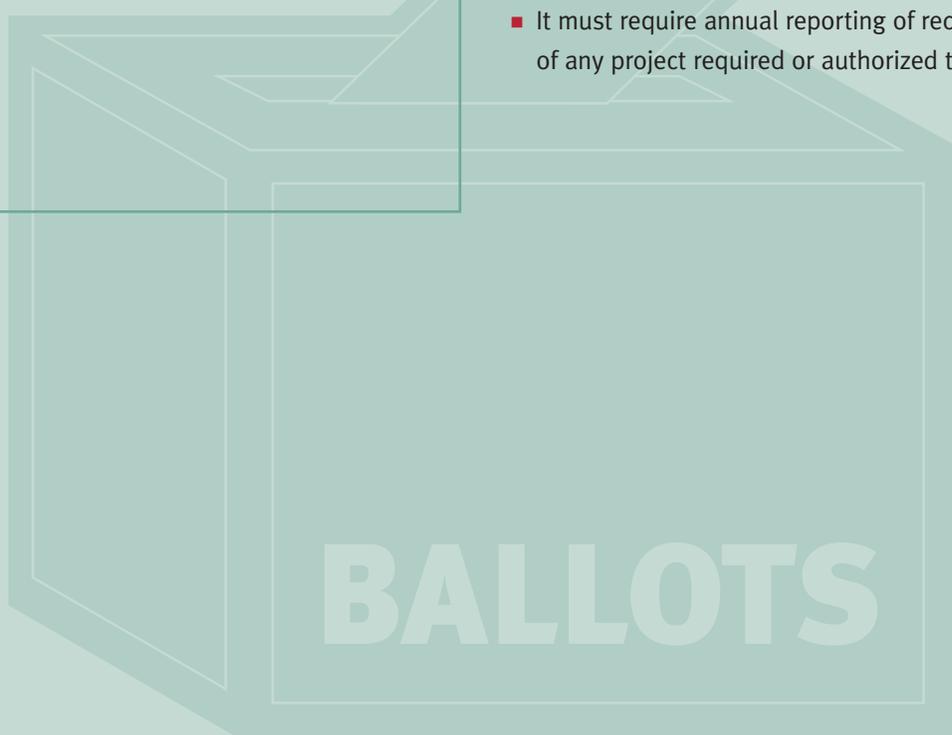
If a local business license tax is introduced by the city council or board of supervisors, the legislative body must adopt an ordinance or resolution that sets forth the type of tax and rate, along with other specific details. To get a general tax on the ballot this way, the ordinance or resolution proposing the tax must be adopted by a two-thirds vote of the members of the legislative body. To get a special tax on the ballot, only a majority vote of the legislative body is required. (For charter cities, regardless of whether it is a general tax or a special tax, the city council may place the tax on the ballot through a majority vote unless the city charter provides otherwise.)

A special tax must also include all of the following accountability measures:

- The initiative must state the “specific purposes” of the tax and require that tax proceeds be used only for that purpose
- It must provide for the creation of an account into which the proceeds shall be deposited
- It must require annual reporting of receipts, expenditures, and the status of any project required or authorized to be funded by the measure

## What is a Charter City?

All cities in California are either “charter” or “general law” cities. A charter city is a city that has chosen to adopt a city charter (like a constitution for the city) and has local authority over municipal affairs, like conduct of elections. A general law city is bound by the general law of the State of California. The League of California Cities maintains a list of charter cities in California, with other information about the differences between the two types of cities (see [www.cacities.org/chartercities](http://www.cacities.org/chartercities)).



BALLOTS

## Why Not a Sales Tax?

Most people are familiar with sales taxes, which are based on a percentage of the sales price of taxable items, computed at the time of purchase, and collected from shoppers by the retailer. Every city and county in California imposes a sales tax that is administered and collected by the State Board of Equalization under the Bradley-Burns Uniform Local Sales and Use Tax Law (“Bradley Burns Law”).

The California Legislature enacted the Bradley Burns Law in 1955 to achieve statewide uniformity in rates and practice with regard to sales and use taxes. The Bradley Burns Law contains a comprehensive taxation scheme for California cities and counties – which mandates, among other things, a fixed tax rate and a long list of certain provisions in local taxation ordinances.

Theoretically, cities and counties may choose whether or not to comply with the Bradley-Burns tax scheme. Those who comply, however, are entitled to participate in a state tax collection and administration system managed by the State Board of Equalization. This system relieves local governments of the burden of collecting and administering local taxes. The system is so beneficial to local governments that opting out has become essentially impossible.

Since cities and counties participate in the statewide sales tax system, local sales taxes must include and exempt the products that are included in and exempted from the statewide sales tax. While food products are generally exempt from sales taxes, a portion of the sales of food sold through vending machines (including beverages) is subject to sales tax. Carbonated beverages also are specifically non-exempt, so these products are subject to sales tax as well.

Additional sales taxes on “food products” beyond those already in state law are prohibited by the California Constitution, so neither the state nor local governments may impose additional sales taxes on food products.

Cities and counties cannot broaden the range of beverages subject to the sales tax; they cannot increase the sales tax rate on specific sugar-sweetened beverages; and they cannot earmark the portion of the proceeds of the sales tax that come from sugar-sweetened beverages. Earmarking the revenue for public health goals would have to be accomplished through a business license tax on those who sell the beverages, rather than a sales tax on those who buy them.

# Drafting the Law: Practical Considerations

**Imposing a business license tax** on distributors or retailers who sell sugar-sweetened beverages (or another specific product) involves many administrative and practical considerations. Several choices must be made, including:

- The amount and basis of the tax (that is, a flat rate or one based on gross receipts from the sales of sugar-sweetened beverages)
- The particular types of beverages subject to the tax, and any exceptions
- Whether (and how) to specifically earmark the proceeds of the tax for particular uses
- Any collection and enforcement mechanisms that must be instituted to ensure compliance (businesses that are subject to the tax must be issued a license or certificate by the city or county)

To prepare a draft ordinance, it's important to determine the landscape of existing taxes in your city or county by analyzing current tax laws in the municipal or county code.

Many of the policy choices involved in crafting a local ordinance to tax those who sell sugar-sweetened beverages are explained in more detail in ChangeLab Solutions's state-level Model Sugar-Sweetened Beverage Tax Legislation, available at [www.nplanonline.org/nplan/soda-taxesfees](http://www.nplanonline.org/nplan/soda-taxesfees). Several of the issues involved in a statewide tax on sellers of sugar-sweetened beverages are similar to the policy issues that local governments will face.

For more details on the legal considerations and requirements around adopting a local business license tax, see ChangeLab Solutions's legal memo "Local Taxes on Sugar-Sweetened Beverages in California," at [www.changelabsolutions.org/publications/local-taxes-sugar-sweetened-beverages-california](http://www.changelabsolutions.org/publications/local-taxes-sugar-sweetened-beverages-california).

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