



## **BUDGET ADVISORY COMMITTEE**

**Monday, November 6, 2017**

**6:00 pm**

**City Council Chambers**

**150 S. Palm Avenue**

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- I. Call to Order/Roll Call – 6:00 pm
- II. Review/Modification of Agenda Items for Discussion
- III. Review and Approval of the Minutes of the October 16, 2017 Meeting
- IV. Oral Communications from the Audience on Items not on the Agenda
- V. Reports/Discussion Items (Public is offered opportunity to speak prior to Action)
  - a. City Attorney Memorandum on Pavement Management Fee
  - b. Revenue Forecasting Update/Utility Tax Scenarios per Request (PFM)
  - c. Departmental Presentations (Public Works)
- VI. Items Requested for Next Budget Advisory Committee Meeting (November 20<sup>th</sup>)
- VII. Adjournment – 8:00 pm

***Budget Advisory Committee Meeting  
Meeting Minutes  
October 16, 2017***

**I. Call to order**

Stacey called the meeting to order at 6:02.

**Attendees:**

Community Members: Stacy Augustine, Robin Austin, Lupe Camacho, Anna Gonzalez, David Phillips, Joe Raden, Michele Sanchez, David Lopez

Staff Representatives: Robb Steel (GCEA), (RMMA), Richard Royce (RPBA & RPBA Management), Joe Powell (Fire Management), Ryan Cathy (Fire 3688)

**Absent:**

Karla Perez, Katie Nickel (RMMA) & Thad Coffing (RCEA),

**II. Review/Modification of Agenda items**

Lina moved to add the approval of minutes to the agenda, Lupe 2<sup>nd</sup> the motion to allow the minutes to be added to the agenda; vote was unanimous.

Discussion of Minutes of October 2, 2017 the following are corrections to those minutes:

- Matt corrected his question regarding interest rate: it was 1.25% not 55%
- Lina corrected the attendance: she was present at the October 2<sup>nd</sup> meeting.
- Joe corrected: Instead of "ex." change to example:
- Jose corrected: Thad 2<sup>nd</sup> the motion instead of 2<sup>nd</sup> them motion

Michelle moved to accept the minutes as corrected, Richard 2<sup>nd</sup> the motion; vote was unanimous.

**III. Oral Communications:** None.

David moved to close oral communications on items not on the agenda, Lina 2<sup>nd</sup> the motion; vote was unanimous.

**IV. Reports/Discussions:**

Robb went over the Utility Users Tax (UUT) History (PowerPoint)

- Discussion took place regarding PERS tax and Jarvis Group
- Mike helped with clarification on the history of PERS and why Utility tax.

Ballot Options were discussed

- Robb said there 3 options

March 6 - Mail In Only – Mike explained why staff doesn't recommend this as the best method.

April 10 (Special Election) – Mike’s goal is to get this to the Council at the 2<sup>nd</sup> meeting in November, because. Council must adopt a by January 8<sup>th</sup>, may fair better on a lower turnout.

June 5 (General Elections) is already an election and is a little cheaper. There is a higher voter turnout, however Tax measures haven’t fared as well when presented in June. Must adopt a Resolution by February 8<sup>th</sup>

-- Stacey brought talks back to how to move forward. Discussion on recommendations:  
Discussion should be made to put the UUT back on the ballot and whether the percentage should be changed.

Dennis spoke: The idea that the folks aren’t informed is hard to believe. He believes that folks are informed. The idea is to get it on the ballot and it be successful.  
The majority of the committee agree that the community are/were informed about the UUT.

Robb summarized.

- Lupe made a motion to recommend to the City Council to declare Fiscal Emergency, Lina 2<sup>nd</sup> the motion; vote was unanimous.

- Lina made a motion to recommend to place the vote on the April 10<sup>th</sup> ballot, Joe 2<sup>nd</sup> the motion; Vote passes with 6 yes and 2 no votes.

## **V. Items Requested for Next Meeting**

- Robb said they will come to the next meeting with some specific structures to move forward.

- Joe R. wants the consults to come back with a scenario that “if we reduced the tax 2% for residents the entire 5 years, but what percentage would it take on the business side for an increase, so that the UUT would produce the same amount of revenue to the city that it would if you had a flat 8% rate for residents and business.”

- Lupe stated that she contacted Upland asking their thoughts on the consultant. Mike commented about what information he got from the City Manager of Upland.

- Joe R. stated that from a previous meeting he asked for 2 opinions from the City Attorney. Robb said that he will have that information at the next meeting. Joe would like these items agendized.

- Stacey asked if there was another elected official in this city that holds another city position that they are being paid for. Robb said only the City Clerk position.

## **VI. Adjournment**

Lina moved for adjournment, Michelle 2<sup>nd</sup> motion at 8:24 pm.

Submitted by:  
Angela Perry



**ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT**

**TO: MEMBERS OF THE BUDGET ADVISORY COMMITTEE**

**CC: MIKE STORY, CITY ADMINISTRATOR  
ROBB STEEL, DEVELOPMENT SERVICES DIRECTOR**

**FROM: FRED GALANTE, CITY ATTORNEY  
NICK YEAGER, DEPUTY CITY ATTORNEY**

**DATE: OCTOBER 30, 2017**

**RE: LOCAL PAVEMENT MAINTENANCE FEE UNDER FEDERAL AND  
CALIFORNIA LAW**

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**I. INTRODUCTION AND SUMMARY OF RESPONSES**

The City Attorney's Office was asked to research whether the City may impose a pavement maintenance fee on certain types of businesses or trucking uses, based on the number of trips into and out of the City. Specifically, the City Attorney's Office was asked to research whether or not federal and/or state law preempts:

1. A pavement maintenance fee per delivery/pickup by companies like UPS and FedEx, while prohibiting the fee from being passed on to residents; and
2. A pavement maintenance fee per departure/arrival of semi-trucks and bob-tails, exempting companies from the fee when the point of sale is in the City.

The brief answer to both questions is the same: federal and state law likely prohibit such a pavement maintenance fee. California law generally prohibits local agencies from imposing fees for the use of local streets and highways. In relation to the second question, the City may be able to impose a permitting fee on such vehicles based on their weight, but any such permitting fee would be limited to recovering the costs incurred by the City for administering the permitting scheme and could not be used to collect revenues for pavement maintenance or other road repairs.

**II. ANALYSIS**

- A. Federal law may preempt the City from imposing a pavement maintenance fee, whether for companies like UPS and FedEx or for semi-trucks or other vehicles over a certain weight.**

Under federal law, states, cities, and counties are prohibited from enacting any regulation related to the price, route, or service of any interstate motor carrier with respect to the transportation

of property. (49 U.S.C. § 14501(c)(1).) Federal law defines “transportation” to include “services related to that *movement*, including arranging for, receipt, *delivery*, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, *packing, unpacking*, and interchange of passengers and property”. (49 U.S.C. § 13102(23)(B) [emphasis added].) This could reasonably apply to a pavement maintenance fee because such a fee would be aimed at the route or service of an interstate motor carrier of property because delivery companies such as FedEx and UPS are delivering property to individuals in the City, and larger vehicles such as semi-trucks would also presumably be transporting property.

Federal law does contain an exemption for “the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle.” (49 U.S.C. § 14501(c)(2)(A).) Because the state may have such authority, the City may have the same authority if provided for in state law. However, California law likely prohibits such a fee, as discussed below.

There may also be concerns regarding interference with interstate commerce. Generally, a local tax or fee cannot discriminate against interstate commerce or impose an undue burden on interstate commerce. The test for determining whether a state or local tax discriminates against interstate commerce is whether:

1. it is fairly applied to an activity with a substantial nexus to the taxing entity;
2. it is fairly apportioned so as to tax only the activities connected to the taxing state;
3. it does not discriminate against out-of-states; and
4. it is fairly related to services provided by the state.<sup>1</sup>

A pavement maintenance fee may not discriminate against interstate commerce if it is paid equally by businesses or individuals regardless of whether they are located within or outside of the City, but it is possible a court could find such a fee is unconstitutional if it has the effect of interfering with businesses located outside the City. Delivery vehicles for companies such as FedEx and UPS, or semi-trucks travelling into or out of the City, would reasonably be expected to be engaged in interstate commerce, at least at certain times.

Therefore, it is unclear whether the City would be preempted by federal law from imposing a pavement maintenance fee on delivery vehicles and/or semi-trucks or other vehicles over a certain weight. As provided below, however, California law likely preempts such a fee.

**B. California law likely preempts the City from imposing a pavement maintenance fee, whether for companies like UPS and FedEx or for semi-trucks or other vehicles over a certain weight.**

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<sup>1</sup> *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

**1. The California Vehicle Code Prohibits a City from Imposing a Fee for the Use of Local Streets and Highways**

The California Vehicle Code contains an express prohibition against local agencies imposing fees or charges for the use of local streets. California Vehicle Code section 9400.8 states:

No local agency may impose a tax, permit fee, or other charge for the privilege of using its streets or highways, other than a permit fee for extra legal loads, after December 31, 1990, unless the local agency had imposed the fee prior to June 1, 1989.

Courts have found local government fees violate Vehicle Code section 9400.8, when “the primary purpose of the...fee was to collect funds based on the use of streets or highways” in the local jurisdiction.<sup>2</sup> Moreover, courts have found that “Vehicle Code section 9400.8 must be construed to prohibit a local agency from imposing fees or charges on legal loads that are hauled on its roads, even though hauling such loads may cause damage beyond minor wear and tear to the roads.”<sup>3</sup> Therefore, any pavement maintenance fee would likely violate Vehicle Code section 9400.8.

However, Vehicle Code section 9400.8 does not prohibit the City from imposing a permitting fee for vehicles carrying extra-legal loads. The reference to “extra-legal loads” refers to truck shipments that exceed the maximum allowable weight. Cities are not prohibited by Vehicle Code section 9400.8 from imposing such permitting fees. However, permit fees are limited to the cost of administering the permitting scheme and could not be used to raise revenues for pavement maintenance or other road repairs. If members of the Committee would like further analysis of the City’s options for such permitting fees, the City Attorney’s Office will provide it.

**2. The Revenue and Taxation Code Prohibits Local Taxation of For-Hire Motor Carriers of Property**

Even if a pavement maintenance fee were characterized as a tax and approved by the voters, California law likely preempts such a tax. California Revenue & Taxation Code Section 7236 authorizes the State to levy a uniform business license tax on for-hire motor carriers based on the size of the motor vehicle fleet. Regarding a local tax, Revenue & Taxation Code Section 7233 provides, “No city, county, or city and county, shall assess, levy, or collect an excise or license tax of any kind, character, or description whatever upon the *transportation business* conducted on or after the effective date of this chapter, by any for-hire motor carrier of property.” (Emphasis added). Also, Revenue & Taxation Code Section 7234 states:

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<sup>2</sup> *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1618-1623.

<sup>3</sup> *Id* at 1622.

(a) The uniform business license tax fee imposed [by the State] by this chapter is *in lieu of all city, county, or city and county excise or license taxes of any kind*, character, or description whatever, upon the *transportation business* of any for-hire motor carrier of property.

(b) This section does not prohibit the imposition by any city, county, or city and county, of any excise or license tax authorized under Division 2 (commencing with Section 6001).

The courts have found that these statutes prevent the City from levying a tax upon the transportation business of a for-hire motor carrier of property, but still permit the City to charge regulatory taxes on activities other than “transportation business”.<sup>4</sup> However, there is no statute or relevant case law analyzing the definition of “transportation business.” Nonetheless, the rules of statutory construction require that terms be interpreted using their ordinary meaning and in harmony with their overall legislative scheme.<sup>5</sup> The Legislative Counsel Bureau of California (“LCB”),<sup>6</sup> in Opinion No. 1020690 concerning “Motor Carriers of Property,” opined that “transportation business” means any business activity related to the transporting of property by for-hire motor carriers.<sup>7</sup> The LCB further explained that Section 7234(a) precludes any license tax as to for-hire motor carriers engaged in the transportation business, but Section 7234(b) clarifies that local governments could still impose a range of general taxes, such as local sales or utility users taxes, on for-hire motor carriers in the transportation business.

### III. CONCLUSION

The City’s authority under federal law to impose a pavement maintenance fee on delivery vehicles for companies such as FedEx and UPS is unclear, and would likely depend heavily on the exact details of how the fee is developed and imposed. However, California law likely prohibits such a fee because the California Vehicle Code contains a general prohibition against cities imposing a fee for the privilege of using local streets and highways, and the California Revenue & Taxation Code preempts cities from imposing taxes and fees on the transportation business of any for-hire motor carrier of property, which would include semi-trucks and trailers arriving and departing in the City.

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<sup>4</sup> *California Tow Truck Ass’n v. City & County of San Francisco*, (2014) 225 Cal.App.4th 846, 860-61.

<sup>5</sup> *IT Corp. v. Solano County Bd. of Supervisors*, (1991) 1 Cal.4th 81, 98.

<sup>6</sup> Opinions by the Legislative Counsel Bureau are neither binding nor considered persuasive by courts; however, given the dearth of guidance in this matter, this opinion provides some insight.

<sup>7</sup> LCB Opinion No. 1020690 dated October 19, 2010, p. 8.



# City of Rialto Baseline Projection & UUT Scenarios

November 6, 2017 Budget Advisory Committee Meeting

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PFM Group Consulting

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## Presentation Overview

### ◆ Major Growth Rate Assumptions

- Revenues
- Expenditures
- Limitations

### ◆ Baseline Projection

- Projected Net Revenue and Fund Balance

### ◆ UUT Scenarios

- 4 different UUT options
- Statewide UUT rates
- Summary of options

Note: The analysis presented below is **preliminary and subject to revision** based on input by:

- 1) the Budget Advisory Committee,
- 2) staff, or
- 3) additional analysis by PFM

Analysis in report **only** shows impact of UUT options



# Major Growth Rate Assumptions



# Baseline Forecast

The baseline forecast is a projection of what the City's financial results could be **without corrective action**

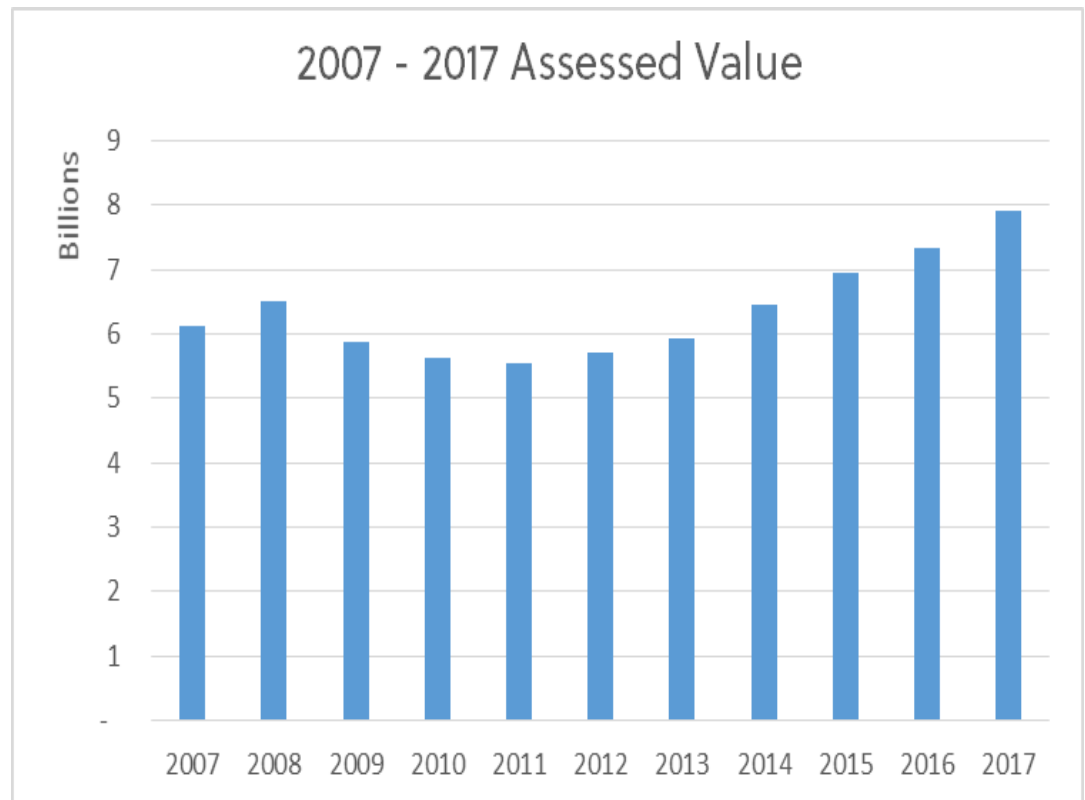
- It reflects inflation, known or assumed growth in revenues and expenditures, and other known events
- It factors out one-time spikes or plunges that are non-recurring
- It is based on recent budget actuals and projected budgets based on the current budget year (FY18)
- The baseline forecast is a work-in-progress that will change based on the City's actions and decisions
- It provides a platform for the Budget Advisory Committee to discuss related challenges and opportunities



## Major Revenue Growth Rate Assumptions

◆ Forecast 4.5% annual Property Tax growth based on compound annual growth rate (CAGR) in Assessed Value (AV) for CPI and resale increases to the AV

- **10 year AV CAGR of 6.77%** -- inclusive of new development
- **5-year AV CAGR of 2.58%**
- Growth from new development to be added as an initiative





## Other Major Revenue Growth Rate Assumptions

- ◆ 4% annual In Lieu Property Tax (VLF) – based on historical growth
- ◆ 3.5% annual Sales Tax Growth: Higher than inflation, lower than historical growth
  - Additional sales tax from proposed development to be added as initiative
- ◆ Utility User's Tax sunsets in spring 2018 and is **not** renewed
- ◆ Other revenue and expense items expected to track general inflation –average 2.3% over the forecast period (based on projections from the Philadelphia Federal Reserve Bank)



## Major Expense Growth Rate Assumptions

- 0.5% annual miscellaneous salary growth (assumes no real salary increases)
- 1.0% annual public safety salary growth (minor salary increases over forecast)
- 1% annual utilities growth based on Bureau of Labor Statistics average utilities CPI for cities
- CalPERS Normal Cost and UAL payment based on most recent CalPERS actuarial valuations
- Other revenue and expense items expected to track general inflation estimated to average 2.3% over the forecast period.



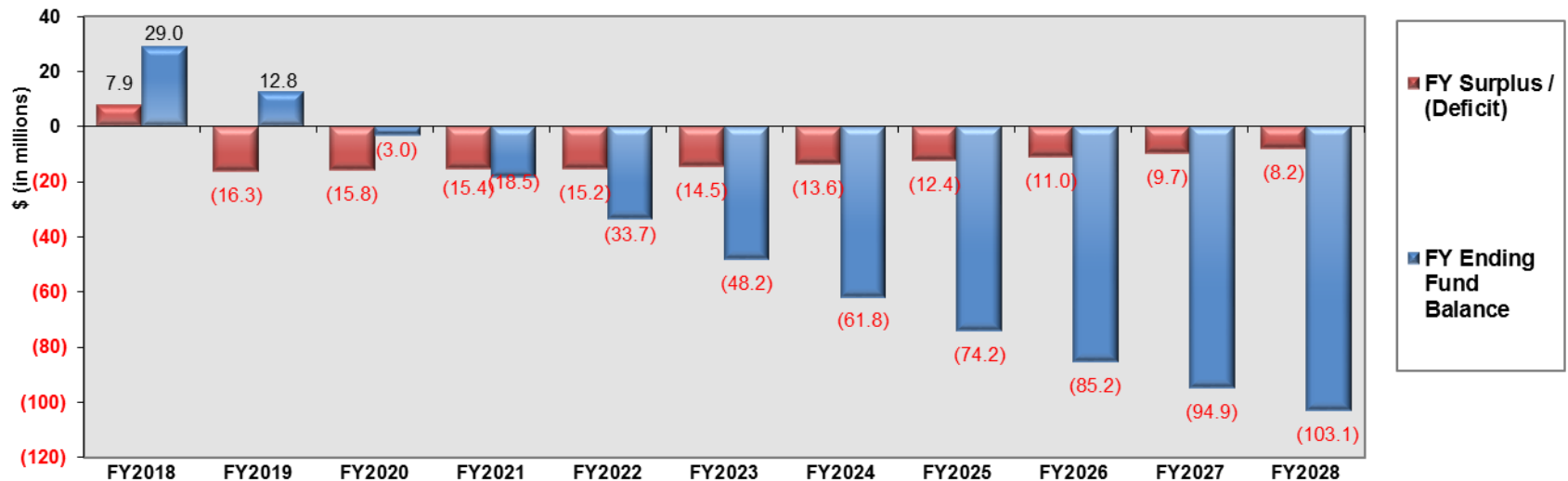
# Baseline Projection



## Baseline Projection

- Fueled primarily by the loss of UUT revenue, the City of Rialto is projected to run a budget deficit beginning in FY19 absent corrective action
- Total change in fund balance of \$132.1 million** over forecast period

**FY2018 – FY2028 Baseline Forecast  
Operating Surplus/Deficit and Ending Fund Balance**







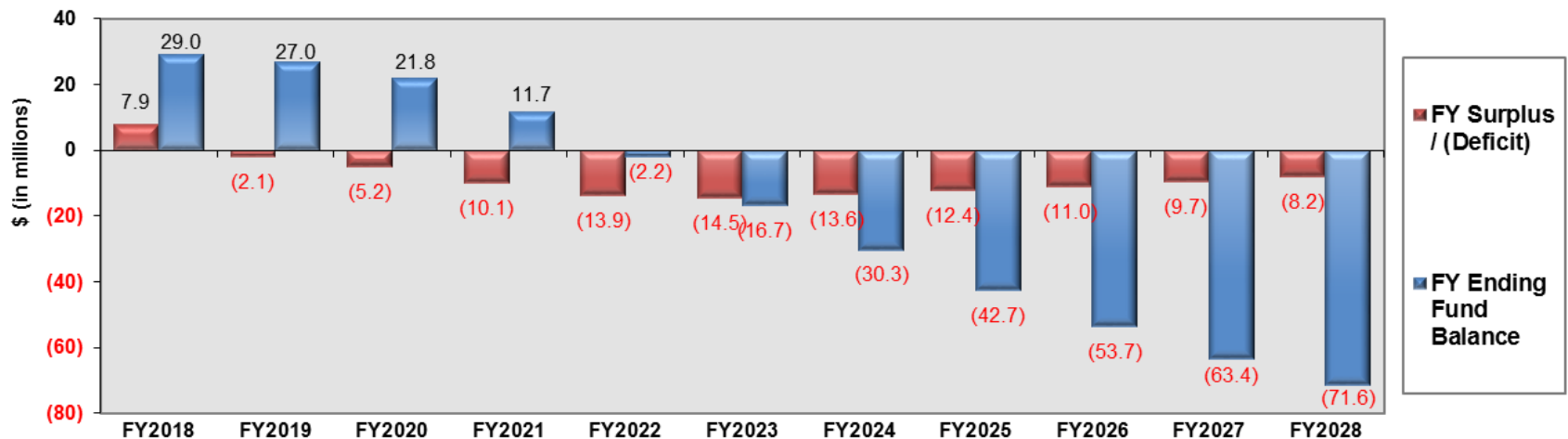
# Utility Users Tax Scenarios



## Option A: Phase out of UUT from 8% to 0%

- This scenario assumes a gradual five year phase out from 8% to 0% for all customers
- **Total change in fund balance of \$100.6 million** over forecast period

**FY2018 – FY2028 Baseline Projection**  
**UUT Phase out 8% to 0%**



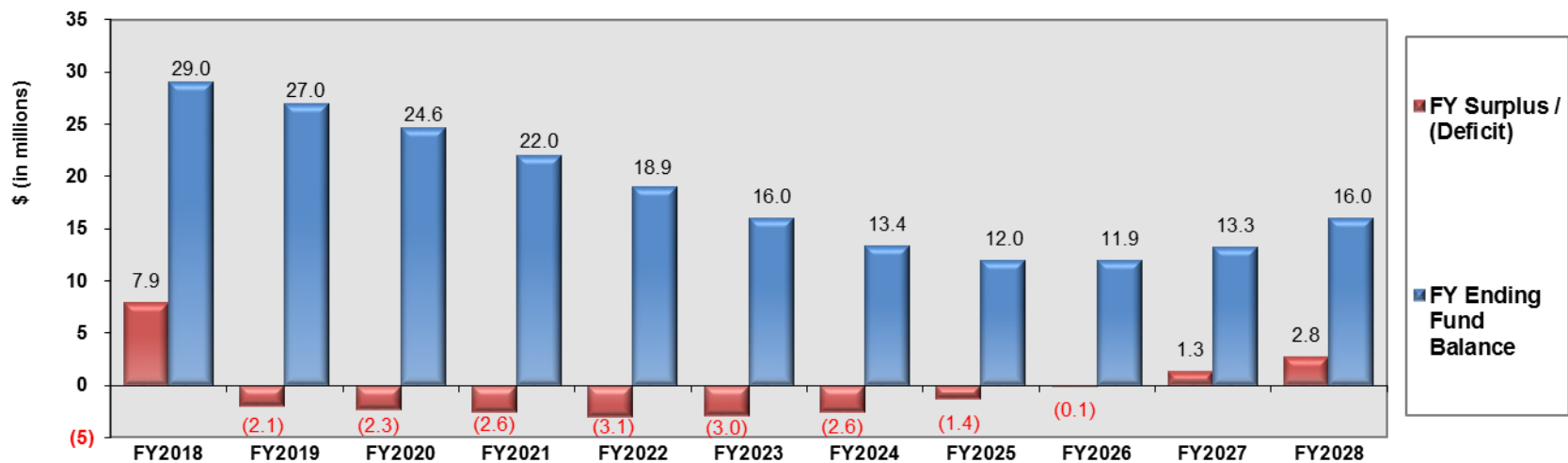


## Option B: Phase in Reduction of UUT from 8% to 6% -- All Customers

- This scenario assumes a five year decrease from 8% to 6% for all customers
- The resulting FY2028 fund balance is positive \$16.0 million
  - Reduction in fund balance of \$13 million from FY18

Note: Fund Balance amount will be affected by different assumptions on expenses—especially salaries and capital—and revenues

### FY2018 – FY2028 Baseline Projection UUT 8% to 6%



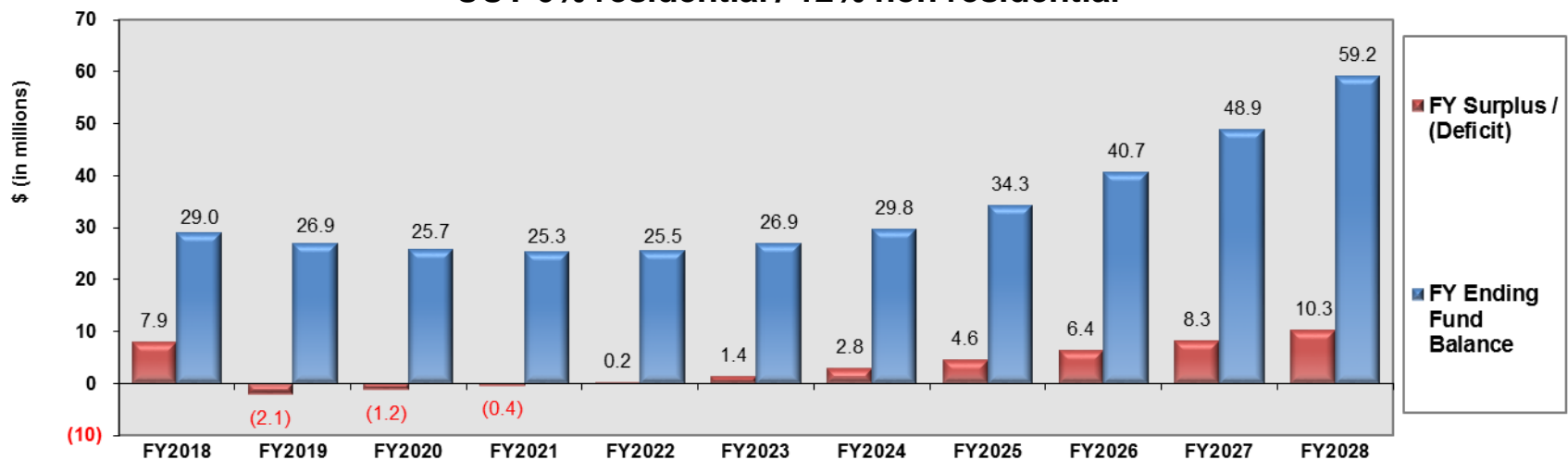


## Option C: Change UUT Rates to 6% residential/12% non-residential

- This scenario assumes a FY2019 change to 6% UUT rate for residential and 12% UUT rate for non-residential
- Based on split of current revenue 67% residential/33% non-residential (Note: Assumed split—not confirmed)
- The resulting FY2028 Fund Balance of \$59.2 million – nearly equal to the status quo rate of 8%

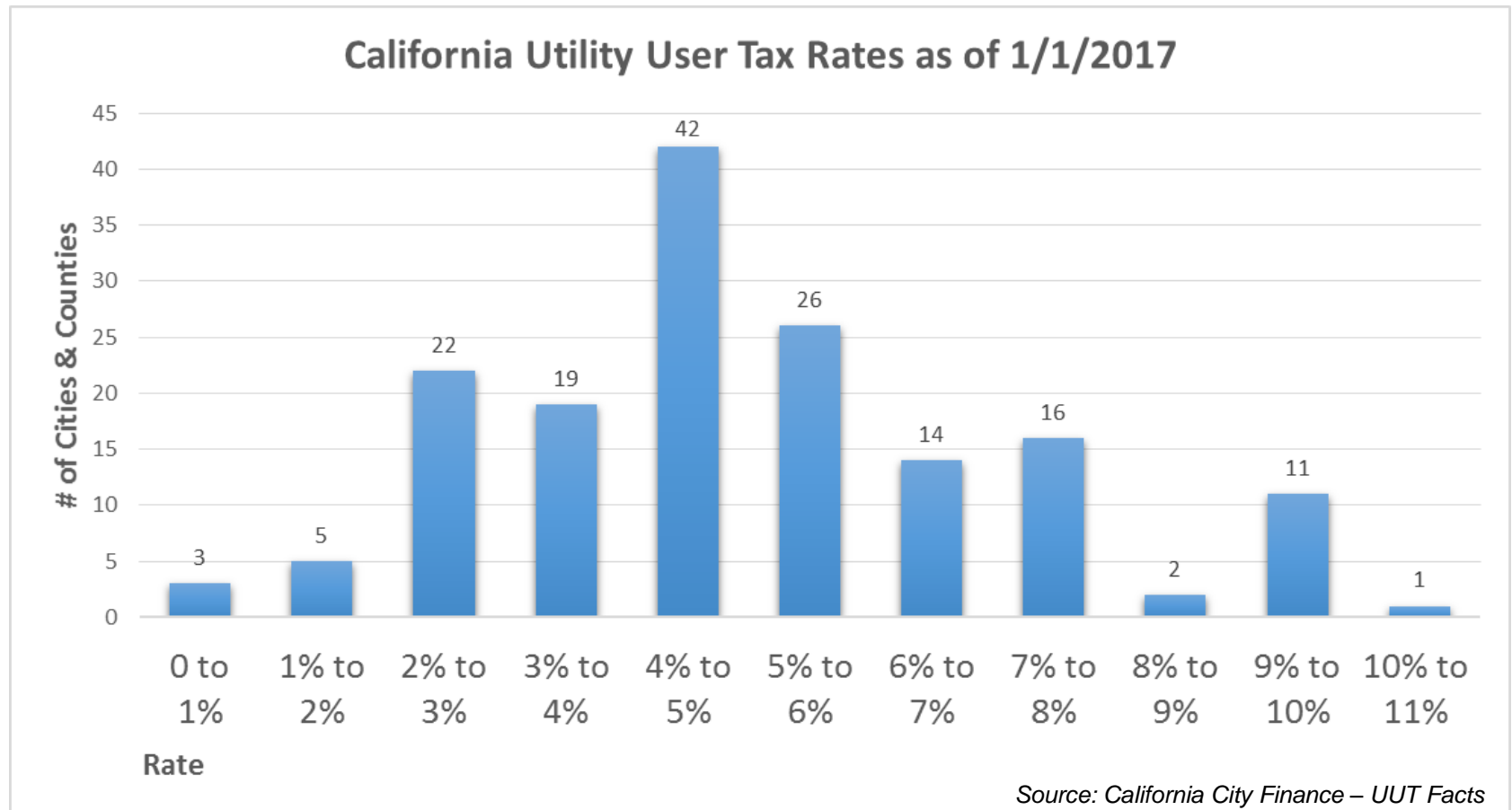
Note: Fund Balance amount will be affected by different assumptions on expenses—especially salaries and capital—and revenues

**FY2018 – FY2028 Baseline Projection**  
**UUT 6% residential / 12% non residential**





## California UUT Rates



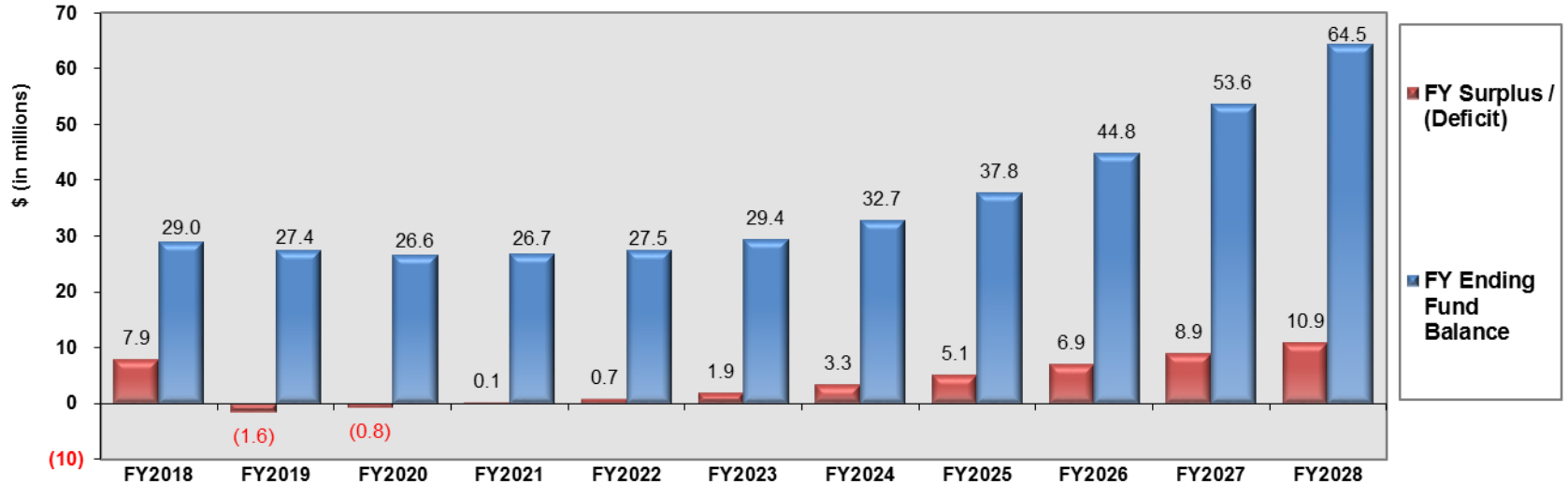


## Option D: Status Quo – Continue 8% UUT Rate

- This scenario assumes a continued 8% UUT, with 3% annual growth (based on historic rate of growth)
- The resulting FY2028 Fund Balance is \$64.5 million
  - \$167 million higher than baseline fund balance of negative \$103.1 million

Note: Fund Balance amount will be affected by different assumptions on expenses—especially salaries and capital—and revenues

### FY2018 – FY2028 Baseline Projection UUT 8% Status Quo





## Summary of UUT Options

Option	FY2028 Surplus/(Deficit)	FY2028 Ending Fund Balance
A. Status Quo	\$10.9	\$64.5
B. 6% res. / 12% non-res.	\$10.3	\$59.2
C. Phase in 8% to 6%	\$2.8	\$16
D. Phase in 8% to 0%	\$(8.2)	\$(71.6)
E. UUT not reauthorized	\$(8.2)	\$(103.1)



## Next Steps

- ◆ Finalize Baseline forecast
- ◆ Add in additional initiatives
  - Revenue (e.g., new sales tax, new development prop. tax, UUT options, etc.)
  - Expenses (higher salary growth, reductions in contracts, etc.)
  - Impacts of better/worse economy