

## Local Governments Lacked Authority to Impose Fees on Property Owners for Trash Receptacles at Public Transit Stops Adjacent to Their Properties



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Regional Water Quality Control Board, Los Angeles Region issued a permit authorizing the County of Los Angeles and certain cities (collectively, the Operators) to operate stormwater drainage systems. The permit required the Operators to (1) install and maintain trash receptacles at transit stops; and (2) periodically inspect commercial facilities to ensure compliance with various environmental regulatory requirements. Some of the Operators filed claims with the Commission on State Mandates seeking a determination that the state must reimburse them for the costs related to the trash receptacle and inspection requirements under article XIII B, section 6 of the California Constitution. The Commission determined that the trash receptacle requirement was a reimbursable state mandate but that the inspection requirements were not. In general, when the state imposes a new program or higher level of service on a local governments, section 6 of the California Constitution requires the state to reimburse the local governments, unless they have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. The court found that local governments did have authority to levy fees to cover the inspection costs based upon their police power authority

to impose regulatory fees that did not exceed the reasonable cost of the inspections. The court reached the opposite conclusion regarding fees for the trash receptacles. The trash receptacles would be located either on the local government's own property or that of the local transit district, and the court concluded that local governments lacked authority to impose fees for the receptacles on transit agencies. Responding to the state's argument that local governments could, instead, impose fees on owners of property adjacent to the transit stops, the court found that such fees would likely run afoul of Proposition 218, which prohibits fees incident to property ownership unless, among other requirements, the fees are for a service that "is actually used by, or immediately available to, the owner of the property in question." The court observed that "common sense dictates that the vast majority of persons who would use and benefit from trash receptacles at transit stops are not the owners of adjacent properties but rather pedestrians, transit riders, and other members of the general public; [and that] any benefit to property owners in the vicinity of bus stops would be incidental." Moreover, the court said, even if local governments could establish that the need for the trash receptacles was in part attributable to, and would be used by, adjacent property owners, the fees for that service would violate a separate provision of Proposition 218, which prohibits fees for a "service available to the public at large in substantially the same manner as it is to property owners."

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