

Opinion: Berkeley vs. UC: Settlement or surrender? Part 2

In our opinion article: Berkeley vs. UC Settlement or Surrender? we made the statement that “What he doesn’t say is that UC Berkeley *is legally required* to reimburse the city for the cost of municipal services that it uses (police, fire, garbage, etc.)”. The following information provides the basis for that statement.

The University of California Is Exempt from City and County Property Taxes, But Not Other Taxes and Fees.

1. California Constitution, Article XIII, Section 3:

"The following are exempt from property taxation:

(e) Buildings, land, equipment and securities used exclusively for educational purposes by a nonprofit institution for higher learning. _"

2. Other taxes (sales and use taxes) may be applied to institutions of higher learning and do apply to the Berkeley campus.

" The University of California, Berkeley is not a sales tax-exempt organization and is subject to California sales or use tax on the purchase and sale of goods and services considered taxable...." Berkley Controller's Office. https://controller.berkeley.edu/financial_operations/accounts-payable/sales-and-use-tax

3. During the 1980s the extent of the constitutional property tax exemption was litigated in appellate courts. Up to that point the exemption was deemed to cover one time "special assessments" for capital costs of sewer and other improvements that specifically benefited educational properties. At the same time, it had also been held that educational institutions were not exempt from recurring user fees for services provided to them by local cities and counties, e.g., sewer connection and monthly service fees. UC and others conceded the applicability of the user fees, but not of special assessments. The California Supreme Court decision is 1986 was that "school districts were exempt from property taxes *but were subject to user fees*. In a middle category were 'special assessments' payable by the [school] districts if the Legislature expressly authorized their collection from public entities." San Marcos Water Dist. v. San Marcos Unified School Dist., 42 Cal.3d 154,160-61" Opinions Attorney General 88-201 (1988) (emphasis added).

4. Government Code Section 54999 was passed in 1988 and clarifies the right of local jurisdictions under San Marco to charge "public entities", including colleges and universities, for capital costs related to the construction or extensions of public utility services used by such entities. Sewer treatment and transport facilities are the most obvious example. Publicly funded health care and 911 responses are another.

5. While the law relating to special assessments has changed over the years, largely in favor of local governments, the exemption for property tax assessments has not changed. *Nor has there been any change in the right of cities to charge for services rendered to local schools, including UC.*

"The rationale behind a public entity's exemption from property taxes and special assessments is to prevent one tax supported entity from siphoning tax money from another such entity.... On the other hand, when one tax supported entity provides goods or services to another, neither the California Constitution nor decisional law exempts the public entity from paying for these goods and services." San Marcos, supra, Section IV A.

5. In 2019, an independent analysis funded by the City estimated that in 2018 goods and services provided by the City to UC cost local taxpayers a total of \$21,415,000. This number is *net of sales tax and other revenues* paid by UC to Berkeley.

The biggest contributors to the deficit were fire services (\$9.9 million), police services (\$6.7 million) and sewage and storm water transport and treatment (\$6.2 million). Clearly, UC's actual share of the costs of each one of these substantially exceeds the total payment (\$2.8 million) agreed to in the new Settlement Agreement.

NOTE: the above relates only to UC's responsibility under to reimburse for current services rendered. It does not include UC's separate obligation under CEQA to mitigate environment impacts from future expansion.

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