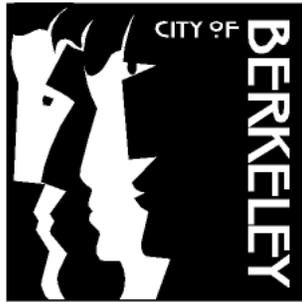


# *City of Berkeley*



## Parcel Based Special Taxes, Fees, and Assessments Audit

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## **I. OBJECTIVES OF THE AUDIT**

The objectives of this audit were to evaluate the internal controls and identify risk for the parcel based assessment processes, and to determine whether the:

- Parcel/property data used for assessments is materially accurate and complete.
- Assessments are computed correctly.

This audit was scheduled to be performed in the City Auditor's fiscal year 2004 audit plan.

## **II. SCOPE AND METHODOLOGY**

The following nine parcel based special taxes, fees, and assessments were examined during the audit:

- City Street Lighting
- City Landscape/Parks
- City Library Services
- Paramedic Supplement
- Berkeley School Tax (Imposed by the Berkeley Unified School District)
- School Maintenance (Imposed by the Berkeley Unified School District)
- Physically Disabled
- CFD1 Disaster Fire (Mello Roos)
- Clean Storm Water

In addition, we followed up on major findings from our two prior-year audits: Landscape and Park Maintenance Assessment Fund Review (November 1994) and Clean Storm Water Assessment Audit (October 1995). Methodologies used for the audit included:

- Made inquiries and conducted walkthroughs with key personnel regarding current processes.
- Tested assessment & parcel data for accuracy and completeness.
- Performed analytical review of existing assessment data, compared to the City's Geographical Information System (GIS), Win2Data (a property data service from First American; the service was discontinued during the audit), and the County's Secured Tax Roll.
- Reviewed current operating procedures in place and legal requirements.
- Conducted site visits of parcels.

Limitations to scope:

- We relied on the County's secured tax roll for a complete list of all Berkeley parcels and we did not verify or test the County's data.
- Limited testing was performed on the utility roll of 58 parcels.

- Test work was performed based on the County’s single use code assigned to a parcel, and it was assumed that this use code represented the primary use of the property and that differences in assessments resulting from applying mixed rates would be immaterial. There were approximately 77 parcels with mixed uses based on records provided by Finance and we did not test their building square footage by uses.

The review was for tax year 2003-2004 (July 1, 2003 to June 30, 2004) parcel data and the current procedures on assessing special taxes, fees, and assessments. The last day of fieldwork was November 5, 2004. The audit was conducted in accordance with Government Auditing Standards. Audit work was limited to those areas specified in the Scope and Methodology section of this report.

### III. BACKGROUND

Alameda County’s 2003 Secured Tax Roll listed 28,293 Berkeley parcels. Excluding the underwater area at the Marina, the total lot square footage for all parcels was approximately 241,074,170 sq ft. according to the City’s Land Management database. The following is a breakdown of all parcels by the County’s use codes:

Table 1

<b>Ownership/Land Use</b>	<b>Number of Parcels</b>	<b>LSFT</b>	<b>LSFT %</b>
City of Berkeley (CoB), Housing Authority of the CoB, & Redevelopment Agency of the CoB	207	13,508,727	5.6%
Other Public Agencies	178	55,659,351	23.1%
Public Utilities	58	1,682,259	0.7%
Non-Public Exempt Entities/Non-Profit	355	6,031,269	2.5%
Residential	25,195	133,653,873	55.4%
Commercial	1,622	16,631,054	6.9%
Industrial	620	12,941,356	5.4%
Institutional	58	966,281	0.4%
<b>Total</b>	<b>28,293</b>	<b>241,074,170</b>	<b>100.0%</b>

Source: Alameda County 2003 Secured Tax Roll

The City imposes a series of charges on properties based on taxable building square footage (BSFT) and lot square footage (LSFT). Both taxable BSFT and LSFT are recorded in the City’s Land Management System. There are three types of charges: special taxes, assessments, and fees. A special tax is levied on properties and its proceeds are used for a specified purpose. City Landscape/Parks, City Library Services, Paramedic Supplement, Physically Disabled, and CFD1 Disaster Fire are special taxes. An assessment is a charge to pay for public improvements such as City Street Lighting. A fee is a charge imposed on parcels for services provided. Clean Storm Water is a fee as defined by the Berkeley Municipal Code (BMC) Section 7.76. Berkeley School Tax and School Maintenance Tax are special taxes imposed by the Berkeley Unified School District (BUSD). The City computes the taxes on behalf of the School District and sends the information to the County together with the City’s assessment data.

Properties held by the City, City agencies, and other public agencies are generally exempt from these charges. If a non-profit entity is exempt from property tax, the City also exempts or partially exempts such entity from special taxes based on the exemption status granted by the County. However, a non-profit entity is not exempt from the City Street Lighting Assessment or Clean Storm Water Fee. In November 1996, Proposition 218 was approved by the state’s voters to ensure that all taxes and most charges on property ownership are subject to voter approval. The vote requirements for special taxes, fees, and property related assessments are summarized in Appendix 1. **For purposes of simplicity, the special taxes, fees, and assessments reviewed are collectively referred to as “assessments” in this report.**

According to the Fiscal Year 2005 Proposed Budget or the City’s financial accounting system (FUNDS), the actual revenues and expenses for FY 2003 from the following special taxes, fees, and assessments were:

Table 2

<b>Fund Description</b>	<b>Fund Number</b>	<b>Actual Revenues FY 2003</b>	<b>Actual Expenses FY 2003</b>	<b>Surplus &lt;Deficit&gt;</b>
City Street Lighting	470	\$1,824,062	\$1,991,209	(\$167,147)
City Landscape/Parks	450	\$7,532,473	\$7,605,385	(\$72,912)
City Library Services	301	\$10,649,029	\$10,580,561	\$68,468
Paramedic Supplement	160	\$2,063,730	\$2,019,108	\$44,622
Physically Disabled	018	\$704,052	\$784,904	(\$80,852)
Clean Storm Water	831	\$2,251,484	\$3,479,800	(\$1,228,316)
CFD1 Disaster Fire (Mello Roos)	656	\$172,875	\$248,121	Not Applicable*
CFD1 Disaster Fire (Mello Roos)	721	\$950,639	\$295,681	Not Applicable*
<b>Total</b>		<b>\$26,148,344</b>		

\* CFD1 Disaster Fire is financed by bonds approved by the voters to acquire a mobile disaster fire protection system, therefore there is no direct correlation between revenue and expense in one year.

Around late June each year, Alameda County sends out the secured tax roll for the upcoming tax year. Finance and Information Technology (IT) jointly compile and transmit the assessment data to the County by the tenth of August for inclusion on property tax bills. An outside engineer prepares the City Street Lighting assessments. The City Street Lighting data is separately provided to IT for inclusion on the assessment roll submitted to the County. Assessments on utility parcels are also separately prepared and sent to the County.

Our Landscape and Park Maintenance Assessment Fund Review report issued in November 1994 and our Clean Storm Water (CSW) Assessment Audit issued in October 1995 identified many internal control weaknesses in the assessment processes. One finding in the Landscape and Park audit stated, *“Changes in improvement square footage are not always entered into the assessment data base timely.”* One finding in the CSW audit stated, *“Due to internal control weaknesses, procedures do not provide a reasonable assurance that all parcels which can be assessed CSW Fees are properly assessed.”* At the time of the two audits, several divisions were involved in recording parcel data. There was little coordination among the divisions in maintaining the Land

Management System, causing data inaccuracies in the System. It was documented in the CSW report that staff were able to input new parcel square footage information into the Land Management database without review or approval.

A few years ago, the City decided to create a new position funded by various assessment funds to better manage the Land Management System and GIS to improve data accuracy for tax purposes. The incumbent, identified as "Land Management Analyst" in this report, is an employee of the Finance Department but works closely with IT.

In late 2003, members of the public revealed that several properties, including the Gaia Building, were not billed for parcel taxes. Subsequently, Finance conducted investigations of 339 parcels with zero BSFT and identified properties that had escaped assessments. As of August 24, 2004, \$621,831 of previously unassessed dollars were billed for 57 properties, according to Finance.

Planning, Information Technology, and Finance staff also engaged in a collaborative effort to revamp the procedures for recording taxable BSFT. One of the major changes is the inclusion of the "Building Square Footage Change Worksheet" as a part of the building permit application effective August 1, 2004. A building permit applicant is required to clearly indicate the amount of taxable BSFT change and the type of BSFT, i.e. residential and nonresidential, on the worksheet. The information is entered into the Building Permits module by Permit Service Center staff upon receipt of a permit application. If a BSFT change is 3,000 sq ft or over, a plan checker reviews the worksheet and compares the BSFT to the final plan for reasonableness and indicates on the worksheet if further review is required. All worksheets are routed to the Land Management Analyst for further review or processing. BSFT changes that are under 3,000 sq ft are reviewed by the Land Management Analyst on a random basis. When the Land Management Analyst identifies an error, he makes the correction to the Building Permits module and notifies the applicant of the correction. In cases where a parcel is retired or a new parcel is added, the Land Management Analyst enters parcel information into the Land Management System and GIS based on the Plat Map and report provided by the County.

Another major change is the introduction of new triggers in the existing automated program developed by IT, which will be implemented in February, 2005 according to the Applications Development Manager. The new triggers will replace the old triggers to initiate taxation on added or deleted BSFT on a more timely basis. When one of the following three conditions of a building permit is detected, the program will move the added or deleted taxable BSFT from the Building Permits module to a file that prompts the Land Management Analyst to post the BSFT change to the Land Management System. A parcel is taxed based on the BSFT recorded in this system. The three conditions that trigger taxation are:

- Approval of a sheet rock/nail inspection when no certificate of occupancy or temporary certificate of occupancy is required.
- Issuance of a certificate of occupancy or temporary certificate of occupancy.
- Approval of a demolition permit. (This results in negative BSFT which reduces assessments.)

The new triggers will rectify the problem caused by the old triggers which recognized BSFT changes only when all permits of a parcel were closed, resulting in delay of taxation when some permits remained open.

In addition, the functions of maintaining the Land Management System are centralized to one person, thereby increasing accountability. With the availability of new technology and skills, the Land Management Analyst scans plat maps or floor plans into digital files for a more accurate measurement of parcel square footage. The new procedures, when fully implemented, will rectify many of the control weaknesses identified in the two prior year audits. The new procedures, however, are designed to improve accuracy and efficiency in recording new BSFT on a going forward basis and are not intended for detecting or correcting historical data inaccuracies.

#### **IV. FINDINGS AND RECOMMENDATIONS**

##### **New Findings Identified In This Audit:**

**Finding 1: A few parcels were erroneously excluded from the assessment roll, resulting in loss of revenue.**

- A. One residential parcel (APN 56-2003-37) on the Alameda County's 2003 Secured Tax Roll was missing from the Land Management file and was not assessed for tax year 2003-2004. The auditor compared the 2004 Secured Tax Roll to the Land Management file to determine if the same problem existed in 2004, and found a different residential parcel (APN 52-1566-58) missing. The auditor was not able to identify the causes for these missing parcels or determine the amount of unassessed dollars. Missing one parcel appeared to be an isolated incident, but may not be since it occurred over a two-year period.
- B. A third residential parcel (APN 52-1535-23) was erroneously excluded from the 2003-2004 assessment file, resulting in \$1,462 of lost revenue. According to the Revenue Collection Manager, this parcel was erroneously included in the exclusion file.
- C. During the audit, it came to the auditor's attention that 10 mobile home parcels were excluded from the assessment roll prepared by the City. The County imposed ad valorem taxes on these properties based on their improvement values, which totaled \$1.5 million. The Revenue Collection Manager explained that these properties were houseboats and immediately contacted the County regarding the taxability of these properties. The County replied in October that the state law considers houseboats as "floating homes" that have the same characteristics as a manufactured home. The County is therefore required to treat them as real property. The question is should houseboats be treated as real property or manufactured homes for local tax purposes? The Ordinance does not have a direct answer to this question.

**City Manager's Response:**

*Agree with the findings.*

##### **Recommendations for Finance:**

- 1.1 After the actual assessment process and prior to the process of excluding exempt parcels,

ensure that all parcels in the current County Assessor's tax roll are included in the City land data file.

City Manager's Response:

*Agree with the recommendation. Finance will compare the assessed parcels to the County's parcel data as recommended to ensure that no taxable parcels are inadvertently excluded from being assessed beginning July 1, 2005.*

1.2 Obtain a legal opinion from the City Attorney regarding the taxability of a houseboat.

City Manager's Response:

*Implemented. According to the City Attorney's Office, houseboats do not appear to be subject to the City's special taxes or property-based assessments.*

1.3 Retroactively bill the excluded parcels identified in Finding 1 for unbilled assessments if they were not assessed in prior years.

City Manager's Response:

*Agree with the recommendation. Valid parcels not assessed in prior years will be retroactively billed for taxes by April 1, 2005.*

**Finding 2: A few parcels were not properly assessed because zero BSFT was assigned to the parcels, resulting in loss of revenue.**

A. Ocean View Gardens, LLC manages 62 apartment units originally developed by E&I Development Associates on two parcels: APN 57-2098-17 and APN 58-2118-24. The land beneath the units is owned by the Berkeley Redevelopment Agency (BRA). E&I has been leasing the land from the Agency since 1982 and renting the units predominantly to low and moderate income tenants. The "use code" assigned to these properties by the County is "62". The code description for "62" is "Use code not assigned at this time". However, the City's system reflected "62" as a "golf course" which might have led the staff to believe there was no building on the properties. Zero BSFT was therefore recorded without being detected. As a result, BSFT based assessments were not charged. Assuming the average BSFT is 600 sq ft per unit, the estimated taxable BSFT for 62 units would be 37,200 square feet (600 sq ft\*62). The estimated loss of revenues for tax year 2003-2004 was \$16,740 (37,200sq ft/1,000 sq ft\*\$456 (Table 4)). In addition, Clean Storm Water fees were charged at the vacant land rate of 0.004554, instead of at the higher rate of 0.013661 for multiple residential units, resulting in an underassessment of \$1,069 for tax year 2003-2004. The City's records also indicated that business license taxes had not been paid for these apartment units prior to 2004.

As of the end of audit fieldwork, Finance was still working with the County to determine the taxability of the Ocean View Gardens apartments. The auditor verified to the County tax records that both parcels were subject to ad valorem tax during tax year 2003-2004 and later requested a legal opinion from the City Attorney. The City Attorney's Office responded that low income housing is a charitable activity that qualifies for tax exemption. They could not reach a conclusion, however, without knowing the County's intent. The auditors are inclined to believe that the burden of obtaining an exemption is on the property owner. In fact, the property owner's responsibility for taxes and assessments was clearly stated in Section 3.7 of the original lease agreement between E&I and BRA, "*As a part of the consideration for the*

*execution and delivery of this lease and as additional rent and subject to all the provisions hereof, Lessee covenants and agrees during the entire Term of this Lease, at its own cost and expense, to pay to the public officers charged with the collection thereof, as the same became due and payable and before any fine, penalty, interest, or other charge may be added thereto for the nonpayment thereof, all real estate taxes licenses and permit fees, charges for public utilities of any kind, and obligations for any and all other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, as well as assessments for sidewalks, streets, sewers, water, or any other public improvements and any other improvements or benefits.”*

- B. Fourteen other parcels were incorrectly stated as Zero BSFT Parcels. Estimated unbilled assessments were calculated based on BSFT from Win2Data as follows:

Table 3

<b>Parcel</b>	<b>Estimated Unbilled Assessments For Yr 03-04</b>	<b>Parcel #</b>	<b>Estimated Unbilled Assessments For Yr 03-04</b>
52-1519-28	Cannot Be Determined*	60-2455-112	\$577
56-1943-27	\$732	60-2455-114	\$577
56-1943-28	\$732	57-2099-21	\$1,399
56-1943-29	\$732	56-1943-25	\$915
57-2099-22	\$997	60-2455-113	\$780
53-1616-31	\$732	55-1842-2	Cannot Be Determined, should be < \$1,400
60-2455-111	\$577	60-2487-28	Cannot Be Determined, should be < \$1,400

Note: Win2Data’s BSFT may include exempt square footage such as garages, patios, and balconies, thereby slightly overstating the estimates.

\* According to the County’s tax records, this parcel was not exempt in FY03-04 but is exempt in FY04-05.

- C. Two residential parcels (APN 16-1428-2-2, 48A-7072-5) on the border between Berkeley and another city were assigned zero BSFT and therefore were not taxed. Unbilled assessments, if any, are immaterial based on the size of the buildings reflected on the aerial photos in the City’s GIS.

City Manager’s Response:  
*Agree with the findings.*

**Recommendations for Finance:**

- 2.1 Obtain a legal opinion regarding the taxability of the Ocean View Gardens apartments.

City Manager’s Response:  
*Alternative solution implemented. An answer has already been received from the County. One of the two Ocean View Gardens parcels has been back billed. The other parcel will be back billed by April 1, 2005. Further legal opinion is not needed.*

- 2.2 Determine if the Zero BSFT Parcels identified above are subject to the City's assessments. If they are, bill the parcels for unbilled assessments and enter the correct BSFT in the Land Management System.

City Manager's Response:

*Agree with the recommendation. Valid parcels will be back billed by May 1, 2005 if they have not been back billed.*

**Finding 3: There is likelihood that the taxable BSFT for some parcels might have been understated or overstated, resulting in improper assessments.**

There is no systematic plan in place to capture such parcels, forgoing the opportunities for recovering revenue related to underassessed properties.

To determine the likelihood of understatement, the following test work was performed. After excluding all the public agency parcels, exempt parcels, common area parcels, and 339 Zero BSFT Parcels investigated by Finance, there remained 578 parcels whose improvement value to land value ratio was greater than 200 percent AND whose building square footage to lot square footage ratio was less than 25 percent. These criteria were used to reduce the sample size by limiting the selection to parcels that have relatively high improvement-land value ratios but low improvement-land area ratios. Out of the 578 parcels, 76 parcels (13%) were randomly and judgmentally selected and their taxable BSFT from the Land Management System was compared to GIS or Win2Data. The results of this analysis were:

- One parcel's BSFT agreed to the improvement square footage reflected on Win2Data.
- Ten parcels' (13%) BSFT could not be compared because Win2Data did not have the information. However, BSFT was in proximity with measurements reflected on the GIS aerial photos.
- Two parcels' (3%) BSFT could not be compared because Win2Data did not have the information. BSFT appeared to be understated when compared to measurements reflected on the GIS aerial photos.
- Thirty-four parcels' (45%) BSFT were lower than the improvement square footage stated on Win2Data. Nine parcels were understated. One parcel might have been understated by over 30,000 sq ft, a second parcel might have been understated by over 9,000 sq ft, and another seven parcels might have been understated by over 1,000 sq ft/parcel.
- Twenty-nine parcels' (38%) BSFT were slightly higher than the improvement square footage stated on Win2Data. Only one of these parcels was potentially overstated by more than 1,000 sq ft.

These results did not reflect consistent significant discrepancies and did not provide conclusive evidence regarding the accuracy of the recorded taxable BSFT. Furthermore, the improvement square footage in Win2Data may include exempt BSFT such as garages, patios, and balconies which might slightly distort the discrepancies. Nevertheless, the results suggested that the BSFT of a parcel might either be understated or overstated.

The discovery of an underassessment is not a one-time windfall. Additional BSFT brings a future stream of revenues as long as the property remains; whereas reduced BSFT represents a

permanent loss of revenues. However, verifying taxable BSFT is a labor intensive process requiring specialized skills which may involve an actual site visit, review of the floor plan, review of permits, and review of the County’s plat maps for indication of parcel changes. The need to identify exempt areas further complicates the process. Costs and benefits must be carefully weighed prior to undertaking a comprehensive verification exercise. The following table reflects revenue gained or lost per 1,000 sq ft of taxable BSFT from eight BSFT based assessments: City Street Lighting, City Landscape/Parks, City Library Services, Paramedic Supplement, Berkeley School Tax, School Maintenance, Physically Disabled, and CFD1 Disaster Fire. Revenue = sum of (1,000 sq ft \* applicable assessment rate for each assessment).

Table 4

Land Use	1 year	5 years (Nominal \$)	10 years (Nominal \$)
Residential	\$456	\$2,280	\$4,560
Commercial	\$640	\$3,200	\$6,400
Industrial	\$619	\$3,095	\$6,190
Institutional	\$608	\$3,040	\$6,080

Note: These numbers include the Berkeley School Tax and BUSD Maintenance Tax imposed by the Berkeley Unified School District.

*City Manager’s Response:*  
*Agree with the finding.*

**Recommendation for Finance:**

- 3 Allocate some resources to start a limited scope project to explore the opportunities for identifying underassessed properties. Based on results from the project, evaluate the costs and benefits and determine whether the project should be continued. We further recommend involving staff other than the Land Management Analyst so that they can be cross-trained to backup the Land Management Analyst in his absence.

*City Manager’s Response:*  
*Alternative solution will be implemented. Finance will perform a feasibility study and report the results to Council by July 1, 2006.*

**Finding 4: \$1.2 million could be gained by the City and \$0.8 million could be gained by the Berkeley Unified School District (BUSD) if BSFT based special taxes were assessed on non-public exempt entities.**

- A. The potential gain from City Landscape/Parks, City Library Services, Paramedic Supplement, Physically Disabled, and CFD1 Disaster Fire taxes appeared to be as high as \$1.2 million if these special taxes were assessed on non-public exempt entities during tax year 2003-2004. The potential gain for BUSD was approximately \$0.8 million if Berkeley School Tax and School Maintenance Tax were assessed on the same non-public exempt entities. These numbers could be higher because there were four parcels whose improvement value was over \$2 million but with a zero BSFT. The auditor could not determine the potential gain from these parcels.

The City could have explored the opportunities for assessing these non-public exempt entities according to a legal opinion issued on April 20, 1990, titled “[NonProfit Exemption for the](#)

National Hispanic University from Library and School Taxes”. This opinion stated: “No express exemption for non-profits appears in either the Library Tax or the School Tax ordinances, nor is there any state constitutional or statutory provision which would require the City to grant such an exemption. Nevertheless, because the City for some ten years has construed these ordinances as granting exemptions to non-profits, consistent with its belief that such exemption was required by the California Constitution, and because this interpretation of the ordinances is not “clearly erroneous”, but rather is reasonable, the City properly may continue to so interpret the ordinances until such time, if any, as the ordinances may be amended to overrule the long-standing administrative practice and expressly eliminate the exemption.”

The following ten properties have the highest exemptions based on their BSFT recorded in the Land Management System:

Table 5

<b>Property Owner</b>	<b>Property Address</b>	<b>Taxes Billed Yr 03-04 *</b>	<b>Potential gain by the City **</b>	<b>Potential gain by BUSD ***</b>
Alta Bates Hospital	2450 Ashby Ave	\$0	\$115,447	\$86,358
Herrick Foundation	2001 Dwight Way	\$4,405	\$60,474	\$45,236
Berkeley Young Men’s Christian Assoc.	2001 Allston Way	\$0	\$36,029	\$26,951
Alta Bates Hospital	3001 Colby St	\$6,672	\$34,352	\$25,696
Church Divinity School of the Pacific	2451 Ridge Rd	\$0	\$27,437	\$20,524
AM Baptist Seminary of West	2511 Hillegass Ave	\$0	\$25,964	\$19,422
Strawberry Creek Lodge	1320 Addison St	\$0	\$22,523	\$13,934
First Presbyterian Church of Berkeley	2407 Dana St	\$0	\$20,303	\$15,187
Encinal Industries Inc.	2015 Shattuck Ave	\$0	\$18,695	\$13,987
Herrick Foundation	2500 Milvia St	\$3,598	\$18,526	\$13,858

\* Total of City Landscape/Parks, City Library Services, Paramedic Supplement, Physically Disabled, CFD1 Disaster Fire, Berkeley School Tax, and School Maintenance Tax billed to the entity during tax year 2003-2004.

\*\* Potential gain by the City if these special taxes were assessed on non-public exempt entities: City Landscape/Parks, City Library Services, Paramedic Supplement, Physically Disabled, and CFD1 Disaster Fire.

\*\*\* Potential gain by the Berkeley Unified School District if Berkeley School Tax and School Maintenance Tax were assessed on non-public exempt entities.

- B. While examining the assessments billed for all “Lodgehalls and Clubhouses” (24 parcels) and “Fraternities and Sororities” (75 parcels) properties, the auditor noticed that the City Street Lighting assessments were not charged on three parcels (APN 53-1609-22, 56-1978-19, 57-2026-15) owned by the Young Men’s Christian Association. In general, non-profit organizations are not exempt from City Street Lighting. The consulting engineer who prepared the City’s Street Lighting Assessments indicated that exclusion was based on an exemption file furnished by Information Technology. The auditor later verified that the three parcels were no longer exempt from City Street Lighting on the 2004-2005 assessment roll.

City Manager’s Response:

*Agree with the findings.*

**Recommendations for City Manager:**

- 4.1 Seek legal advice from the City Attorney and revisit the option of assessing non-public exempt entities.

*City Manager's Response:  
Implemented.*

- 4.2 Consider placing a measure on the ballot to extend legally allowable parcel based special taxes to non-public exempt entities.

*City Manager's Response:  
Agree with the recommendation. The City Manager will consider placing a measure on the ballot in 2006.*

**Recommendation for Finance:**

- 4.3 Bill assessments on the three parcels identified in Finding 4B.

*City Manager's Response:  
Agree with the recommendation. Finance will back bill the three parcels by April 1, 2005.*

**Finding 5: There are concerns over internal controls.**

- A. Current procedures give the Land Management Analyst the authority to change the square footage data in the Building Permits module and the authority to enter, change, and post square footage data to the Land Management System, increasing the risk of unauthorized changes without detection. There are no formal procedures in place to mitigate this risk.

In addition, the Applications Development Manager can make changes to data in the Land Management System and he also has access to the program files. This same concern, regarding the programmers' ability to perform incompatible functions in FUNDS\$, was addressed in Finding 2 in our FUNDS\$ Change Management Audit report presented to Council on May 4, 2004. Recommendations were made in this earlier audit report to rectify the situation. However, based on a December 14, 2004, status report from the City Manager regarding the implementation of our audit recommendations from this earlier audit, it appears that IT has not fully resolved the finding. Since IT is scheduled to report to Council on the status of the recommendations again on June 30, 2005, the auditors will not make additional recommendations at this time.

- B. The new BSFT procedures require building permits resulting in changes of less than 3,000 sq ft be reviewed by the Land Management Analyst on a random basis. However, the methodologies for such review have not been formalized and documented. Based on past experience, the Land Management Analyst processes approximately 360 building permits that have a BSFT change in a year. Approximately 95% (342) of the BSFT changes are under 3,000 sq ft. Without formalized and consistent review procedures, there is no assurance that errors will be detected in time before they are posted to the Land Management System for

taxation purposes.

- C. The Land Management System recorded taxable BSFT, which excludes exempt areas such as garages, patios, and balconies. The field is labeled as “Building Square Footage”. A user unfamiliar with the System might be misled to believe that the data represents the actual building square footage and incorrectly use the data for other purposes.

City Manager’s Response:  
*Agree with the findings.*

**Recommendations for Finance:**

- 5.1 On a quarterly basis, the Revenue Collection Manager should on a sample basis review and verify that the BSFT posted to the Land Management System is supported and accurate. This review should be documented.

City Manager’s Response:  
*Alternative solution will be implemented. Facilitated by the necessary software to be provided by IT, Finance will develop control totals for building square footage and lot square footage within Assessor Use Group (first digit of the use code). In addition, parcel counts per use group will be developed. The Revenue Collection Manager, annually during tax preparation, will compare the current year's control totals to the previous year's and investigate if significant/unreasonable variations in totals are detected. In addition, IT will provide software to replace the current HTE function used to change building square footage. The new software will record who makes the change, when it was made, and require some sort of annotation to explain why the change was made. The original HTE function will be disabled. A log function will be reinstated to record any changes made to critical information, such as land use and building/lot square footage, in the Land Management database. These processes will be implemented by July 1, 2005.*

- 5.2 Formalize and document the review procedures performed by the Land Management Analyst. Procedures should include a comparison of the BSFT and LSFT to the County’s assessed values. When a property of high assessed value is assigned a zero square footage or low square footage, it should trigger a concern that the property may not be properly taxed.

City Manager’s Response:  
*Agree with the recommendation. Finance will request IT to create reports that can be run on a “pre-tax” basis, and that list any parcels with low floor area ratio or zero building square footage in the land database, and show the “improvement” value as reflected in the county database indicating a building exists on the parcel. The review procedures will be formalized and documented by October 1, 2005.*

**Recommendations for IT:**

- 5.3 Label the BSFT field description on the Land Management Inquiry screen as “Taxable Building Square Footage” so that this field will not be misinterpreted as the actual building square footage and improperly used for other purposes.

City Manager’s Response:

*Agree with the recommendation. IT will make the recommended change to the Land Management inquiry screen by July 1, 2005.*

**Recommendation for the City Auditor's Office:**

- 5.4 A limited scope audit of the new BSFT procedures should be performed within two years to ensure that the procedures are fully implemented and the intended objectives are achieved.

**City Manager's Response:**

*Agree with the recommendation. The City Auditor's Office is requested to conduct a limited scope audit by March 2007.*

**Finding 6: There are opportunities for inadvertent failure to assess properties.**

According to the Applications Development Manager of the Information Technology Department, an automated program to be implemented by February 2005 will trigger taxation on added or reduced taxable BSFT when one of the following conditions is detected in the building permit system:

- Approval of a sheet rock/nail inspection when no certificate of occupancy or temporary certificate of occupancy is required.
- Issuance of a certificate of occupancy or temporary certificate of occupancy.
- Approval of a demolition permit. (This will reduce BSFT to zero resulting in \$0 assessment.)

There is a loophole in this process. A property owner can apply for a permit to add a room, complete the construction, and not call for a sheet rock/nail inspection. In this case, even though added building square footage was entered into the Building Permits module at the time an application was submitted, it will not be added to the parcel for tax purposes if none of the three conditions are detected.

**City Manager's Response:**

*Agree with the finding.*

**Recommendation for IT and Planning:**

- 6 We recommend IT, on an annual basis, provide Planning with a report listing all expired building permits indicating additional BSFT but lacking a final inspection. Planning should follow up on these permits through site visits on a sample basis to prevent or to discourage property owners from escaping assessments advertently or inadvertently.

**City Manager's Response:**

*Alternative solution will be implemented. With the new procedures in place to capture taxable square footage in the building permit submittal and plan check process, it is not known at this time if a significant number of taxable square footage will escape due to the loophole identified in Finding 6. Planning suggests a quality assurance (QA) process be instituted for a period of four quarters to make such determination. The QA process will begin with working with IT to provide instructions to Building and Safety staff to run a quarterly report listing all expired building permits lacking a final inspection when the scope of work indicated the addition of taxable square*

*footage. Planning will follow up on these permits through record review and, if necessary, site visits on a sample basis. Based on the four quarterly reviews for the next twelve months, further QA or other changes may or may not be implemented. If no significant number of escaped square footage is identified during the first twelve months, this QA process will be implemented once every two years at the minimum on a continual basis. The first quarterly review will begin no later than October 1, 2005. IT will provide a program to run the QA report by July 1, 2005.*

**Finding 7: Incorrect rates were used to compute assessments on some parcels, resulting in underassessments.**

- A. The vacant land rate was erroneously used to calculate Clean Storm Water assessment for 19 non-vacant parcels because the County miscoded these parcels as vacant, resulting in a total underassessment of \$2,453 a year.
- B. The prior year's rate (0.02552) was erroneously used to calculate Paramedic assessment for 69 parcels, causing a total underassessment of less than \$400. According to the Applications Development Manager, the root cause of this problem was due to not enough consideration being given to the software that is responsible for calculating assessments. In this case (and one of the other assessments), the rate was changed from four to five decimal positions, requiring extensive database and programming changes. IT was not made aware of this change until several weeks before assessments were due to the County. To accommodate the new rates, they were hardcoded into the program, in violation of the normal best practices exercised by the Applications Development staff. During tax preparation activities, the hardcoded rates were overlooked.

*City Manager's Response:*  
*Agree with the findings.*

**Recommendation for Finance:**

- 7.1 Work with the County to correct the miscoding. Use the correct Clean Storm Water rate to bill the parcels that were miscoded as vacant land.

*City Manager's Response:*  
*Implemented. The parcels that were identified were in a transition state. They have since been checked with the County and confirmed that 2004 property records were correct. Should a property's land use designation be questionable in the future, Finance will work with the Assessor's Office to investigate and, if necessary, correct the land use designation. If the land use designation is changed as a result of this process, and a material discrepancy is found to exist, the parcel will be re-assessed.*

**Recommendation for the City Manager:**

7.2 The City Manager should direct departments, such as Public Works, Economic Development, the City Manager's Office, and Finance who are responsible for the parcel based assessments to notify IT of any new rates, rate changes, or changes in the computation method no later than March each year so that sufficient time is allowed for appropriate software modifications to accommodate the changes.

City Manager's Response:

*Agree with the recommendation. The City Manager will provide directives to appropriate departments as recommended no later than June 30, 2005.*

**Finding 8: The rate factors used to compute the Clean Storm Water Fees have not been changed since their adoption in 1991, ignoring the impact of inflation and leading to fund deficits.**

Except for the vacant land runoff factor, which was adjusted from 0.1 to 0.2 in 1997, the other rate factors used to calculate the Clean Storm Water Fees have not been changed since they were adopted in 1991.

The Clean Storm Water Fee was established by Ordinance 6070 in 1991 to fund the clean storm water activities mandated by Federal and State law and to reduce the amount of pollutants that enter the City's storm water drainage system. BMC Section 7.76.30 stipulates the formula or the rates used for calculating the fee:  $[(\text{Parcel Size} \times \text{Runoff Factor}) / \text{Runoff Unit}] \times (\text{Rate per Runoff Unit})$ . The Runoff Factor for non-vacant land use, the Runoff Unit, and the Rate per Runoff Unit have not been adjusted or changed since their adoptions. The same rate factors have been used for over twelve years, ignoring the impact of inflation. According to the Proposed Budget for Fiscal Year 2005, the Clean Storm Water Fund was operated at a deficit of \$1.2 million during fiscal year 2003 (See Table 2). The Supervising Engineer at Public Works also indicated that the fund was in deficit for many years and has been financed by other funds. In fact, it was pointed out in the FY 2000 & FY 2001 Biennial Budget, *"The Clean Storm Water fee is subject to the provisions of Proposition 218, and therefore requires voter approval of any rate increases. The El Nino storms of FY 1998 have demonstrated the need for major capital improvements. Staff estimates that it would require an additional \$1 million to \$1.3 million annually to fund a storm drain system replacement program. A rate increase from 50% to 72% would be required to fund this program."*

A report on the City's Clean Storm Water Fee issued by an independent consulting firm in June 2004 also projected that \$3,193,703 is required to fund the program in FY 2005. The funding requirement will grow to \$3,702,377 by FY 2010 and to \$4,167,058 by 2015. Since the City is nearly built out, the annual revenue collected from Clean Storm Water will remain stable at around \$2.3 million (See Table 2). If the rates remain unchanged, the program's annual deficit will likely reach \$1.9 million by FY 2014.

City Manager's Response:

*Agree with the finding.*

**Recommendation for City Manager:**

8 Consider seeking ratepayer or voter approval to increase the Clean Storm Water Fee and to amend the Ordinance to include provisions for an annual adjustment of the Clean Storm

Water rates for inflation.

City Manager's Response:

*Agree with the recommendation. This had been considered in a previous election, but was dropped due to too many tax measures already on the ballot. This recommendation will be re-considered for the 2006 election.*

**Major Findings Identified In Prior Year Audits That Remain Unresolved**

**Finding 9: Clean Storm Water (CSW) Assessment Audit: Public agencies and the City of Berkeley are not assessed Clean Storm Water Fees.**

The Budget Office indicated that they have budgeted for the City's CSW fees in the General Fund since FY 2001, and that \$60,000 is budgeted for FY 2005. However, the budgeted dollars were not transferred to the CSW Fund in past years. The transfer will be made beginning this year according to the Budget Office.

The City does not impose the Storm Water Fee on properties owned by other public agencies such as the Regents of the University of California (UC), the East Bay Municipal Utility District (MUD), and the East Bay Regional Park District. Although the City has been billing BUSD for CSW, nothing has been collected, according to the Revenue Collection Manager. The total amount of fees forgone to other public agencies is over \$215,000 a year (See table 6). The CSW Assessment Audit cited a legal opinion titled "Application of Clean Stormwater Fee to Public Entities" issued in June, 1993, "*The portion of the Fee devoted to capital improvements may be assessed against BART, East Bay MUD, and the Park District. The City must negotiate with U.C., the BUSD, and state agencies an agreement to pay this portion of the Fee before those agencies are obligated to pay it.*"

The CSW audit recommended negotiation with each state owned public agency for CSW assessments. The former City Manager disagreed with the recommendation to negotiate with the University of California, the Berkeley Unified School District, BART, East Bay MUD, and the Park District. He further stated that it was a policy matter that should be confirmed by the City Council. The City Manager, however, agreed to request a legal opinion from the City Attorney regarding the issue of whether the City had to be assessed the Fee based on the current language of the Ordinance. Subsequently, the City Attorney issued a legal opinion titled "Whether the City's Clean Storm Water Fee Ordinance Applies to City Owned Property" dated March 14, 1996, it concluded, "*The Ordinance applies to the City and City agencies because they are property owners. Thus, they are subject to CSW fees unless the Ordinance is amended.*" It further stated, "*The Ordinance is clear on its face that the CSW fee is to be assessed against 'all property owners', which includes the City.*"

Although it may appear that there is limited benefit to an action whereby the City "bills itself", it should be remembered that the City budget is comprised of a number of specific purpose funds, in addition to the General Fund. Subjecting City properties to City taxes would further align City spending with intended uses.

Alameda County's 2003 Secured Tax Roll listed 385 parcels (See Table 1) owned by public agencies, including the City. According to the Land Management database, the total LSFT of these parcels is approximately 69,168,078 sq ft, accounting for 28.7 percent of the size of all

Berkeley parcels. The City of Berkeley owns 207 parcels with a total LSFT of 13,508,727 sq ft. The following table lists the number of parcels held by the City and public agencies. The CSW Fee was estimated based on vacant land, institutional rate, or a combination of the two rates as indicated below. The capital improvement portion is 42.95 percent of the estimate. This percentage was originally developed in 1991 with the assumption that 42.95 percent was to be expended on capital improvements.

Table 6

<b>Property Owner</b>	<b>Number of Parcels</b>	<b>LSFT</b>	<b>Estimated CSW Fee - Capital Improvement (LSFTxCSW Rate)x42.95%</b>
East Bay Regional Park District	25	28,306,578	\$55,366 **
Regents of the University of California	69	21,442,474	\$125,812 *
Berkeley Unified School District	38	3,795,483	\$22,270 *
East Bay Municipal Utility District	17	961,158	\$7,519 ***
San Francisco Bay Area Rapid Transit District	20	692,735	\$1,355 **
Others	9	460,923	\$2,704 *
<b>Subtotal – Other Public Agencies</b>	<b>178</b>	<b>55,659,351</b>	<b>\$215,026</b>
City of Berkeley (CoB)	191	5,694,407	\$20,889 ****
City of Berkeley–Parcel at Marina (Note 1)	1	7,628,942	\$14,922 **
Housing Authority of the CoB, and Redevelopment Agency of the CoB	15	185,378	\$642 ****
<b>TOTAL - CoB and Other Public Agencies</b>	<b>385</b>	<b>69,168,078</b>	<b>\$251,479</b>

Source: Alameda County 2003 Secured Tax Roll and datafile from the Land Management System.

Note 1: Approximately 96% (183,094,597 sq ft) of this parcel is underwater which is not subject to the Clean Storm Water Fee.

CSW rate = (Runoff Factor)/(Runoff Unit)\*(Rate per Runoff Unit)

\* Estimate based on institutional rate: [(0.6/2196)\*50] = 0.013661

\*\* Estimate based on vacant land rate: [(0.2/2196)\*50] = 0.004554

\*\*\* Estimate based on industrial rate: [(0.8/2196)\*50] = 0.018215

\*\*\*\* Vacant land rate was used if a parcel did not have a street number, otherwise institutional rate was used.

City Manager's Response:

*Agree with the finding.*

**Recommendation for the City Manager:**

- 9 Re-consider negotiating CSW Fees with each public agency. Develop a strategy for billing these agencies. If the City Council decides not to assess parcels owned by other public agencies, amend the Ordinance to specify such intent.

City Manager's Response:

*Partially implemented. The City has the legal authority to charge public agencies the non-capital part of the CSW Fee, and is in process of doing so.*

**Finding 10: Clean Storm Water (CSW) Assessment Audit: Parcel square footage used to calculate the Clean Storm Water Fees was not always correct.**

Thirty-eight parcels were owned by the Berkeley Unified School District. The auditor selected six parcels (15%) and verified the LSFT to the lot size reflected on the aerial photos in the City’s GIS. The LSFT of four parcels (67%) appeared to be correctly stated. The LSFT of the other two parcels (33%) were understated by over 150,000 sq ft and 24,000 sq ft respectively.

In other test work, 12 parcels whose County assessed land value was greater than \$100 per square foot were selected. The LSFT of each parcel was compared to the lot size reflected in GIS. Four parcels (33%) were potentially understated. One of the parcels might have been understated by 28,000 sq ft. These results indicated that the LFST for some parcels continue to be understated, resulting in underassessments.

The following table reflects lost Clean Storm Water fees per 10,000 sq ft of understated LSFT. Lost revenue = 10,000 sq ft \* applicable Clean Storm Water rate for the land use.

Table 7

Land Use	1 year	5 years (Nominal \$)	10 years (Nominal \$)
Residential-Single & Duplex	\$91	\$455	\$910
Residential – Multi-units & Others	\$137	\$685	\$1,370
Commercial	\$182	\$910	\$1,820
Industrial	\$182	\$910	\$1,820
Institutional	\$137	\$685	\$1,370
Vacant Land	\$46	\$230	\$460

*City Manager’s Response:*  
*Agree with the finding.*

**Recommendation for Finance:**

- 10 Employ a systematic and documented approach to correct LSFT inaccuracy in the Land Management database. To narrow the area of investigation, we recommend using the LSFT reflected on the parcel layer of GIS as a tool to identify significant discrepancies.

We further recommend focusing on large parcels or parcels that currently have a comparatively high land value per square footage.

*City Manager’s Response:*  
*Agree with the recommendation. Recommendation will be implemented by July 1, 2005.*

**Finding 11: Landscape and Park Maintenance Assessment Fund Review: The City does not know if all assessment data sent to the County is included on the County’s property tax bills.**

No formalized procedures are in place to rectify this condition. Parcels which are not properly billed by the County may go undetected, resulting in lost revenue to the City. According to the Revenue Collection Manager, billed assessments can be verified to the County’s on-line property tax records on a case by case basis as needed.

City Manager's Response:  
*Agree with the finding.*

**Recommendation for Finance:**

- 11 We recommend the Revenue Collection division take a more proactive role in monitoring payments or collections from the County and, on a quarterly basis, compare them to the assessment amounts submitted to the County. Timely resolve significant or unexpected discrepancies with the County once they are identified.

City Manger's Response:

*Partially agrees with the recommendation. IT suggested that the process of reconciling the assessments calculated by the City to what was billed by the County could be automated if Finance were to get the billing information in data format rather than on paper reports. If this automation is implemented, there will be an additional expense associated with receiving this data in digital/electronic format from the County. Finance will contact the County to determine the cost. If the cost is not reasonable, Finance will plan and research for another solution. A decision on how to proceed will be made by July 1, 2005.*

**V. SAFETY**

Title 8 of the California Code of Regulations (CCR) requires every California employer to have an effective Injury and Illness Prevention Program (IIPP) in writing in accord with its stipulations. The IIPP adopted by the City aims at providing a safe and healthful workplace to all City employees. To achieve this end, the Program requires each department to conduct safety inspection semiannually, at a minimum, for office personnel and monthly for non-office operations. A periodic inspection is designed to identify, document existing or potential hazards in workplace, and to eliminate or control them.

As part of the audit, the auditor performed limited review of the safety inspection procedures performed at the Planning Department located at 2120 Milvia Street. On an annual basis, the Safety Coordinator with the appropriate supervisors at the Planning Department used the "Housekeeping and Industrial/Office Safety Inspection Checklist" provided with the Injury and Illness Prevention Program (IIPP) to identify safety issues in the department. Identified issues and corrective actions were documented on a worksheet for follow-up purposes. Based on the auditor's review of the worksheet for 2002 and 2003 and inquiry with the Safety Coordinator, corrective actions were implemented within three months in most cases. During 2002 and the first six months of 2004, the Planning Department only reported three minor and one major work related injuries. The major injury occurred when an employee fell and fractured his wrist while riding a bicycle to perform his City duties. In addition, the Safety Coordinator stated that, at least monthly at the time of the documented fire extinguisher check, he performs a safety inspection based on the items listed on the Checklist and makes corrections as needed. However, the results of the monthly inspections are not formally documented. The auditor did not review the results.

**Finding 12: The Administration Regulation - "Use of Bicycles on City Business" that stipulates the requirements for using bicycles on City business is not posted**

**on iCobWEB. Some City departments may not be aware of the official existence of this Administrative Regulation and its requirements.**

In April 2004, one of the inspectors fractured his wrist while riding a bicycle to perform his City duties, resulting in 103 days of lost work. According to both the Safety Coordinator and the Senior Management Analyst in Planning, the City did not have an official policy on performing City duties on a bicycle, making it difficult to manage the activity. The Safety Coordinator further indicated that Planning was in compliance at the time of the accident with policies provided to them by Human Resources and has since instituted a training program conducted by the Police Department's bicycle training officer

During a meeting to discuss our audit findings, the Occupational Health & Safety Coordinator informed the auditor that an official Administration Regulation (A.R.) – “Use of Bicycles on City Business” has been in place since 1994 and furnished the Auditor with a copy of the A.R. Enforcement of the City's administrative regulations is the responsibility of departmental management. Because the A.R. is not posted on iCobWEB, some City departments may not be aware of its requirements and may not follow its safety requirements, which may result in unsafe use of bicycles for City business.

*City Manager's Response:*  
*Agree with the finding.*

**Recommendation for Human Resources:**

- 12 All City employees should be made aware of the City's requirements for use of bicycles on City business and follow the requirements. We recommend the approved A.R.- “Use of Bicycles on City Business” be updated and published on iCobWEB no later than June 30, 2005.

*City Manager's Response:*  
*Agree with the recommendation. Human Resources will post the updated A.R.- “Use of Bicycles on City Business” on iCobWEB by June 30, 2005 and will make departments aware of the existence of the A.R.*

**Finding 13: Documented safety inspections were conducted annually instead of semiannually on office personnel and monthly on non-office operation (public area) at the Planning Department located at 2120 Milvia Street, as required by the Injury and Illness Prevention Program.**

The IIPP was developed in accordance with the California Occupational Safety and Health Act (OSHA) to suit the City's establishments and needs. When safety inspections are not performed as frequently as required, existing or potential hazards may not be timely identified, which may result in injuries and accidents that could have been avoided.

*City Manager's Response:*  
*Agree with the finding.*

**Recommendation for Planning:**

- 13 Conduct documented semiannual safety inspections for office personnel and monthly on the public area, using the applicable checklist/form provided with the IIPP. Other schedules may be used to supplement the checklist/form at the department's discretion.

City Manager's Response:

*Agree with the recommendation. Documented semiannual inspections for Planning's office personnel and monthly inspections for the public area will be conducted beginning February 2005, using the checklist/form provided with the IIPP.*

## VI. CONCLUSION

Since discovering that the City did not bill several properties for special taxes and assessments in November 2003, the City has devoted a more assertive and collaborative effort, with contributions from various departments, to identify properties that had potentially escaped assessments and to improve procedures in recording BSFT changes. As of August 2004, Finance had back billed \$621,801 of escaped assessments on 57 properties. In addition, the procedures to record BSFT are being revamped to stream line the processes as well as to improve data accuracy. Except in the case of the Ocean View Gardens apartments identified in Finding 2A, the auditor did not find other significant underassessments. Scattered immaterial errors, however, were identified. Since no consistent pattern of material errors was noted, the auditor did not extrapolate an error rate on the entire parcel population.

The City Street Lighting, City Landscape/Parks, City Library Services, Paramedic Supplement, Physically Disabled, CFD1 Disaster Fire, and Clean Storm Water assessments reviewed during this audit generated a total revenue of over \$26 million in FY 2003, which accounted for eight percent of the City's revenue from all sources for the same year. As new processes of recording parcel data and assessments are being implemented, it is essential to incorporate adequate internal controls over the new processes to provide reasonable assurance that assessments are accurately compiled, and material errors will be timely identified and corrected.

## Appendix 1

Source: “*Understanding Proposition 218*”, Legislative Analyst’s Office, December 1996.

Type	Vote Needed	Who Votes	Vote Requirement
Special Taxes	Yes	All voters in community or affected area.	Two-thirds
Assessments	Yes	Property owners (and renters responsible for paying assessments) in affected area.	Majority weighted in proportion to assessment liability.
Property Related Fees	Yes, for any service other than water, sewer, or refuse collection.	Local government may choose: <ul style="list-style-type: none"><li>• Property owners (and renters responsible for paying fees) in affected area, or</li><li>• Electorate in the affected area.</li></ul>	Majority of property owners or two-thirds of electorate. Local governments may weigh ballots in proportion to fee liability.