

Case No. Go63580

In the Court of Appeal, State of California

FOURTH APPELLATE DISTRICT DIVISION THREE

STEVE ROGERS

Plaintiff, Respondent and Cross-Appellant,

vs.

CITY OF REDLANDS

Defendant, Appellant, and Cross-Respondent.

Appeal and Cross-Appeal From the Superior Court of the State of
California,

County of San Bernardino. Case No. CIVSB2126031

Honorable Wilfred J. Schneider, Jr.

Honorable Joseph T. Ortiz

**APPLICATION FOR LEAVE TO FILE AMICI CURIAE
BRIEF; AMICI CURIAE BRIEF OF LEAGUE OF
CALIFORNIA CITIES, THE CALIFORNIA STATE
ASSOCIATION OF COUNTIES, AND CALIFORNIA SPECIAL
DISTRICTS ASSOCIATION IN SUPPORT OF APPELLANT
CITY OF REDLANDS**

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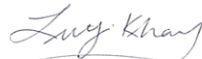
**CERTIFICATE OF INTERESTED ENTITIES OR
PERSONS**

This is the initial certificate of interested entities or persons submitted on behalf of Amici Curiae League of California Cities, California State Association of Counties, and California Special Districts Association in the case number listed above.

Besides Amici and the Parties to this action, the undersigned understands that the customers of the trash utility of the City of Redlands may have an interest in the outcome of this matter.

Dated: August 8, 2024

BEST BEST & KRIEGER LLP



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League of California Cities,
California State Association of
Counties, and the California
Special Districts Association*

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In the Court of Appeal, State of California
FOURTH APPELLATE DISTRICT DIVISION THREE

STEVE ROGERS
Plaintiff, Respondent and Cross-Appellant,

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CITY OF REDLANDS
Defendant, Appellant, and Cross-Respondent.

**APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF
IN SUPPORT OF APPELLANT**

Pursuant to Rule 8.200 subdivision (c)(1) of the California Rules of Court, the League of California Cities (“Cal Cities”), the California State Association of Counties (“CSAC”), and the California Special Districts Association (“CSDA” and, together, the “Local Government Amici”), respectfully apply for permission to file an Amici Curiae Brief in support of Appellant City of Redlands.

Cal Cities is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhancing the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 25 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide

significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. CSAC's membership consists of all 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsel's Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

CSDA is a non-profit corporation with a membership of more than 1,000 special districts throughout California that was formed to promote good governance and to improve core local services through professional development, advocacy, and other services for all types of independent special districts. Independent special districts provide a wide variety of public services to urban, suburban, and rural communities, including irrigation, water, recreation and parks, cemetery, fire protection, police protection, library, utilities, harbor, healthcare, community-service districts, and more. CSDA monitors issues of concern to special districts and identifies those matters that are of statewide significance, and has identified this case as having such significance.

The issues in this appeal concern whether Vehicle Code section 9400.8 (“Section 9400.8”) bars local governments from charging customers the full cost of providing trash service, including the cost of repairing streets damaged by trash trucks, under Proposition 218 (Cal. Const., art. XIII C, § 6). Local Government Amici have a direct interest in their members’ abilities to recover costs resulting from services provided to the public and any decision by this Court will have significant impacts on their member local governments.

The undersigned attorneys have carefully examined the briefs submitted by the parties and represent that Local Government Amici’s brief will highlight a number of critical points that Local Government Amici believe warrant further analysis, consistent with the City of Redlands’ position. In this way the proposed Amici curiae brief will assist the court in deciding the matter.

The undersigned attorneys also represent that they authored this brief in whole, on a pro bono basis; that their firm is paying the full cost of preparing and submitting the brief; and that no party to this action, or any other person, authored the brief or made any monetary contribution to help fund the preparation and submission of the brief. (Cal. Rules of Court, Rule 8.200(c)(3).)

For these reasons, Local Government Amici respectfully requests leave to file the Amici Curiae Brief attached.

Dated: August 8, 2024

BEST BEST & KRIEGER LLP



Lutfi Kharuf

*Attorneys for Amici Curiae
League of California Cities,
California State Association of
Counties, and the California
Special Districts Association*

**BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANT
CITY OF REDLANDS**

Government entities are tasked with delivering essential services within their jurisdictions, and perhaps one of the most essential for public health and hygiene is solid waste collection and disposal. Each week (and sometimes more often), a truck arrives outside almost every home in California, while its residents are sleeping, and takes away the detritus of modern living. It is difficult to imagine life without this service, yet its economics and complexities are rarely considered. In California, providing solid waste disposal, which by necessity requires that a government entity be able to recoup the cost of providing the service (thereby ensuring its continued existence), is particularly difficult due to a detailed network of constitutional amendments coupled with conflicting interpreting precedent.

For example, at issue here is whether fees and charges imposed for the provision of solid waste services can recover the full cost of providing such services, including the costs of repairing streets damaged in the course of providing such services. In some cases, such costs are incorporated in the rate for solid waste fees; in other cases, such costs are recovered through a separate surcharge or franchise fee. A franchise fee is a mechanism by which local governments can recover (1) portions of the cost to provide solid waste service as well

as (2) the value of the tangible, real property used in providing the service, by requiring that the private solid waste hauler with which the local government contracts remit to the local government costs to offset the impact of solid waste hauling activities. Recovery of franchise fees is crucial to compensate local governments for the costs incurred in supporting and providing waste hauling, but the underlying legal framework is constantly shifting.

In 2022, the Supreme Court issued its opinion in *Zolly v. City of Oakland*, explaining that a franchise fee can be imposed for the right to use “tangible property, such as land or buildings.” (13 Cal. 5th 780, 793 (2022).) Additionally, while not explicitly before the Court, the Court acknowledged that Proposition 26 (Cal. Const., art. XIII C, §1, subd. (e)) authorizes a government entity to recover the costs of providing some sort of privilege or benefit, including “the special ability to drive heavy vehicles and to place waste receptacles on [city] streets” (*Id.* at 796.)

Yet the trial court’s interpretation of Vehicle Code section 9400.8 categorically prohibits local governments from recovering the cost to maintain streets, even when the local government presents evidence directly connecting such costs to the special and substantial impacts caused by solid waste collection vehicles. In doing so, the trial court sets a threatening precedent that conflicts with the Supreme

Court’s analysis of franchise fees and the revenue-raising powers afforded California’s local governments by article XI, section 9 of the California Constitution and other law. The trial court’s interpretation deviated from the language of Section 9400.8 and did not account for the legislative intent behind the statute, but was instead grounded on a single, distinguishable case.

If this Court upholds the trial court’s decision, recovery for the costs of road and street impacts of utility service will be prohibited. As explained in more detail below, such a holding is extremely impactful in light of the insufficient, and continually diminishing, available sources of revenue for mitigating road and street impacts, especially given that much of California’s infrastructure built in the boom years after World War II is reaching the end of its design life. Consequently, the ability of local governments across the entirety of California to fund road repairs and maintenance, and in turn provide crucial utility services to the public, will be threatened.

ARGUMENT

I. LOCAL GOVERNMENTS BEAR THE COSTS OF MAINTAINING THE MAJORITY OF CALIFORNIA’S ROADS IMPACTED BY THEIR SOLID WASTE SERVICES

In April 2023, Nationwide Civil Engineering Services (“NCE”) prepared a California Statewide Local Streets and Roads Needs Assessment Report which compiled data from California’s 58 counties

and (then) 481 cities, which own and maintain nearly 86% of the state’s publicly maintained centerline miles, valued at over \$253 billion. (*California Statewide Local Streets and Roads Needs Assessment*, April 2023¹, “*Statewide Needs*” p. 6.) Combined with sources from prior years, data as to 99.9% of the state’s local streets and roads were included in this comprehensive study. (*Id.* at p.. B-3.)

Of the state’s total publicly-maintained centerline miles, 70% are in urban areas. (*Id.* at p. 7.) Cities within the counties of Los Angeles, San Bernardino, San Diego, Orange, Riverside, Fresno, and Kern encompass the largest amount of centerline miles (*Id.* at pp. 18-19) and all provide utility services to their residents, including solid waste services, which is often privately contracted.

There are 58 counties, 483 cities, and well over 2,000 independent special districts, all of which provide some variety of public services. Of those cities and counties that provide utility services, at least 353 utilize franchise fee agreements for the provision of solid waste services.²

Cities and Counties are responsible for maintaining over 85% of California’s roads. (*Id.* at pp. 1-2.) In part to ensure accountability in this respect, in April 2017, the Governor signed Senate Bill 1, the

¹ <https://savecaliforniastreet.org/wp-content/uploads/2023/05/Statewide-Needs-2022-FINAL.pdf>.

² <https://calrecycle.ca.gov/lgcentral/franchiseagreement/>.

Road Repair and Accountability Act of 2017, to address basic road maintenance and rehabilitation on both the state highway and the local streets and road system. This bill deposits funds into a Road Maintenance and Rehabilitation Account (“RMRA”) and requires cities and counties provide annual reporting to the California Transportation Commission to be eligible for funding.³ This bill promotes efficient investment of public funds to maintain local streets and roads and emphasizes the important job cities and counties have in repairing and maintaining roads from damage, including damage caused by utility vehicles.

The Pavement Condition Index (“PCI”) is a numerical index that ascribes a value to indicate the general condition of pavement, and is widely used to measure the performance of road infrastructure. On a scale of zero (failed) to 100 (excellent), the average statewide PCI for local streets and roads is 65, or “At Risk,” and 54 of 58 counties have either “At Risk” or “Poor” pavements. (*Statewide Needs*, p. 2.)

“Heavier and more garbage collection trucks (recycling and green waste trucks are new weekly additions to the traditional weekly garbage truck)” are a key factor contributing to rapid pavement deterioration. (*Id.* at p. 20.) In addition, California’s garbage truck

³ <https://catc.ca.gov/-/media/ctc-media/documents/programs/local-streets-and-roads/2021/2021-local-streets-and-roads-program-guidelines-a11y.pdf> .

fleet is rapidly shifting such that a majority of vehicles comprise heavier trucks powered by alternative fuel technologies. (*Effects of Increased Weights of Alternative Fuel Trucks on Pavement and Bridges*, UC Institute of Transportation Studies, November 1, 2020⁴, pp. 5, 80.) These alternative trucks, though less harmful to the environment, introduce heavier axle loads (due to heavy battery packs) and, in turn, increase damage to the pavements they use. (*Id.* at 5.) Studies confirm that this increase in weight further reduces pavement life. (*Id.* at p. 68.)

II. THE UNAVAILABILITY OF SUFFICIENT REVENUES TO FUND STREET MAINTENANCE

Additional funding, which includes franchise fee revenue, is needed to increase PCI across the state as there is an unavailability of sufficient local, state, and federal revenues to fund street maintenance.

A. California Roads and Streets are “At Risk”

It is first important to address the costs associated with pavement repair and maintenance. Cities utilize Best Management Practices (“BMPs”) to calculate the costs to maintain pavement condition. At BMP conditions, preventive maintenance treatments (i.e., slurry seals, chip seals, thin overlays) are most cost-effective. In

⁴ <https://escholarship.org/content/qt4z94w3xr/qt4z94w3xr.pdf?t=qo95b9>.

addition, preventive maintenance interferes less with commerce and the public's mobility and is more environmentally friendly than rehabilitation or reconstruction. (*Statewide Needs*, p. 2.) However, the cost of reconstructing pavement conditions far exceeds the cost of maintenance, and the PCI of the majority of urban street and rural roads in California fall below the "Preventative Maintenance" category and necessitate rehabilitative measures. (*Id.* at p. 17.) The average PCI statewide is considered at risk and if repairs to these streets and roads are delayed by only a few years, the costs of treatment to rehabilitate them may increase exponentially. (*Id.* at pp. 19-20.)

The Institute of Transportation Studies at the University of California used a 10-year analysis period and analyzed pavement damage by alternative-fuel waste-hauling trucks to predict expected annual spending on pavements by California's state and local governments. (*Effects of Increased Weights of Alternative Fuel Trucks on Pavement and Bridges*, UC Institute of Transportation Studies, November 1, 2020, pp. 56-66.) Results demonstrate that costs can increase by up to \$33 million annually for the local road networks in California, with the majority of cost increases to be focused on the counties that currently have the highest vehicle miles traveled: Los Angeles, San Bernardino, Riverside, San Diego, Orange,

Alameda, Kern, Fresno, Santa Clara, Sacramento, and Contra Costa.
(*Id.* at p. 71.)

As of 2022, with existing state funding of \$3.36 billion/year, the PCI of California is expected to drop slightly to 63, which is considered “At Risk” by 2032. (*Statewide Needs*, p. 3.) To maintain an average PCI of 65, \$3.76 billion/year in funding is needed. However, to increase the PCI to reach BMP, which would limit costs for rehabilitation and reconstruction, \$8.54 billion/year is needed. (*Id.* at p. 3).

B. Without Additional Funding, California Roads and Streets Will Continue to Deteriorate

As part of the Statewide Needs report, 338 agencies provided data regarding revenue sources and pavement expenditures for Fiscal Year (“FY”) 2020/2021 and FY 2021/2022. In general, total pavement funding to municipalities, with the help of local, state, and federal funds, stabilized at around \$2 billion between FY 2014/2015 and FY 2016/2017. However, COVID-19’s impact in FY 2020/2021 and FY 2021/2022 resulted in a major decrease of funding down to only \$870 million. (*Statewide Needs*, p. 47.)

Federal funding sources have decreased steadily since the 2008 recession when the American Recovery and Reinvestment Act was implemented. Federal funding for local pavement repairs and maintenance has fluctuated around 10%, but is projected to decrease

to 7% in coming years. (*Id.* at p. 49.) Additionally, though cities and counties utilize every existing dollar from SB1, which allocates approximately \$1.5 billion annually to the local street and road systems (*Id.* at 2), the total funding shortfall for pavements and essential components is still expected to be \$69.7 billion over the next 10 years. (*Id.* at p.65.)

In sum, federal and state funding are not sufficient to maintain California's roads, and are substantially below the annual \$8.54 billion amount required to increase California's PCI to reach BMP, or even the \$3.76 billion/year to maintain California's current "At Risk" PCI. Without additional access to funding, California's roads will certainly deteriorate and become more vulnerable to a "Poor" designation.

1. Federal Funding for Local Road Repair and Maintenance is Limited

Federal funding of local road maintenance and repair has decreased steadily since the 2008 recession when Congress implemented the American Recovery and Reinvestment Act. The amount of federal funds used for local pavement repairs and maintenance represents the smallest funding source, making up only 5% of total funds in FY 2021/2022. (*Id.* at p. 49.) Additionally, nearly all state and federal aid today is earmarked for specific purposes, making it difficult for municipalities to address local needs. (*A Primer*

on California City Revenues, Part Two: Major City Revenues, Michael Coleman, December 1, 2016⁵.)

2. State Funding for Local Government Road Repair and Maintenance Is Insufficient

In California, the Highway User Tax Account (HUTA), which accounts for the proceeds of the state gas tax, is the single largest funding source for city and county road maintenance, but is declining steadily due to reduced gas consumption. (*Statewide Needs*, p. 49.) California has the largest zero-emission vehicle (“ZEV”) fleet in the country, which is steadily increasing; therefore, state gas tax revenues will continue to decrease. (*Id.* at pp. 53-54.) A 2020 study from the University of California, Berkeley also estimated that “the electrification of vehicles will result in an annual nationwide funding reduction of \$250 million.”(*Should Electric Vehicle Drivers Pay a Mileage Tax?* Lucas W. Davis & James M. Sallee, University of California, Berkeley, January 2020⁶, p. 66.)

In 2017, the California Legislature passed Senate Bill 1 (SB1), also known as the Road Repair and Accountability Act of 2017, which allocates \$5.4 billion each year for repairing roads, freeways, and bridges throughout California.⁷ Of that \$5.4 billion, 483 cities and 58

⁵ <https://www.westerncity.com/article/primer-california-city-revenues-part-two-major-city-revenues>

⁶ <https://doi.org/10.1086/706793>

⁷ <https://dot.ca.gov/programs/sb1>

counties receive only \$1.5 billion annually, divided amongst them, for streets and roads. (*Statewide Needs*, p. 60.)

Though cities and counties utilize every existing dollar from SB1, the total funding shortfall for pavements and essential components is still expected to be \$69.7 billion over the next 10 years. (*Id.* at p. 65.)

C. Local Governments Cannot Increase or Even Maintain the Current “At Risk” State of Their Roads Without Additional Funding

Per the Statewide Needs April 2023 report, local governments’ total expenditures for road maintenance will amount to \$3.36 billion annually over the next 10 years. (*Id.* at p. 65.) Of these expenditures, 58% will come from state funding (almost entirely gas tax and SB 1); 7% from federal funding; and the remaining 35% from local sources, mostly in the form of taxes which are subject to voter approval requirements and may be repealed by voter initiative. (*Id.*) Of the total funding, 50% will contribute to rehabilitation and reconstruction; 20% to preventative maintenance; and the remaining to operations and maintenance. (*Id.* at p. 51.)

Notably, neither these funds nor the associated efforts will increase, **or even maintain**, the state’s current PCI of 65 and “At Risk” designation.

III. LOCAL GOVERNMENT AMICI JOIN THE LEGAL ARGUMENTS AND AUTHORITY ADVANCED BY THE CITY OF REDLANDS AND FURTHER RESPOND TO NEW ARGUMENTS RAISED IN PLAINTIFF AND CROSS-APPELLANT’S REPLY BRIEF

A. Local Government Amici Join the City of Redlands’ Legal Arguments in Full.

The statistical and financial analysis relating to local agency needs for street and road repair and maintenance described above underscores both the gravity of the current state of local streets and roads, and the importance of protecting local funding sources. It also demonstrates that the trial court’s interpretation of Section 9400.8 as prohibiting local cost recovery for the costs of road and street impacts of utility services is not only contrary to the plain language of the statute and its legislative intent, but also poor public policy. For these reasons, and in addition to pointing this Honorable Court to concerns of public policy, Local Government Amici join in the legal arguments and authorities advanced by the City of Redlands.

There is an additional issue raised in the Parties’ briefing that Local Government Amici wish to address. Because this argument was raised for the first time in Cross-Appellant’s reply, Local Government Amici wish to address it in this brief.

B. Health and Safety Code Sections 5470 *Et Seq.* Authorize Use of Solid Waste Revenues Toward the Full Cost of Solid Waste Service, Including Street and Road Repair.

In reply, Cross-Appellant argues that Health and Safety Code section 5472's pay-under-protest requirement does not extend to a surcharge to recover the utility's share of road repair costs. In doing so, Cross-Appellant urges this Court to adopt a baseless limitation on the statute, and to ignore the context of Section 5472. Further, in the absence of any evidence supporting this strained interpretation, Cross-Appellant cites unrelated statutes in the Public Resources Code, adopted *after* Health and Safety Code section 5471(c). Not only is this later-adopted statute unrelated, but also is explicitly made applicable *only* to a specific division of the Public Resources Code. Cross-Appellants do not explain why a later-adopted, unrelated statute should be interpreted to modify a pre-existing statute.

1. Cross-Appellant's Interpretation Conflicts with Context and Rules of Statutory Interpretation.

There is no doubt that roads are considered "facilities" as the term is generally used. *See, e.g.*, 14 CCR sec. 15301(c) (providing examples of Class 1 facilities in the context of the California Environmental Quality Act); 42 USC § 5122(10) (defining "public facility" in the context of disaster relief provisions). The only question is whether a road is a "facility" for purposes of sanitation such that revenues from rates and charges imposed under Health and Safety

Code section 5470 *et seq.* can be used for the costs associated therewith. The context clearly shows that the answer is “yes.”

Health and Safety Code section 5471(c) authorizes an entity to impose a rate or charge for “services and facilities furnished by it ... in connection with its ... sanitation ... system.” Section 5470(f) defines “rates and charges” to mean fees, tolls, rates, rentals, or other charges for services and facilities furnished by an entity in connection with its sanitation or sewerage systems, ***including garbage and refuse collection***. Garbage and refuse collection occurs by way of trucks using local streets and roads to pick up solid waste, and delivering it for processing and disposal. In other words, local streets and roads are an integral component and “facility” used in connection with sanitation service.

Had the Legislature intended to exclude integral components of a solid waste utility, the statute would say so. In fact, the Legislature did that in the same statute cited by Cross-Appellant in the context of sewerage facilities, where the Legislature expressly excludes “new local street sewers or laterals.” (Health & Safety Code § 5471(c)); *see also* Cross-Appellant’s Reply Brief, p. 9.)

Under the maxim of statutory construction of *expression unius est exclusion alterius*, “[w]hen language is included in one portion of a statute, its omission from a different portion addressing a similar

subject suggests that the omission was purposeful,’ and that the Legislature intended a different meaning.” (*Department of Finance v. Commission on State Mandates*, 85 Cal.App.5th 535, 568 (2022) [citations omitted].) The Legislature omitted any exclusion of a component of the *solid waste* utility and, since specific components of a *sewerage* facility were expressly excluded, it must mean that such omission was intentional. In other words, if the Legislature wanted to exclude roads, it would have done so.

As such, it is clear from the context and rules of statutory interpretation that inclusion of an undefined term in section 5471(c) should not be read to exclude certain components of the costs of providing solid waste utility service, particularly where the Legislature has gone out of its way to exclude certain types of facilities in the same provision.

2. Cross-Appellant’s Reliance on the Public Resources Code to Interpret the Health and Safety Code is Misplaced.

The plain language of Health and Safety Code sections 5470 *et seq.* cannot support Cross-Appellant’s interpretation limiting how solid waste fees can be spent. As such, Cross-Appellant’s attempt to rely on Public Resources Code section 40194, an entirely unrelated, later-adopted statute, is misplaced. Specifically, Cross-Appellant cites the definition of “solid waste facility” in Public Resources Code section

40194 as modifying and limiting Health and Safety Code section 5471. This argument fails for at least two reasons.

First, Public Resources Code section 40100 provides that its definitions apply only to that division of the Public Resources Code. As such, they cannot be used to define an otherwise undefined term in Health and Safety Code section 5471(c). The purpose for defining a word within a statute is so that its ordinary (dictionary) meaning is not implied or assumed. A “definition” by its terms, excludes non-essential elements by mentioning only those things to which it shall apply. (*Rules of Statutory Construction and Interpretation*, Supreme Court of the United States, App. A2, para. 8.) **When a term is defined within a statute, that definition is provided to supersede and not enlarge other definitions of the word found elsewhere, such as in other Titles or Codes.** (*Id.* at App. A2, para. 9.) The Court should not add language that the Legislature has not included. To do so, given the “particularization and detail” with which the lawmaking body had set out the categories, would amount to “enlargement” of the statute rather than “construction” of it. (*Id.* at App. A2, para. 9) (citing CRS Report for Congress (2008) - 97- 589 p. RS-B.) Additionally, other provisions of Health and Safety Code section 5470 *et seq.* indicate “facilities” should include the full network of tangible things necessary for the provision of solid waste

service, including roads used for “garbage and refuse collection” as authorized in Health & Safety Code section 5470(f).

Secondly, statutory provisions do not apply to events predating enactment unless there is *clear legislative intent that they so apply*. “Requiring clear intent assures that Congress itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.” (*Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994); *see Goldstein v. Superior Ct.*, 93 Cal. App. 5th 736, 747 (2023) [unless the Legislature expressly states otherwise, or it is very clear from extrinsic sources that the Legislature must have intended a retroactive application, a newly enacted statutory provision applies prospectively only]; *see also In re S.B.*, 32 Cal. 4th 1287, 1296 (2004) [statutes do not operate retrospectively unless the Legislature plainly indicates otherwise].)

Here, the first iteration of Public Resources Code section 40194 was adopted in 1989. At least as far back as 1988, Health and Safety Code section 5471(c) had the same language as to its limitation of use of revenues for “sanitation facilities.” Cross-Appellant cannot apply the subsequently adopted language of the Public Resources Code retroactively to revise, modify, or change the interpretation of the Health and Safety Code. The Health and Safety Code means what it

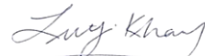
has meant since adoption, and that meaning cannot be found in later-adopted laws.

CONCLUSION

In conclusion, the trial court's interpretation of Section 9400.8 would be poor public policy for communities across California. The significant impact of public utility services on streets, when combined with a lack of state and federal funding, suggests the Legislature should not lightly be assumed to deny local government authority to recover costs for damage incurred. Such cost recovery is explicitly protected in the California Constitution and referenced in relevant jurisprudence. The lack of state and federal funding has placed an even higher importance on the local government's ability to recover costs, whether by a rate for service, a surcharge, a franchise fee, or otherwise. As such, Local Government Amici respectfully request this Court reverse the trial court's ruling.

Dated: August 8, 2024

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CERTIFICATE OF WORD COUNT

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Dated: August 8, 2024

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CERTIFICATE OF SERVICE

Steve Rogers v. City of Redlands
Fourth Appellate District, Division Three, Case No. G063580
Superior Court Case No. CIVSB2126031

I, Rochelle Burris, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 South Grand Avenue, 25th Floor, Los Angeles, California 90071. My email address is: rochelle.burris@bbklaw.com. On August 8, 2024, I served the document(s) described as **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES, THE CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION IN SUPPORT OF APPELLANT CITY OF REDLANDS** on the interested parties in this action addressed as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on August 8, 2024, from the court authorized e-filing service at TrueFiling. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

BY MAIL: By placing a true copy thereof enclosed in a sealed envelope. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State

of California that the above is true and correct.

Executed on August 8, 2024, at Valencia, California.

/s/ Rochelle Burris

Rochelle Burris

SERVICE LIST

Steve Rogers v. City of Redlands
Fourth Appellate District, Division Three, Case No. G063580
Superior Court Case No. CIVSB2126031

<p><u>Attorneys for Plaintiff, Respondent, Cross-Appellant (via TrueFiling):</u> Eric J. Benink, SBN 187434 eric@beninkslavens.com Vincent D. Slavens, SBN 217132 Benink & Slavens, LLP 8880 Rio San Diego Drive, 8th Floor San Diego, CA 92108 Tel: (619) 369-5252 Fax: (619) 369-5253</p> <p>Thomas A. Kearney, SBN 90045 Prescott W. Littlefield, SBN 259049 pwl@kearneylittlefield.com 655 N. Central Ave., 17th Floor Glendale, CA 91203 Tel: (213) 473-1900 Fax: (213) 473-1919</p>	<p><u>Attorneys for Appellant (via TrueFiling):</u></p> <p>Michael G. Colantuono, Esq. mcolantuono@chwlaw.us Meghan A. Wharton, Esq. mwharton@chwlaw.us mwilliams@chwlaw.us COLANTUONO, HIGHSMITH & WHATLEY, PC 790 E. Colorado Blvd., Suite 850 Pasadena, CA 91101-2109</p>
<p><u>Via TrueFiling:</u> San Bernardino Superior Court Appeals and Appellate Division 8303 Haven Ave, 1st Flr Rancho Cucamonga, CA 91730 appeals@sb-court.org</p>	<p><u>Via: U.S. Mail</u> Honorable Wilfred J. Schneider, Jr. Honorable Joseph T. Ortiz Clerk of the San Bernardino Superior Court 247 West Third Street San Bernardino, CA 92415</p>