



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Opposition for AB 2188 – Solar Energy Permits (Muratsuchi)

MEETING DATE: May 21, 2014

PREPARED BY: City Clerk

RECOMMENDED ACTION: Authorize the mayor, on behalf of the City Council, to send a letter of opposition for AB 2188 – Solar Energy Permits (Muratsuchi).

BACKGROUND INFORMATION: On May 6, 2014, the City received correspondence from the League of California Cities to oppose AB 2188 (Muratsuchi), legislation pertaining to solar energy permits.

As you may be aware, existing law provides that it is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. Existing law states the implementation of consistent statewide standards to achieve timely and cost-effective installation of solar energy systems is not a municipal affair but instead a matter of statewide concern. The law currently requires a city or county to administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit and requires a solar energy system for heating water to be certified by the Solar Rating Certification Corporation or another nationally recognized certification agency.

This bill would additionally require a city or county to adopt, on or before September 30, 2015, an ordinance that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems as specified. It also would require the local agency to inspect a small residential rooftop solar energy system eligible for expedited review within 5 business days of any request and to perform only one inspection. The bill would prohibit a local agency from conditioning the approval of any solar energy system permit on approval of that system by an association that manages a common interest development. Finally, the bill would require a solar energy system for heating water to be certified by an accredited listing agency.

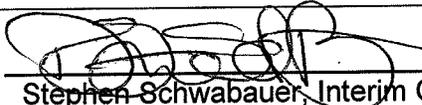
For the reasons stated above and in the attached draft correspondence, it is recommended that the City Council authorize the execution and delivery of the proposed correspondence.

FISCAL IMPACT: Not applicable at this time.

FUNDING AVAILABLE: Not applicable at this time.



Randi Johl-Olson
City Clerk

APPROVED: 

Stephen Schwabauer, Interim City Manager

Randi Johl

From: Stephen R. Qualls [squalls@cacities.org]
Sent: Tuesday, May 06, 2014 05:31 PM
Subject: LETTERS NEEDED

Attachments: AB 2188 (Muratsuchi) Action Alert 042814.pdf; AB 2188 (Muratsuchi) SAMPLE Oppose Letter 5 5 2014.docx; Background on AB 2188 (Muratsuchi).pdf; Talking Points for AB 2188 (Muratsuchi).pdf



AB 2188



AB 2188



Background on AB



Talking Points for

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ACTION ALERT!!

AB 2188 (Muratsuchi). Solar energy: permits

Oppose

Background:

AB 2188 would, among other things, require cities and counties to adopt a new, costly ordinance that would essentially create a separate permitting and inspection process specifically for residential solar installations of less than 10 kilowatts.

AB 2188 would be an economic burden on local governments. Requiring local jurisdictions to uniformly issue solar permits in an "over the counter" fashion within 24 hours and inspect solar installations within two days of the request would be very problematic for many local governments still recovering from the historic economic downturn. A local jurisdiction's ability to process a permit application and complete an inspection in an expedited manner is largely driven by available funding and trained staff. Furthermore, many municipalities still impose mandatory furloughs on Fridays, which limit their ability to provide services under a specified timeline.

AB 2188 could pose a threat to public safety by limiting the inspection process and thereby increasing the risk of fire hazard. During the permit review process, many cities perform an onsite inspection, prior to issuing the permit, to ensure structural soundness. This most often occurs when a city lacks adequate building records of the dwelling. AB 2188, as amended April 21, 2014, would limit a city to one inspection, thus essentially prohibiting a city from visually inspecting a dwelling prior to installation. Additionally, due to the this measure's 24 hour permit approval mandate, local fire departments may no longer have the ability to participate in the "plan check" phase of the permit approval process to verify that no fire hazards are present and the installation complies with all applicable fire codes.

Talking Points:

- While we remain supportive of expanding access to renewable energy resources, including residential solar, we do not believe that the rigid solar permit and inspection process as mandated in AB 2188 is the right approach.

- A local jurisdiction's ability to process a permit application and complete an inspection in an expedited manner is largely driven by available funding and trained staff. The 24-hour issuance and two-day inspection deadlines would be very problematic for

many local governments still recovering from the historic economic downturn.

- AB 2188 could pose a threat to public safety by limiting the inspection process and thereby increasing the risk of fire hazard.
- Building permits and inspections are required by state law, regulations, and local ordinances to help ensure public safety. By enforcing these laws, local governments essentially act as a consumer protection agency. AB 2188 could jeopardize this proven process by forcing cities and counties to potentially overlook shortcomings in solar permit applications or installations in order to comply with the bill's highly restrictive approval timeline.
- Please contact your legislator and share any specific examples of how this bill will impact your city/town.

Stephen Qualls
Central Valley Regional Public Affairs Manager
League of California Cities

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[Description: Description: LCC_Logo_SM]
Strengthening California Cities through Advocacy and Education
To expand and protect local control for cities through education and
advocacy in order to enhance the quality of life for all Californians.

<<http://www.cacities.org/AC>>

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AMENDED IN ASSEMBLY MAY 8, 2014

AMENDED IN ASSEMBLY MAY 5, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2188

Introduced by Assembly Member Muratsuchi

February 20, 2014

An act to amend Section 714 of the Civil Code, and to amend Section 65850.5 of the Government Code, relating to solar energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2188, as amended, Muratsuchi. Solar energy: permits.

(1) Existing law provides that it is the policy of the state to promote and encourage the use of solar energy systems, as defined, and to limit obstacles to their use. Existing law states that the implementation of consistent statewide standards to achieve timely and cost-effective installation of solar energy systems is not a municipal affair, but is instead a matter of statewide concern. Existing law requires a city or county to administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Existing law requires a solar energy system for heating water to be certified by the Solar Rating Certification Corporation or another nationally recognized certification agency.

This bill would specify that these provisions address a statewide concern. The bill would additionally require a city, county, or city and county to adopt, on or before September 30, 2015, an ordinance that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems, as specified. The bill would additionally

require a city, county, or city and county to inspect a small residential rooftop solar energy system eligible for expedited review within 25 business days of any request, as specified, and to perform only one inspection, as specified. The bill would prohibit a city, county, or city and county from conditioning the approval of any solar energy system permit on approval of that system by an association that manages a common interest development. The bill would require a solar energy system for heating water to be certified by an accredited listing agency, as defined.

(2) Existing law prohibits any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document from effectively prohibiting or restricting the installation or use of a solar energy system. Existing law exempts from that prohibition provisions that impose reasonable restrictions on a solar energy system that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance. Existing law defines the term “significantly,” for these purposes, with regard to solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, to mean an amount exceeding 20% of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20%, and with regard to photovoltaic systems that comply with state and federal law, an amount not to exceed \$2,000 over the system cost or a decrease in system efficiency of an amount exceeding 20%, as specified. Existing law requires a solar energy system for heating water subject to the provisions described above to be certified by the Solar Rating Certification Corporation or another nationally recognized certification agency.

This bill would instead define the term “significantly,” for these purposes, with regard to solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, to mean an amount exceeding 10% of the cost of the system, not to exceed \$1,000, or decreasing the efficiency of the solar energy system by an amount exceeding 10%, and with regard to photovoltaic systems that comply with state and federal law, an amount not to exceed \$1,000 over the system cost or a decrease in system efficiency of an amount exceeding 10%, as specified. The bill would require a solar energy system for heating water subject to the provisions described above to be certified by an accredited listing agency, as defined.

(3) Existing law requires an application for approval for the installation or use of a solar energy system to be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property and prohibits the approver from willfully avoiding or delaying approval. Existing law requires the approving entity to notify the applicant in writing within 60 days of receipt of the application if the application is denied, as specified.

The bill would instead require the approving entity to notify the applicant in writing within 30 days of receipt of the application if the application is denied, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In recent years, the state has both encouraged the
4 development of innovative distributed generation technology and
5 prioritized the widespread adoption of solar power as a renewable
6 energy resource through programs such as the California Solar
7 Initiative.

8 (b) Rooftop solar energy is a leading renewable energy
9 technology that will help this state reach its energy and
10 environmental goals.

11 (c) To reach the state’s Million Solar Roofs goal, hundreds of
12 thousands of additional rooftop solar energy systems will need to
13 be deployed in the coming years.

14 (d) Various studies, including one by the Lawrence Berkeley
15 National Laboratory, show that, despite the 1978 California Solar
16 Rights Act, declaring that the “implementation of consistent
17 statewide standards to achieve the timely and cost-effective
18 installation of solar energy systems is not a municipal affair ... but
19 is instead a matter of statewide concern,” the permitting process

1 governing the installation of rooftop solar energy systems varies
2 widely across jurisdictions and, contrary to the intent of the law,
3 is both an “obstacle” to the state’s clean energy and greenhouse
4 reduction goals and a “burdensome cost” to homeowners,
5 businesses, schools, and public agencies.

6 (e) The United States Department of Energy, through its SunShot
7 Initiative, has distributed millions of dollars in grants to local and
8 state governments, including California jurisdictions, and nonprofit
9 organizations to reduce the costs of distributed solar through
10 streamlined and standardized permitting.

11 (f) A modernized and standardized permitting process for
12 installations of small-scale solar distributed generation technology
13 on residential rooftops will increase the deployment of solar
14 distributed generation, help to expand access to lower income
15 households, provide solar customers greater installation ease,
16 improve the state’s ability to reach its clean energy goals, and
17 generate much needed jobs in the state, all while maintaining safety
18 standards.

19 SEC. 2. Section 714 of the Civil Code is amended to read:

20 714. (a) Any covenant, restriction, or condition contained in
21 any deed, contract, security instrument, or other instrument
22 affecting the transfer or sale of, or any interest in, real property,
23 and any provision of a governing document, as defined in Section
24 4150 or 6552, that effectively prohibits or restricts the installation
25 or use of a solar energy system is void and unenforceable.

26 (b) This section does not apply to provisions that impose
27 reasonable restrictions on solar energy systems. However, it is the
28 policy of the state to promote and encourage the use of solar energy
29 systems and to remove obstacles thereto. Accordingly, reasonable
30 restrictions on a solar energy system are those restrictions that do
31 not significantly increase the cost of the system or significantly
32 decrease its efficiency or specified performance, or that allow for
33 an alternative system of comparable cost, efficiency, and energy
34 conservation benefits.

35 (c) (1) A solar energy system shall meet applicable health and
36 safety standards and requirements imposed by state and local
37 permitting authorities, consistent with Section 65850.5 of the
38 Government Code.

1 (2) Every solar energy system for heating water shall be certified
2 by an accredited listing agency as defined in Section 65850.5 of
3 the Government Code.

4 (3) A solar energy system for producing electricity shall also
5 meet all applicable safety and performance standards established
6 by the National Electrical Code, the Institute of Electrical and
7 Electronics Engineers, and accredited testing laboratories such as
8 Underwriters Laboratories and, where applicable, rules of the
9 Public Utilities Commission regarding safety and reliability.

10 (d) For the purposes of this section:

11 (1) (A) For solar domestic water heating systems or solar
12 swimming pool heating systems that comply with state and federal
13 law, “significantly” means an amount exceeding 10 percent of the
14 cost of the system, but in no case more than one thousand dollars
15 (\$1,000), or decreasing the efficiency of the solar energy system
16 by an amount exceeding 10 percent, as originally specified and
17 proposed.

18 (B) For photovoltaic systems that comply with state and federal
19 law, “significantly” means an amount not to exceed one thousand
20 dollars (\$1,000) over the system cost as originally specified and
21 proposed, or a decrease in system efficiency of an amount
22 exceeding 10 percent as originally specified and proposed.

23 (2) “Solar energy system” has the same meaning as defined in
24 paragraphs (1) and (2) of subdivision (a) of Section 801.5.

25 (e) (1) Whenever approval is required for the installation or
26 use of a solar energy system, the application for approval shall be
27 processed and approved by the appropriate approving entity in the
28 same manner as an application for approval of an architectural
29 modification to the property, and shall not be willfully avoided or
30 delayed.

31 (2) For an approving entity that is an association, as defined in
32 Section 4080 or 6528, and that is not a public entity, both of the
33 following shall apply:

34 (A) The approval or denial of an application shall be in writing.

35 (B) If an application is not denied in writing within 30 days
36 from the date of receipt of the application, the application shall be
37 deemed approved, unless that delay is the result of a reasonable
38 request for additional information.

39 (f) Any entity, other than a public entity, that willfully violates
40 this section shall be liable to the applicant or other party for actual

1 damages occasioned thereby, and shall pay a civil penalty to the
2 applicant or other party in an amount not to exceed one thousand
3 dollars (\$1,000).

4 (g) In any action to enforce compliance with this section, the
5 prevailing party shall be awarded reasonable attorney's fees.

6 (h) (1) A public entity that fails to comply with this section
7 may not receive funds from a state-sponsored grant or loan program
8 for solar energy. A public entity shall certify its compliance with
9 the requirements of this section when applying for funds from a
10 state-sponsored grant or loan program.

11 (2) A local public entity may not exempt residents in its
12 jurisdiction from the requirements of this section.

13 SEC. 3. Section 65850.5 of the Government Code is amended
14 to read:

15 65850.5. (a) The implementation of consistent statewide
16 standards to achieve the timely and cost-effective installation of
17 solar energy systems is not a municipal affair, as that term is used
18 in Section 5 of Article XI of the California Constitution, but is
19 instead a matter of statewide concern. It is the intent of the
20 Legislature that local agencies not adopt ordinances that create
21 unreasonable barriers to the installation of solar energy systems,
22 including, but not limited to, design review for aesthetic purposes,
23 and not unreasonably restrict the ability of homeowners and
24 agricultural and business concerns to install solar energy systems.
25 It is the policy of the state to promote and encourage the use of
26 solar energy systems and to limit obstacles to their use. It is the
27 intent of the Legislature that local agencies comply not only with
28 the language of this section, but also the legislative intent to
29 encourage the installation of solar energy systems by removing
30 obstacles to, and minimizing costs of, permitting for such systems.

31 (b) A city or county shall administratively approve applications
32 to install solar energy systems through the issuance of a building
33 permit or similar nondiscretionary permit. Review of the
34 application to install a solar energy system shall be limited to the
35 building official's review of whether it meets all health and safety
36 requirements of local, state, and federal law. The requirements of
37 local law shall be limited to those standards and regulations
38 necessary to ensure that the solar energy system will not have a
39 specific, adverse impact upon the public health or safety. However,
40 if the building official of the city or county makes a finding, based

1 on substantial evidence, that the solar energy system could have
2 a specific, adverse impact upon the public health and safety, the
3 city or county may require the applicant to apply for a use permit.

4 (c) A city, county, or city and county may not deny an
5 application for a use permit to install a solar energy system unless
6 it makes written findings based upon substantial evidence in the
7 record that the proposed installation would have a specific, adverse
8 impact upon the public health or safety, and there is no feasible
9 method to satisfactorily mitigate or avoid the specific, adverse
10 impact. The findings shall include the basis for the rejection of
11 potential feasible alternatives of preventing the adverse impact.

12 (d) The decision of the building official pursuant to subdivisions
13 (b) and (c) may be appealed to the planning commission of the
14 city, county, or city and county.

15 (e) Any conditions imposed on an application to install a solar
16 energy system shall be designed to mitigate the specific, adverse
17 impact upon the public health and safety at the lowest cost possible.

18 (f) (1) A solar energy system shall meet applicable health and
19 safety standards and requirements imposed by state and local
20 permitting authorities.

21 (2) Every solar energy system for heating water shall be certified
22 by an accredited listing agency.

23 (3) A solar energy system for producing electricity shall meet
24 all applicable safety and performance standards established by the
25 National Electrical Code, the Institute of Electrical and Electronics
26 Engineers, and accredited testing laboratories such as Underwriters
27 Laboratories and, where applicable, rules of the Public Utilities
28 Commission regarding safety and reliability.

29 (g) On or before September 30, 2015, every city, county, or city
30 and county shall adopt an ordinance, consistent with the goals and
31 intent of subdivision (a), that creates an expedited, streamlined
32 permitting process for small residential rooftop solar energy
33 systems. In developing an expedited permitting process, the city,
34 county, or city and county shall adopt a checklist of all
35 requirements with which small rooftop solar energy systems shall
36 comply to be eligible for expedited review. ~~If submitted during~~
37 ~~business hours, an~~ *An* application that meet the requirements in
38 the checklist shall be reviewed ~~within 24 business hours of deemed~~
39 *approved upon receipt of the completed* application submittal. ~~If~~
40 ~~submitted after business hours, an application that meet the~~

1 requirements in the checklist shall be reviewed within 24 business
2 hours of the beginning of the next business day after submittal of
3 the application. The checklist and required permitting
4 documentation shall be published on a publically accessible Internet
5 Web site and the city, county, or city and county shall allow for
6 electronic submittal of a permit application and associated
7 documentation, and shall authorize the electronic signature on all
8 forms, applications, and other documentation in lieu of a wet
9 signature by an applicant. In developing the ordinance, the city,
10 county, or city and county shall strive to conform with standardized
11 checklists based on existing statewide solar permitting guidelines
12 or best practices including those developed through the United
13 States Department of Energy's SunShot Initiative.

14 (h) For a small residential rooftop solar energy system eligible
15 for expedited review, only one inspection shall be required and
16 that one inspection shall be scheduled within ~~two~~ *five* business
17 days of a request, if the request is received during business hours.
18 If the request is received after business hours, the inspection shall
19 be scheduled within ~~two~~ *five* business days of the beginning of the
20 next business day after receipt of the request. If a city, county, or
21 city and county *determines that it* is unable to provide *an* inspection
22 within ~~two~~ *five* business days of a request, the city, county, or city
23 and county may ~~authorize a third-party inspection, using a qualified~~
24 ~~or certified inspector.~~ *hold a public hearing and adopt an*
25 *ordinance or resolution providing for a different time period or*
26 *different means for scheduling inspections.* If the small residential
27 rooftop solar energy system fails inspection, a subsequent
28 inspection shall also conform to the requirements of this
29 subdivision.

30 (i) A city, county, or city and county shall not condition approval
31 for any solar energy system permit on the approval of a solar
32 energy system by an association, as that term is defined in Section
33 4080 of the Civil Code.

34 (j) The following definitions apply to this section:

35 (1) "A feasible method to satisfactorily mitigate or avoid the
36 specific, adverse impact" includes, but is not limited to, any
37 cost-effective method, condition, or mitigation imposed by a city,
38 county, or city and county on another similarly situated application
39 in a prior successful application for a permit. A city, county, or
40 city and county shall use its best efforts to ensure that the selected

1 method, condition, or mitigation meets the conditions of
2 subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of
3 Section 714 of the Civil Code.

4 (2) "Accredited listing agency" means a standards or testing
5 organization that evaluates solar energy systems according to
6 specified, independent criteria and allows its mark to be used on
7 qualifying systems as a stamp of approval, such as the American
8 National Standards Institute or the American Association for
9 Laboratory Accreditation.

10 (3) "Electronic submittal" means the utilization any of the
11 following:

12 (A) Email.

13 (B) The Internet.

14 (C) Facsimile.

15 (4) "Small residential solar energy system" means all of the
16 following:

17 (A) A solar energy system that is no larger than 10 kilowatts
18 alternating current nameplate rating or 30 kilowatts thermal.

19 (B) A solar energy system that conforms to all applicable state
20 fire, structural, electrical, and other building codes as adopted or
21 amended by the city, county, or city and county and paragraph (3)
22 of subdivision (c) of Section 714 of the Civil Code.

23 (C) A solar energy system that is installed on a single or duplex
24 family dwelling.

25 (D) A solar panel or module array that does not exceed the
26 maximum legal building height.

27 (5) "Solar energy system" has the same meaning set forth in
28 paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the
29 Civil Code.

30 (6) "Specific, adverse impact" means a significant, quantifiable,
31 direct, and unavoidable impact, based on objective, identified, and
32 written public health or safety standards, policies, or conditions
33 as they existed on the date the application was deemed complete.

34 SEC. 4. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 a local agency or school district has the authority to levy service
37 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O

CITY COUNCIL

PHIL KATZAKIAN, Mayor
LARRY D. HANSEN,
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BOB JOHNSON
JOANNE MOUNCE
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RANDI JOHL-OLSON
City Clerk
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Interim City Attorney

May 21, 2014

Honorable Al Muratsuchi
Member, California State Assembly
State Capitol Building, Room 4117
Sacramento, California 95814
Via Facsimile: (916) 319-2166

**SUBJECT: AB 2188 (Muratsuchi) Solar Permits (as amended May 5, 2014)
NOTICE OF OPPOSITION**

Dear Assembly Member/Senator:

The City of Lodi is writing to express our opposition to AB 2188. This measure would, among other things, require cities and counties to adopt a new, costly ordinance that would essentially create a separate permitting and inspection process specifically for residential solar installations of less than 10 kilowatts.

While we remain supportive of expanding access to renewable energy resources, including residential solar, we do not believe that the rigid solar permit and inspection process as mandated in AB 2188 is the right approach. Requiring every local jurisdiction to uniformly issue solar permits and inspect solar installations within five days of the request would be very problematic and costly for many local governments still recovering from the historic economic downturn. A local jurisdiction's ability to process a permit application and complete an inspection in an expedited manner is largely driven by available funding and trained staff. Furthermore, many municipalities still impose mandatory furloughs on Fridays, which limit their ability to provide services under a specified timeline.

It should also be noted that AB 2188 could pose a significant threat to public safety. Amendments taken in the Assembly Local Government Committee on April 30, 2014 completely eliminate the review process for solar permits and instead require local jurisdictions to issue the permit in a ministerial manner upon receipt of a completed application. Eliminating the permit review process would prohibit cities from involving their fire department or utility department in the permit approval process, thus removing a jurisdiction's ability to verify that no fire hazards are present and the installation complies with all applicable fire codes.

Building permits and inspections are required by state law, regulations, and local ordinances to help ensure public safety. By enforcing these laws, local governments essentially act as a consumer protection agency. AB 2188 could jeopardize this proven process by forcing cities and counties to potentially overlook shortcomings in solar permit applications or installations in order to comply with the bill's highly restrictive approval timeline. For these reasons, the City of Lodi opposes AB 2188.

Sincerely,

Phil Katzakian
Mayor

C: Senator Cathleen Galgiani / Assembly Member Richard Pan
Stephen Qualls, League of California Cities