



COVID-19, Local Finances and Labor Negotiations: **The New Normal**

Wednesday, May 13th
11am PST

The webinar will begin shortly.

May 13, 2020

The background of the slide is a photograph of a classical building with white columns and a blue sky with light clouds. The text is overlaid on this image.

Covid-19 Impact on Bargaining with Labor Groups

The logo for AdastraGov is centered in a white rectangular box. It consists of the text "AdastraGov" in a blue, sans-serif font, followed by a yellow circular icon containing a globe with a diagonal line through it, suggesting a global or legal theme.

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Agenda

- Introductions
 - Crisis and scenario analysis
 - Develop your strategy
 - Reducing expenses
 - Open and closed contracts
 - Restructuring
 - Fiscal emergency planning for solvency
 - Final thoughts
 - Q & A
-

Introductions



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Crisis and Scenario Analysis

- Economic Impact in California
 - Impact on Pensions
 - Impact on Personnel Costs
 - Impact on Revenues and Expenses
-

COVID-19 Fiscal Impact on California Cities



California cities face severe revenue shortfalls due to the impact of the COVID-19 pandemic on their economies and increased emergency costs. As a result, cities will be forced to make significant reductions or cuts to a broad range of core public services and staff, regardless of population size. Given current and projected revenue shortfalls, cities need fiscal assistance to stabilize local government operations to offset the devastating impacts the crisis is having on California's communities. These findings are part of a new data analysis* by the League of California Cities.

Public Services Will Be Impacted By Drastic Revenue Loss



Core Services Face Significant Impacts Regardless of City Size



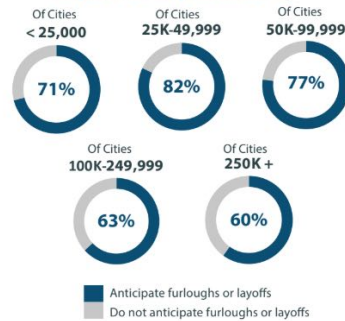
Cities anticipate a nearly **\$7 BILLION GENERAL REVENUE SHORTFALL** over the next two fiscal years. This shortfall will grow by billions of dollars if COVID-19 stay-at-home orders extend into the summer months and beyond.

City Leaders Report Immediate Impact to Core Revenue Sources

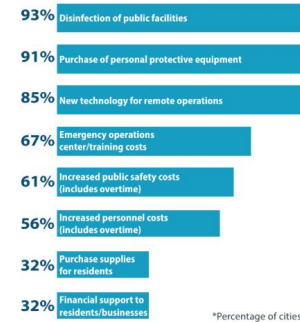
- 100%** Sales Taxes
- 89%** Hotel/Bed Taxes
- 72%** Property Transfer Taxes
- 42%** Utility Taxes
- 15%** Investments, Forfeitures, and Fines
- 4%** Parking and Admissions

12% of cities report spending **> \$500k** to help control the COVID-19 pandemic

COVID-19 Has Staggering Impact on City Workforce



Unanticipated COVID-19 Expenses



100% of California cities, regardless of population size, face projected revenue loss this year

Over **90%** of cities are considering **LAYOFFS OR EMPLOYEE FURLOUGHS, or CUTTING PUBLIC SERVICES.**
72% are considering doing **BOTH.**

Cities Key Revenue Loss by Source through FY 21-22

\$24 million Utility Taxes	\$28 million Property Transfer Taxes
\$65 million Franchises	\$93 million Parking and Admissions
\$175 million Investments, Forfeitures, and Fines	\$402 million Business Tax
\$616 million County Transportation SUT	\$1.37 billion Hotel/Bed Taxes
\$2.26 billion Sales Taxes	\$1.7 billion City/County of San Francisco

Total \$6.7 billion

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Impact on Pensions

Govinvest PENSION Demo City Charles Francis

Years Projected: 30

Filter: Plans

Global Adjustments

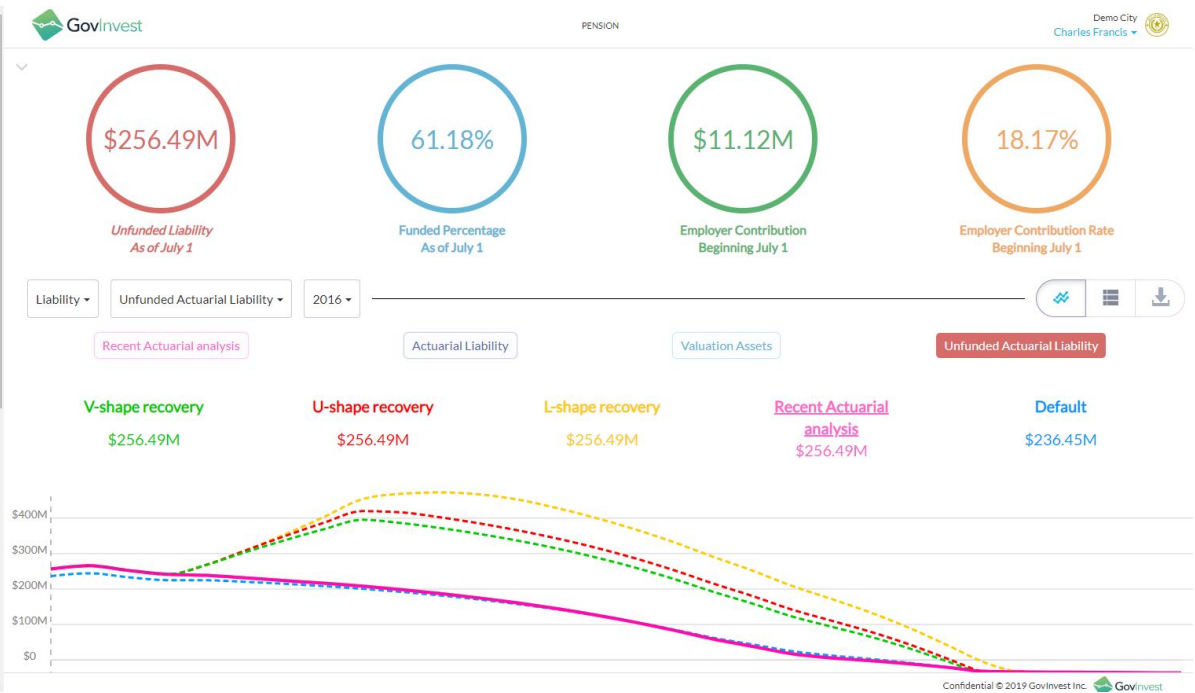
Assumptions and Methods

Scenario Comparison

- Default (use as baseline)
- V-shape recovery (use as baseline)
- U-shape recovery (use as baseline)
- L-shape recovery (use as baseline)
- Recent Actuarial analysis (baseline)

Saved Scenarios

Saved scenarios not in current comparisons will appear here



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Impact on Personnel Costs

Project setup
Projects List

Proposals

Current Proposal
F5Demo
copy rename delete new
save save as discard

Comparisons

- F5Demo-3%
- F5Demo-v-shape recovery
- F5Demo-3% and v-shape recovery
- F5Demo-U-shape recovery
- F5Demo-L-shape recovery

Adjustments

1. Salaries and Wages

2. Benefits-Pension

Miscellaneous (%)
2020 2021 2022 2023 2024



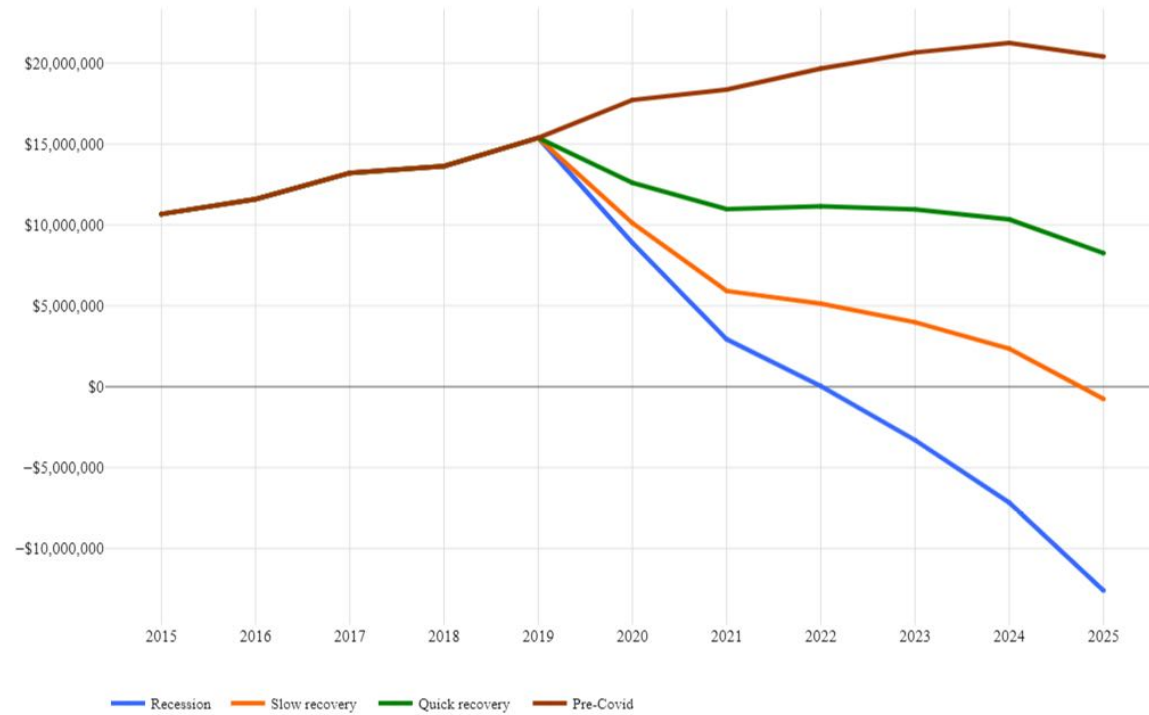
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Impact on Revenues & Expenses

General Fund Balance





Develop Your Strategy

An overall strategy should guide all aspects of a negotiation

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Meyers-Milias Brown Act Emergency

- The MMBA requires local public employers to:

1. “meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with” union representatives before “arriving at a determination of policy or course of action” and
2. give reasonable written notice to unions and the opportunity to meet and confer regarding any “ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the” agency’s governing body or designated boards and commissions.



However, in the cases of emergency, this duty is suspended until “the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation”

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Meyers-Milias Brown Act Emergency

- The MMBA does not explain what constitutes a local emergency, but according to...
 - The Court of Appeals: “emergency has long been accepted in California as an unforeseen situation calling for immediate action”
 - *Sonoma County Organization etc. Employees v. County of Sonoma* (1991) 1 Cal.App.4th 267, 276.
 - PERB: “under exceptionally limited circumstances, an employer may be excused from negotiating on the basis of true emergency that provides a basis for claiming that a business necessity excused a unilateral change”
 - *County of San Bernardino (Office of Public Defender)* (2015) PERB Decision No. 2424-M, at 54.

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Organizational Alignment

- Make sure everyone is on the same page: your executive team, department heads, operational managers, finance, legal, HR, and elected officials
- Establish clear internal communication channels
- Start with a comprehensive summary of the financial concerns before a single proposal is on the table




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Top Tips

- Bargain early, set reasonable deadlines
 - Carefully consider opening proposals
 - Be especially mindful of internal equity issues
 - Develop and Maintain Credibility
 - Beware of surprises from other sources within the agency
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- A solid blue horizontal bar spans the width of the slide, positioned below the list of tips.



Options to Reduce Expenses

To match revenue
reductions

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Open Contracts

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Timing

- If you have an open contract, do you want to close it before July 1?
 - Can you live with a one-year roll-over with no wage increase?
 - Does the contract foreclose or limit layoffs or furloughs?
 - Does the contract contain other potentially costly provisions?

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If Zero Won't Do

- Wage reductions and such
 - Pension cost-sharing
 - Longevity premiums
- Furloughs
- Change minimum staffing
- Changes to reduce need for OPEB pre-funding
- Limit cash-outs
- Triggered re-openers





Closed contracts

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Voluntary Reopeners

- Defer future wage increases
 - Wage cuts (perhaps to limit layoffs)
 - Staffing reductions (where minimum staffing specified in MOU)
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Structural changes

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Joint Power Authorities

- Types
 - Police/fire
 - Parks/Public Works
 - Mega
- Benefits
 - Currently, new JPAs are not required to provide defined benefit plans
 - Economies of scale and regional coordination
- Concerns
 - Arguably, shifting work to a JPA may constitute contracting out for the purposes of MMBA
 - Loss of local control

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Contracting out

- As a practical matter, PERB now requires full bargaining for any contracting out
- There are also significant limitations on the ability of general law cities to contract out services
- Also, BEWARE that CalPERS is actively policing the contractor/employee distinction
- Expect further legislative efforts by unions to limit contracting out

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Limited relief available through CalPERS

- Use of 115 funds to pay pension/OPEB costs
 - CalPERS allows local agencies to work on a case by case bases.
 - Current options are limited to doing a “fresh start” or a revised amortization policy
 - If granted, the unfunded liability can be amortized as a level dollar amount for up to a 30-year extension due to severe financial hardship
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Fiscal Emergencies and Bankruptcy

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Declaration of Fiscal Emergency

- The case that established the four-part test: *Sonoma County Organization of Public Employees vs. The County of Sonoma*
- The Four-Part Test
 1. The contract modification must arise out of an actual emergency
 2. Relief from the contract must be necessary to protect a basic societal interest rather than for the benefit of a particular group of individuals
 3. The modification or relief must be appropriately tailored to the emergency it was designed to address, and the conditions that result must be reasonable
 4. The modification imposed must be temporary and limited to the exigency that prompted the legislative response

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Declaration of Fiscal Emergency

- Note: These factors are not necessarily absolute
 - Example: *In United States Trust Company of New York v. New Jersey* – “the existence of an emergency and the limited duration of a relief measure are factors to be assessed in determining the reasonableness of an impairment... they cannot be regarded as essential in every case”
 - “an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose”

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AB 506: A Viable Pre-Bankruptcy Option

- In order to qualify for bankruptcy protections, a public agency must:
 - Engage in a neutral evaluation process with its creditors with the help of a mediator; or
 - Declare a fiscal emergency

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Bankruptcy and Pension

- Under Chapter 9 of the Bankruptcy Code, municipalities can file for bankruptcy if they meet the eligibility requirements
 - Section 365's rejection power
- A municipality's pensions obligation *may* be adjusted as part of a Chapter 9 plan
 - *IN RE: CITY OF STOCKTON, CALIFORNIA, Debtor*
 - *Butner v. United States; City of Detroit*
- Bankruptcy courts must consider the alternatives to adjusting pension obligations, including the impact on employees

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Final Thoughts

- When Bargaining in a Concessionary Environment, let the facts do the work
 - The Quality of materials you produce for your Council/Board, will determine your success
 - As no one knows the long-term economic effects of the COVID-shutdown, presenting alternative scenarios regarding the long-term effects will be critical
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Thank you

Comments/Questions/
Concerns?



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