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Newsletter | Fall 2020

Update on Public Law How Many Voters Does It Take to Pass a Special Tax?

By Michael G. Colantuono

City and County of San Francisco v. All Persons Interested in the Matter of Proposition C is a recent, landmark Court of Appeal decision allowing special taxes proposed by initiative to be approved by a simple majority — not two-thirds — of voters. It follows on a 2017 decision of the California Supreme Court in *California Cannabis Coalition v. City of Upland*. That case concluded that Prop. 218 did not apply to initiative tax proposals because “local government” did not include the electorate exercising its initiative power. The decision was written broadly and raised questions about Prop. 218’s two-thirds-voter-approval requirement for special taxes.

San Francisco voters approved Measure C in 2018 to raise a business license tax to fund homeless services. It passed with 61 percent approval, and the city filed a validation action to test whether it could be enforced without two-thirds voter approval. The trial court ruled for the city, citing *Upland*. Three business associations argued that two-thirds voter approval was required by Prop. 13, Prop. 218, and the city charter, which extends the initiative power to measures “within the powers conferred upon the Board of Supervisors to enact.” The Court of Appeal disagreed in a published opinion.

The business associations sought review in the California Supreme Court, but that court denied review. As a result, the Court of Appeal opinion is now the law of California — for now. At least six other cases are pending to test this issue in other courts. If another Court of Appeal disagrees with the *San Francisco* ruling, trial courts will be free to choose between the two decisions until the California Supreme Court resolves the issue. Alameda County has two cases pending in the trial court, San Francisco has two cases pending in the Court of Appeal, and Oakland and Fresno have one appeal each in progress. Most likely to be decided next is Fresno’s appeal, which is set for argument on December 15, 2020, meaning decision is likely by March 15, 2021. Stay tuned!

For more information, contact Michael at MColantuono@chwlaw.us or (530) 432-7359.

We’ve Got Webinars!

CH&W offers webinars on a variety of public law topics including redistricting after 2020 Census data are released in March 2021; the welter of new housing laws; personnel, public works, and management issues under COVID-19; and, police personnel records. Current topics are listed on our website (www.chwlaw.us) under “Resources.”

Our webinars provide advice and Q&A for public agency counsel and staff in an attorney-client-privileged setting for \$1,000 per agency. To schedule a webinar, contact Bill Weech at BWeech@chwlaw.us or (213) 542-5700.

Redistricting: 2021 Remapping Process is Upon Us

By Matthew T. Summers

Next year, all public agencies with district elections will need to redraw electoral districts to reflect the results of the 2020 Census. For the many agencies which adopted districts in response to demands under the California Voting Rights Act, this will be entirely new. For agencies with a history of district voting, the 2021 redistricting will be substantially different due to new legislation.

The Fair and Inclusive Redistricting for Municipalities and Political Subdivisions Act (FAIR MAPS Act), AB 849 (Bonta, D-Alameda) imposes new procedural and substantive requirements on cities and counties, but not special districts. Previously, all agencies could — but were not required to — consider topography, geography, communities of interest, cohesiveness, contiguity, integrity, and compactness when drawing or revising districts. Special districts can apply the same rules as before. Los Angeles and San Diego Counties will redraw districts through existing commissions. For all other cities and counties, including charter cities, new requirements apply.

Substantively, cities and counties are now required to apply uniform, mandatory criteria. Under AB 849, they must now draw or re-draw districts of equal population applying these criteria, in order of priority: 1) geographical contiguity; 2) cohesion of local neighborhoods and communities of interest; 3) easily identifiable and understandable boundaries, using natural and artificial barriers when possible; 4) compact, to the extent practical in light of higher-ranked criteria. These new criteria may require significant alteration of districts, even those established relatively recently.

The public will have increased opportunities to participate. Cities and counties must hold at least four public hearings before adopting districts, including one before drafting maps and two after publishing draft maps for public comment. Clerks

must create redistricting websites, with specified information about the process, all notices, and draft and final maps, available in English and any other language spoken by at least 3% of the agency's residents. Agencies must complete redistricting 151 days before their first regular election in 2022 (i.e., by June 10, 2022 for the November 8, 2022 election), but cannot publish a draft map before August 1, 2021. Local governments embarking upon redistricting should start promptly after Census data are available, now slated for March 31, 2021 to allow sufficient time.

Districting can be contentious and can invite litigation. Accordingly, agencies are well advised to seek the support of qualified demographers (who may be in short supply for those who delay) and experienced legal counsel.

For more information, contact Matt at MSummers@chwlaw.us or (213) 542-5719.

We're Blogging!

CHW is now blogging on issues of interest to California local government officials. The California Public Law Report is available here:

www.CaliforniaPublicLawReport.com

We provide regular updates on legal and other developments of interest to local government leaders. Readers can visit when they wish or subscribe to the blog via an RSS (really simple syndication) feed or email notices.

Check it out!

Win for Government on Cost to Relocate Utilities

By Holly O. Whatley

In *Riverside County Transportation Comm'n v. Southern California Gas Co.*, the Court of Appeal extended to a public agency that did not grant the franchise the benefits of a utility franchise provision on the cost to relocate utility infrastructure. In 1939, the City of Riverside and, in 1953, the City of Perris granted franchises to SoCal Gas for pipelines under streets. SoCal Gas accepted the franchises, installed the lines, and paid annual franchise fees. As is typical, the franchises required SoCal Gas to pay to relocate pipelines to allow any lawful change of street grade, alignment, or width.

When the RCTC extended Metrolink from Riverside to Perris, it identified five utility conflicts. SoCal Gas had license agreements (akin to leases) with railroads for four of the five, and RCTC succeeded to the railroads' interest in those agreements. RCTC demanded SoCal Gas pay to relocate the pipelines, but it refused.

To avoid delaying its Metrolink project, RCTC paid about \$562,000 to SoCal Gas under protest to relocate the pipelines. RCTC sued to recover the money and for breach of license, trespass, quiet title and common counts. On summary judgment, the trial court ruled for RCTC as to reimbursement, but for SoCal Gas on other claims. Both appealed.

As to the location for which SoCal Gas had no license, the Court of Appeal affirmed that RCTC could recover relocation costs under the franchises. It found Public Utilities Code § 6297 did not apply to require the utility to fund the relocation, but a common law (i.e., judge-made) rule did. That rule requires a franchised utility "to make way for a proper governmental use of the streets." SoCal Gas argued RCTC's use was "proprietary," not governmental. The Court rejected the argument with a lengthy review of the history of that distinction: "[T]he reasons underlying the governmental-proprietary distinction in the utility relocation context are no longer valid." Because RCTC was a government authorized to construct and operate

public transit, its project was necessarily governmental. The Court also held the RCTC properly terminated the licenses, obliging SoCal Gas to remove its pipelines from those locations.

This is welcome news for public agencies, as utilities frequently dispute relocation costs, forcing agencies to litigate to recover costs they advance under protest.

For more information, contact Holly at HWhatley@chwlaw.us or (213) 542-5704.

Gary Bell and Ryan Reed Recognized

The Daily Journal Corporation, publisher of California's leading legal trade paper, named **Gary B. Bell** to its "Top 40 Under 40" list. The annual list honors California's leading lawyers under the age of 40, selected from hundreds of nominees across all legal fields and throughout the state. The award highlights Gary's work as Auburn City Attorney, and his successful defense of the City's imposition of a lien for costs to abate prostitution at a massage establishment. After successfully defending the City in administrative proceedings, Gary successfully defended a suit to overturn the decision, achieving a complete victory for the City. Jon R. di Cristina also represented the City.

Best Lawyers included **Ryan A. Reed** in the 2021 Best Lawyers: Ones to Watch. This list is a peer-reviewed recognition of younger attorneys for professional excellence. Ryan is recognized in Municipal Law. He graduated *cum laude* from Georgetown Law in 2018, and currently serves as the Assistant City Attorney for the Cities of Auburn, Chico, and Grass Valley, Assistant Town Attorney for Yountville, and Assistant General Counsel for a number of our special district clients. He advises clients on municipal issues ranging from land use to cannabis regulation to labor and employment.



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