COLANTUONO, HIGHSMITH & WHATLEY PC PASADENA | GRASS VALLEY

Newsletter | Spring 2020

COLANTUONO HIGHSMITH WHATLEY, PC

Update on Public Law

COVID-19: Back to Work!

By Ryan A. Reed and Teresa L. Highsmith

As of late April, California has been under a stay-at-home order for over a month. As the emergency continues, employers face challenging decisions as to when and how to require employees to come to work.

Mandating Work On-Site. Employers providing essential services may require employees to provide services on-site, or by telecommuting if job duties can be performed remotely. It is advisable to document the services provided by each job classification, whether they are essential, and whether they can be performed on-site or via telecommuting This can help show management's decisions to order employees to work on-site or remotely are not arbitrary or discriminatory. A telecommuting agreement is a useful tool to clarify management's and employees' expectations.

Agencies may discipline employees for job abandonment if they do not show up for work without leave. Memoranda of understanding or internal policies may define what constitutes job abandonment. Absent such definitions, a rule of thumb is that a three-day unexcused absence amounts to job abandonment. Before resorting to discipline, we recommend contacting employees to ensure they are not claiming leave. Not contacting employees risks a discrimination and retaliation claim.

Return to Work. To ensure continuity of essential functions, the Centers for Disease Control recommend only that symptomatic employees and those within three days of recovery be required to stay home. Exposed employees can return to work under these conditions:

1. Screening: Employers should measure employees' temperatures and assess symptoms before their return to the work site.

2. Monitoring: Employees should self-monitor for symptoms and employers can tell them what symptoms to look for.

3. Face Masks: Employees should wear face masks for 14 days after their last exposure to COVID-19.

(Continued on page 2)

Webinars!

CH&W offers webinars on:

- SB 998 – mandatory policies governing **water-meter shutoffs** for nonpayment;
- SB 330 – **Housing** Crisis Act of 2019;
- **COVID-19** – pesonnnel, public works, and management issues ;
- SB 1421 and AB 748, recent statutes granting greater public access to **police personnel records**;
- New laws on accessory dwelling units (**ADUs**).

A webinar allows agency management and counsel advice and guidance and Q&A in an attorney-client-privileged setting. The fee is $1,000 per agency.

To schedule a webinar, contact Bill Weech at BWeech@chwlaw.us or (213) 542-5700.

Stronger Cannabis Enforcement

By Matthew T. Summers and Nikhil S. Damle

California cities and counties face challenges in enforcing cannabis ordinances and laws. A new statute strengthens enforcement, complementing existing tools recently reaffirmed by courts.

AB 97 (Budget Comm.) empowers the Bureau of Cannabis Control, the Department of Food and Agriculture, and the Department of Public Health to cite any violation of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), adopted after Proposition 64 to regulate legal cannabis entities and to integrate adult use and medical cannabis commerce. AB 97 amended MAUCRSA to extend provisional state cannabis licenses through 2021, to extend the window for permanent state licenses, and to require licensees to submit evidence of compliance with local licensing requirements.

Under AB 97, state licensing authorities may fine unlicensed operators up to $5,000 per violation for any MAUCRSA violation for licensees and $30,000 for those unlicensed, with discretion to impose lower fines depending on the seriousness of the violation, the good faith of the violator, and previous violations. Fines can be appealed to an administrative hearing officer and are subject to review in court. Fine proceeds are available to state licensing authorities for enforcement, investigation, and regulation.

Cities cannot impose fines under AB 97. Instead, they may use their existing nuisance abatement authority to issue notices of violation and citations, and may sue to close, or compel compliance by, unlawful businesses. Cities and counties retain their broad police power to regulate land use. The state Supreme Court and several Courts of Appeal have consistently found local land use authority undiminished by changing cannabis laws and affirmed the use of nuisance abatement actions to close or regulate cannabis businesses. In 2018, CH&W won *City of Pasadena v. Medical Cannabis Caregivers* — a nuisance abatement action to close unlicensed dispensaries — a published case affirming local regulatory power, holding unlicensed activity can be abated as a nuisance per se.

Cities and counties can enforce licensing and land use requirements for cannabis commerce with these local tools, by seeking state enforcement, or both.

For more information on this subject, contact Matt at MSummers@chwlaw.us or (213) 542-5719 or Nikhil at NDamle@chwlaw.us or (213) 542-5709.

Return to Work (Cont.)

4. Social Distance: Employees should maintain social distance from others in the workplace.

5. Clean and Disinfect: Employers should clean and disinfect shared areas and make disinfecting supplies available to employees.

Ideally, a physician's release should be required before a previously symptomatic employee is permitted to return to work. Otherwise, it is wise to require employees to certify they have experienced no symptoms in the three days before return. Employers should develop a self-certification form (listing symptoms the CDC has identified) for employees to complete and state an employee may be subject to discipline for a false certification.

For more information on this subject, contact Ryan at RReed@chwlaw.us or (530) 270-9490 or Terri at THighsmith@chwlaw.us or (213) 542-5703.

Charter Cities and Statewide Elections

By Holly O. Whatley

In *City of Redondo Beach v. Padilla*, the LA Court of Appeal concluded the Voter Participation Rights Act (VPRA) does not apply to charter cities, a question much debated since the VPRA's 2015 adoption. If a jurisdiction's local-election turnout is 25 percent or more below its turnout in the previous four statewide general elections, it must consolidate its local elections with statewide elections. Few cities have the turnout required to maintain separate local elections. Many charter cities consolidated with statewide elections despite doubt the VPRA applied to them.

Redondo Beach challenged the VPRA, arguing it violated the constitutional home rule doctrine giving the city plenary authority over its elections. Redondo Beach's charter set its regular elections for March in odd-numbered years. The Court found that, if it applied, the VPRA would conflict with Redondo Beach's charter, triggering an established four-part analysis (the "*CalFed / Vista* analysis") of whether a city's charter must yield to contrary state law. But the Court found no need to engage in that analysis because neither the text nor legislative history of the VPRA clearly applied it to charter cities.

As to the statute's text, the Court noted the Legislature is typically specific when it intends laws to apply to charter cities. It found VPRA's use of "political subdivision" too generic to evidence intent to include charter cities. The Court also declined to infer such intent from legislative history. To avoid the constitutional home-rule question, the Court construed the VPRA not to apply to charter cities, obviating the need for *CalFed / Vista* analysis.

Absent Supreme Court review, charter cities which did not consolidate their local elections with statewide dates need not do so. And those that did consolidate have the freedom to revert to other dates. Caution is appropriate until late May or early June when we will know if Supreme Court review is sought or granted.

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

Money Fights: Utility Rates and Pensions

By Michael G. Colantuono

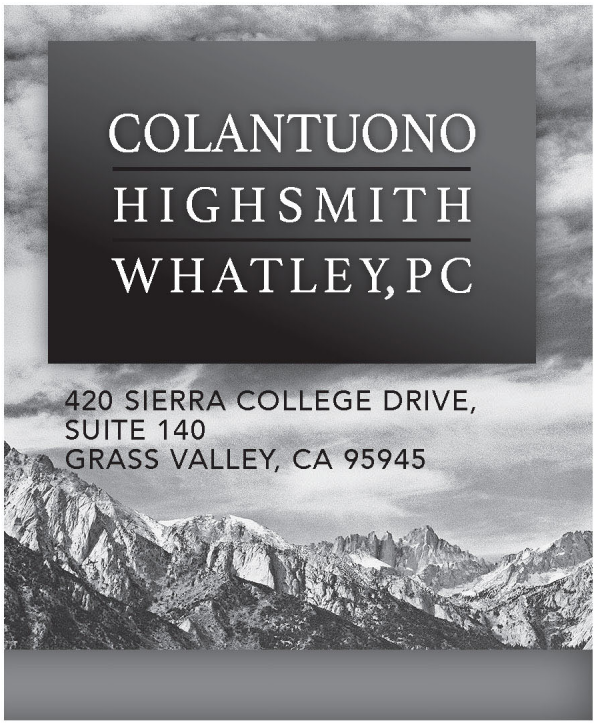
It is a busy time for finance law and may get busier with the COVID-19 economic downturn.

First up is *Zolly v. City of Oakland*, a new decision of the San Francisco Court of Appeal allowing a class of refuse customers to sue that City, arguing the franchise fees haulers pay the City (and pass through to customers) are taxes requiring voter approval because they bear no reasonable relationship to the value of the franchise rights. Oakland will seek Supreme Court review, but if the decision remains as the Court of Appeal decided it, it amounts to a restatement of *Jacks v. City of Santa Barbara*, a Supreme Court decision CH&W won for that City in 2017. *Jacks* involved an electric franchise; similar disputes are pending in Ventura and San Diego. When granting franchises that require franchise fees, local governments should include evidence in the record showing the fee is at least roughly proportionate to the value of the franchise rights.

On the morning of May 5th, the California Supreme Court will hear three local government cases: *Weiss v. Caltrans* (inverse condemnation procedures), *Alameda County Deputy Sheriffs' Association v. Alameda County Employees' Retirement Association* (did PEPRA violate vested pension rights, as by ending "air time"?), and *Wilde v. City of Dunsmuir* (can you referend a water rate?). CH&W's Michael Colantuono will argue *Weiss* and *Wilde*. Arguments are web-streamed at <https://www.courts.ca.gov/35333.htm>.

Finance law keeps moving. As always, we will keep you posted!

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



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