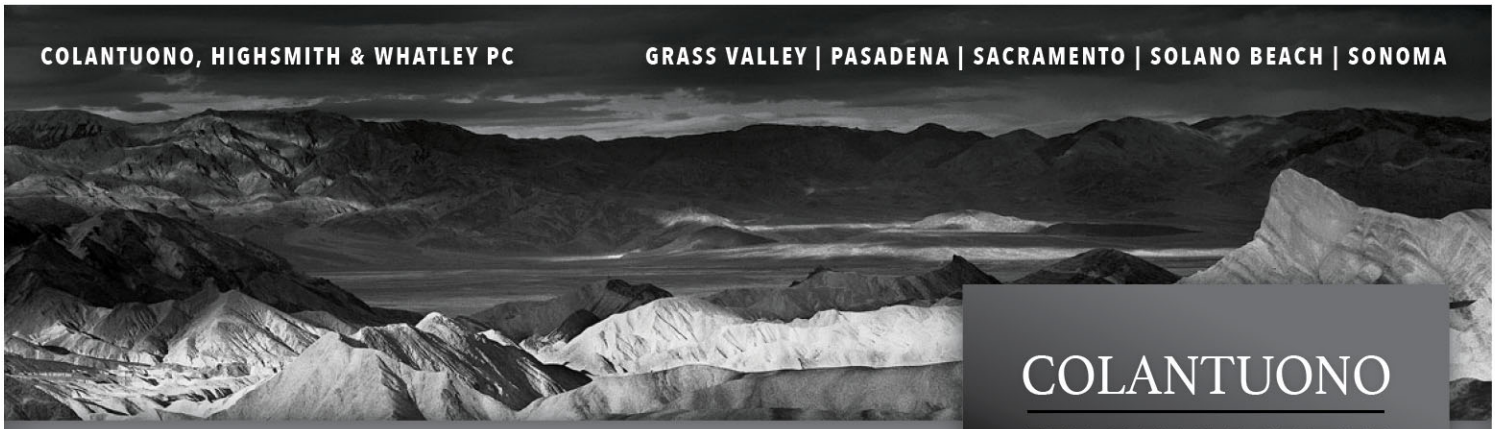
COLANTUONO, HIGHSMITH & WHATLEY PC GRASS VALLEY | PASADENA | SACRAMENTO | SOLANO BEACH | SONOMA



Newsletter | Spring 2021

COLANTUONO HIGHSMITH WHATLEY, PC

Update on Public Law

SCOCA Molds Public Finance Law

By Michael G. Colantuono

The California Supreme Court has a major role in developing the law of public revenues, interpreting the initiative constitutional amendments which frame that law. It does so by the cases it decides and — importantly — by those it decides not to hear at all.

In 2017, the Court decided *California Cannabis Coalition v. City of Upland*, a dispute over an initiative to allow marijuana dispensaries in that city. It concluded that an initiative is not subject to some of Proposition 218's limits on taxes proposed by city councils and county boards of supervisors. Its broad language opened the door to the possibility that a special tax proposed by initiative could be immune from the requirement for two-thirds voter approval. Three Court of Appeal decisions have now walked through that door, concluding that initiative special taxes can be approved by simple majorities of votes — two involving San Francisco and one involving Fresno. All three led to petitions for review in the California Supreme Court and the Supreme Court denied all three petitions. Thus, without deciding a case, the California Supreme Court has made very clear that the law is now settled — special taxes proposed by initiative require only simple-majority voter approval.

Some issues remain in litigation, such as whether special transactions and use ("sales") taxes require two-thirds voter approval because the Revenue & Taxation Code says so. We are litigating that issue for the County of Alameda. But, in large part, this battle is over.

The Supreme Court will decide, likely in the next year, an important issue in public finance litigation — whether a plaintiff must participate in a rate-making or other revenue hearing, identify the legal issues on which they will sue, and allow the agency to respond before suit. This is known as "exhausting administrative remedies" and, specifically, "issue exhaustion." It sounds pretty technical, but it matters greatly to the stability of

(continued on page 2)

Where to find us:

GRASS VALLEY
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
Phone (530) 432-7357

PASADENA
790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101-2109
Phone (213) 542-5700

SACRAMENTO
333 University Avenue, Suite 200
Sacramento, CA 95825
Phone (916) 400-0370

SOLANA BEACH
440 Stevens Avenue, Suite 200
Solana Beach, CA 92075
Phone (858) 682-3665

SONOMA
670 West Napa Street, Suite F
Sonoma, CA 95476
Phone (707) 996-9690

www.chwlaw.us
Blog:
www.californiapubliclawreport.com

Organics Recycling is Coming – Is Your City Ready?

By Gary B. Bell and Nikhil S. Damle

SB 1383 (Lara, D-South Gate) established methane emissions reduction targets for short-lived climate pollutants — like methane. Governor Brown signed it into law in 2016. It requires a 50% reduction by 2020 from 2014 levels of organic waste disposal, and a 75% reduction by 2025. It also requires at least 20% of edible food currently entering the waste stream be recovered for human consumption by 2025. These requirements will challenge many cities and sanitation districts, which must work with their staffs and franchised haulers to adopt and enforce ordinances to comply with the new law. It applies to every commercial and residential generator of waste in the State — all of us.

CalRecycle is tasked to oversee implementation of the law. It released final regulations in late 2020. By January 1, 2022, cities and districts are required to adopt an "enforceable ordinance" mandating reduction of organic waste and to establish an edible food recovery program. Enforcement begins January 1, 2024. CalRecycle released models of a franchise agreement, organic waste reduction ordinance, procurement policy, and edible food recovery agreement. These are available on its website at https://www.calrecycle.ca.gov/Organics/.

Cities and districts should start work on an ordinance now to meet the deadline. This will likely require discussions with franchised haulers, food recovery organizations, large commercial waste generators, and others. Franchise and other agreements may also require amendment. With the exception of enforcement, for which public agencies must retain responsibility, a city or district can designate a private entity (such as a franchisee) or a public entity (such as a joint powers agency) to fulfill the new requirements.

The bill authorizes CalRecycle to impose penalties on cities and districts for noncompliance beginning January 1, 2022. However, this may be tempered by SB 619 (Laird, D-Santa Cruz), which blocks CalRecycle from assessing penalties against cities and towns until January 1, 2023, as long as they have shown "reasonable effort" to comply. SB 619 does not change the compliance date of January 1, 2022, so ordinances must still be adopted by then. As this newsletter is written, the bill is pending in the Assembly Natural Resources Committee.

For more information, contact Gary at GBell@chwlaw.us or (916) 400-0370; or Nikhil at NDamle@chwlaw.us or (213) 542-5700.

Public Finance Law (cont.)

government finance. Without such a requirement, every new development in public finance law can produce a wave of lawsuits — like the many challenges to tiered water rates that followed the 2015 decision in *Capistrano Taxpayers Assn. v. City of San Juan Capistrano* or to general fund transfers from power utilities that followed the Court of Appeal decision in *Citizens for Fair REU Rates v. City of Redding* in 2015, even though the Supreme Court reversed that City's loss in 2018. The pending Supreme Court case, handled by CHW for the affected assessment districts, is *Hill RHF Housing Partners, L.P. v. City of Los Angeles*. The Court of Appeal rejected a challenge to a business improvement assessment, holding the challengers needed to attend the hearings and to identify their issues — they could not just send in a "no" ballot and sue. The Supreme Court granted review in September 2020 and the case is now fully briefed. Argument is likely in 2022.

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

Historic Resources and Charter Cities' Home Rule Powers Bend to Housing Production

By Andrew L. Jared and Matthew T. Summers

New statutes have promoted housing supply at the expense of other local land use policies. Recent cases show how far they reach as against such other values as a 4,900-year-old cultural resource and cities' ability to control project siting.

In *Ruegg & Ellsworth v. City of Berkeley*, the Court of Appeal recently held that Government Code § 65913.4, adopted by 2017's SB 35 (Wiener, D-San Francisco), applies to charter cities, even as to a site on the Register of Historic Resources. This resource was a "shellmound"— archeological evidence of thousands of years of civilization.

Typically, a housing development receiving discretionary approval subject to the California Environmental Quality Act (CEQA) must comply with regulations to protect historical and cultural resources. In 2018, SB 35 required expedited review of housing projects. A qualifying project is subject only to "streamlined," ministerial approval and is not subject to conditions or mitigation measures. Cities must respond to a project application quickly — within 60 to 90 days, depending on project size — or the project is deemed to "satisfy" planning standards.

Ruegg & Ellsworth confirmed the Housing Accountability Act (Government Code § 65589.5) and SB 35 apply to charter cities and that recent amendments to the latter requiring streamlined approval of mixed-use projects, if at least two-thirds of the project's square footage is residential, apply retroactively. Berkeley is seeking review in the California Supreme Court.

The case did observe that, while mixed-use projects qualify for SB 35's streamlined approval process, their commercial components are subject to charter city land use power. Local application review procedures should account for this greater authority.

Home rule powers are also at issue in *California Renters Legal Advocacy and Education Fund v. City of San Mateo* involving the Housing Accountability Act (HAA). The HAA requires cities and counties to articulate why projects contradict objective standards within 60 days after a complete application is submitted, or the application is "deemed approved." San Mateo disapproved a 10-unit market-rate development for violating objective requirements for height limits and second-story setbacks from single-family uses. The trial court found its special standard of review of zoning compliance unconstitutional as to charter cities. Housing advocates appealed, and the Attorney General intervened to defend the statute. CHW wrote an amicus brief for Cal. Cities defending charter cities' home rule authority and arguing the HAA's special standard of review is unconstitutional for all cities as an unlawful delegation of municipal power to others. Decision is expected this year.

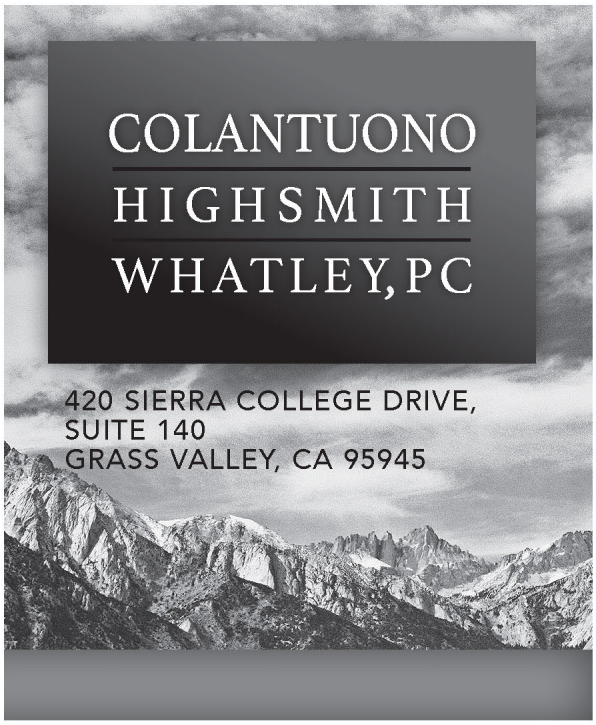
Given many new pro-housing laws, the risk of litigation, and tight deadlines; cities and counties must be prompt in reviewing housing proposals.

For more information, contact Andrew at AJared@chwlaw.us or (213) 542-5390; or Matt at MSummers@chwlaw.us or (213) 542-5719.

We've Got Webinars!

CHW offers webinars on a variety of public law topics including mandatory policies on water-meter shutoffs; new and proposed housing statutes; public works; and police personnel records. Check our website for current topics.

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



PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
MAIL MASTERS

Are you on our list? To subscribe to our newsletter or to update your information, complete the form below and fax it to 530/432-7356. You can also call Marta Farmer at 530/432-7357 or subscribe via our website at WWW.CHWLAW.US.

Name _____ Title _____

Affiliation _____

Address _____

_____

City _____ State _____ Zip Code _____

Phone _____ Fax _____

E-mail _____

☐ Mail ☐ E-Mail ☐ Both

Our newsletter is available as a printed document sent by US Mail and as a PDF file sent by e-mail. Please let us know how you would like to receive your copy.