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Newsletter | Winter 2021

Update on Public Law
CHW Grows!

CHW had a growth spurt in 2021, opening three new offices and adding lawyers and cities to our team.

On February 1st, the municipal lawyers of Walter & Pistole joined CHW, bringing the cities of Martinez, Novato, and Sonoma into the CHW family. **Jeffrey A. Walter** is the City Attorney of the three and joins CHW as a shareholder and brings 45 years' legal experience. W&P's Sonoma office is now CHW's **North SF Bay** office. Jeff previously served Benicia, Corte Madera, and Cotati as City Attorney, is special counsel to the Sonoma County Civil Service Commission, and has served other districts and agencies as general counsel. He has an AV Preeminent rating from Martindale-Hubbell and was honored as a Northern California Super Lawyer in 2010. Jeff's practice focuses on all aspects of municipal law, including land use, taxation, development fees, elections, initiatives, and referenda.

Also joining our North SF Bay team is **John A. Abaci**, a 27-year lawyer who handles both advisory and litigation matters. John has been a litigator since 1994, initially as a deputy DA handling consumer protection and insurance fraud prosecutions and, since 1998, for municipal clients. He has litigated a variety of cases, including personal injury, inverse condemnation, nuisance abatement, disability, and civil rights. He also advises public agencies on a wide range of matters including government claims, law enforcement, personnel, public records, and public works. John's current cases include an arbitration with PG&E over the reopening of Richmond's franchise agreement and police liability defense matters for the City of Vallejo. He joins us as Senior Counsel.

Others on the North SF Bay team are land use lawyer **David L. Zaltsman**, with 36 years' experience, and labor and employment lawyer **Jennifer M. Vuillemet**, with 25 years' experience. They join us Of Counsel.

(Continued on page 3)

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Good News on Local Tax Authority

By Michael G. Colantuono

Recent court decisions provide good news for local taxing authority. *Howard Jarvis Taxpayers Association v. City and County of San Francisco* is the latest of three decisions — from appellate courts in San Francisco and Fresno — concluding that special taxes proposed by initiative may be approved by a simple majority of voters. Special taxes are those the proceeds of which are legally restricted to a particular purpose, like public safety. Before the California Supreme Court's 2017 decision in *California Cannabis Coalition v. City of Upland*, the law had required two-thirds voter approval of special taxes whether proposed by local government officials or by initiative petition. Citing that case, the Court of Appeal concluded in 2020 that San Francisco's Proposition C was validly approved by a simple majority of voters because it was proposed by initiative. This year's Fresno decision closely followed the reasoning of that earlier case. This latest San Francisco case adds one more point — the fact that a San Francisco Supervisor was an initiative proponent, using his City Hall address, did not change the result. There are strict rules against using public resources to urge a "yes" or a "no" vote once a measure is on the ballot, however.

The Howard Jarvis Taxpayers Association sought rehearing in the latest San Francisco case and can be expected to seek review in the California Supreme Court, as it did in the Fresno case. The Supreme Court has until March 29 to act on its Fresno petition. Given that the Supreme Court denied review in the first San Francisco case, it may not take up the issue. If so, *Upland's* suggestion has become the holding of these three cases and settled law.

Wyatt v. City of Sacramento is the latest chapter in ample litigation of transfers from utility funds to cities' and counties' general funds under 1996's Proposition 218 and 2010's Proposition 26. Some of those cases led to settlements by which cities agreed to seek voter approval of general fund transfers

(GFTs) as taxes. Sacramento obtained voter approval of its GFT in 1998 — just two years after Proposition 218 and without pressure of a suit. The trial court concluded decades later the measure violated Proposition 218's requirement that utility rate proceeds be spent only on utility services. On January 29, 2021, the Sacramento Court of Appeal gave Sacramento and CHW a win, concluding Proposition 218 did not limit voters' power to approve utility users taxes. This is an important victory, not only for cities which have voter-approved GFTs, but for the 104 cities and counties which have utility users taxes, as the logic of the trial court (and of a similar ruling against Long Beach) could undermine all such taxes. *Wyatt* will likely seek review in the California Supreme Court and the Long Beach case is pending in the LA Court of Appeal, but this is very good news for local governments and those who depend on their services.

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 mandatory policies on water-meter shutoffs; new and proposed housing statutes; personnel, public works, and management issues under COVID-19; and police personnel records.

Current topics are listed on our website 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.

FAIR MAPS Redistricting Bootcamp

By Holly O. Whatley and Pamela K. Graham

The redistricting cycle following the 2020 Census will be unique. All local governments with districts must comply with the recently enacted FAIR MAPs Act's demanding procedural and substantive criteria.

The clock is ticking. Census data are typically available by April 1, but COVID-19 has delayed release to September 30 (with another 30 days needed for State prisoner reallocations).

2020's Assembly Bill 1276 (Bonta, D-Alameda) extended deadlines to these:

- Cities and counties with regular elections between January 1 and July 1, 2022 must draw districts not later than 174 days before that election. For cities and counties with June 7, 2022 elections, the deadline is December 15, 2021.
- Cities and counties with the next regular election occurring on or after July 1, 2022 must adopt district boundaries not later than 205 days before that election. For municipalities with November 8, 2022 elections, the deadline is April 17, 2022.
- Charter city deadlines are the same unless a different deadline is adopted by ordinance or charter provision before October 1, 2021.

Substantively, district boundaries must comply with the U.S. and California Constitutions and the federal Voting Rights Act, and must be "substantially equal" in population, with only minor deviations permitted. The FAIR MAPs Act also requires districts be geographically contiguous; respect local neighborhoods and communities of interest; be easily identifiable; accomplish geographic compactness; and neither favor nor discriminate against political parties.

Procedurally, cities must hold at least four public hearings — at least one before drawing a map and at least two after. To increase public participation,

those public hearings require five days' notice, with draft maps published at least seven days before adoption, and public access to demographic and mapping data, among other requirements. For communities which must act by December 15, 2021, these must begin before Census data is released on September 30, 2021 — perhaps relying on state Department of Finance and other data which give a sense of what the Census data will show.

Local jurisdictions should begin to prepare now. Hire the necessary demographer. Decide whether to use a citizens' commission. Start developing your website and calendar.

Our redistricting team is here to help you through this process.

For more information, contact Holly at HWhatley@chwlaw.us or (213) 542-5704 or Pamela at PGraham@chwlaw.us or (213) 542-5702.

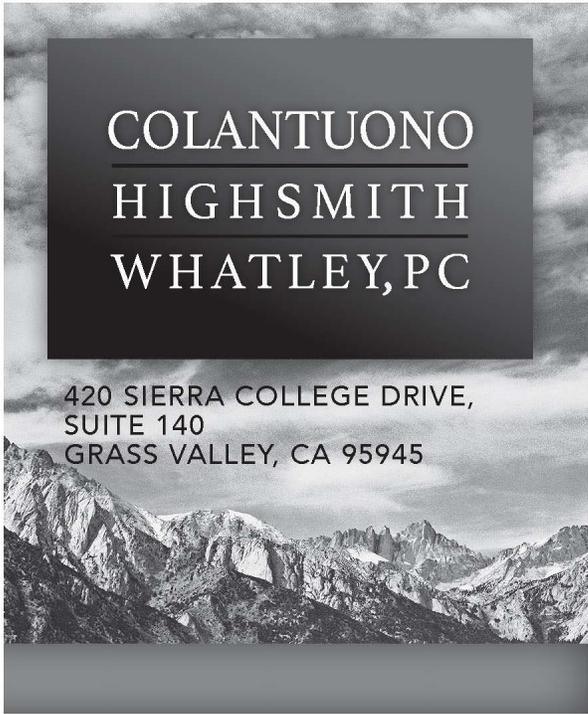
CHW Grows!

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On January 4th, **Alena Shamos** joined us as the anchor of our new **San Diego County** office in Solana Beach. In her 20th year of practice, Alena is a litigator with a wide range of experience serving local governments in San Diego County. Her current cases include election, marijuana, post-redevelopment, and land use matters, including two petitions for review pending in the California Supreme Court in land use and inverse condemnation disputes. She joins us as Senior Counsel.

Finally, we have opened an office in **Sacramento** to be anchored by shareholder **Gary B. Bell**, City Attorney of Auburn and Town Attorney of Yountville and **Ryan A. Reed**, Assistant City Attorney of Auburn and Grass Valley and Assistant Town Attorney of Yountville. Gary and Ryan serve a number of our special district clients, too.

An exciting time of growth for CHW!



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